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Presidential Documents

Title 3—

The President

Presidential Determination No. 2004–44 of September 10, 2004

Presidential Determination and Certification Concerning Libya Under Section 101 and 102(b) of the Arms Export Control Act and Determination on Export-Import Bank Support for U.S. Exports to Libya

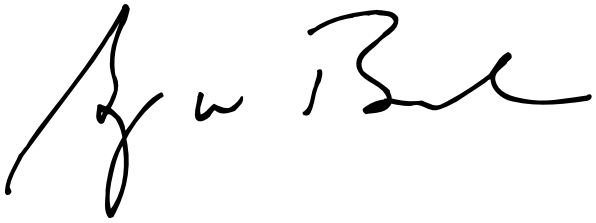
Memorandum for the Secretary of State

Pursuant to section 101 of the Arms Export Control Act, I hereby determine that Libya received nuclear enrichment equipment, material, or technology after August 4, 1977. I hereby determine and certify that the continued termination of assistance, as required by this section, would have a serious adverse effect on vital United States interests and that I have received reliable assurances that Libya will not acquire or develop nuclear weapons or assist other nations in doing so.

Pursuant to section 102(b) of the Arms Export Control Act, I hereby determine that Libya, a non-nuclear weapon state, sought and received design information that I determine to be important to, and intended by Libya for use in, the development or manufacture of a nuclear explosive device. I hereby determine and certify that the application of sanctions, as required by this section, would have a serious adverse effect on vital United States interests.

Pursuant to section 2(b)(4) of the Export-Import Bank Act of 1945, as amended, I hereby determine and certify that it is in the national interest for the Export-Import Bank to guarantee, insure, or extend credit, or participate in the extension of credit in support of United States exports to Libya.

You are directed to report this determination to the Congress and to provide copies of the justification explaining the basis for this determination. You are further directed to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, September 10, 2004.

[FR Doc. 04–21211
Filed 9–17–04; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 2004–46 of September 10, 2004

Presidential Determination with Respect to Foreign Governments' Efforts Regarding Trafficking in Persons

Memorandum for the Secretary of State

Consistent with section 110 of the Trafficking Victims Protection Act of 2000 (Division A of Public Law 106–386), as amended, (the ''Act''), I hereby:

Make the determination provided in section 110(d)(1)(A)(i) of the Act, with respect to Equatorial Guinea and Venezuela, not to provide certain funding for those countries' governments for fiscal year 2005, until such government complies with the minimum standards or makes significant efforts to bring itself into compliance, as may be determined by the Secretary of State in a report to the Congress pursuant to section 110(b) of the Act;

Make the determination provided in section 110(d)(1)(A)(ii) of the Act, with respect to Burma, Cuba, Sudan, and North Korea, not to provide certain funding for those countries' governments for fiscal year 2005, until such government complies with the minimum standards or makes significant efforts to bring itself into compliance, as may be determined by the Secretary of State in a report to the Congress pursuant to section 110(b) of the Act;

Make the determination provided in section 110(d)(3) of the Act, concerning the determinations of the Deputy Secretary of State with respect to Bangladesh, Ecuador, Guyana, and Sierra Leone;

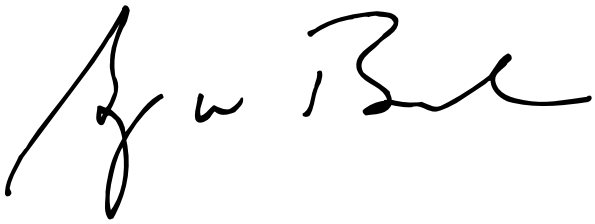
Determine, consistent with section 110(d)(4) of the Act, with respect to Equatorial Guinea, for the implementation of programs, projects, or activities regarding police professionalization, business responsibility, and promotion of the rule of law, that provision to Equatorial Guinea of the assistance described in section 110(d)(1)(A)(i) of the Act for such programs, projects, or activities would promote the purposes of the Act or is otherwise in the national interest of the United States;

Determine, consistent with section 110(d)(4) of the Act, with respect to Sudan, for all programs, projects, or activities of assistance as may be necessary to implement a North/South peace accord and to address the crisis in Darfur, that provision to Sudan of the assistance described in section 110(d)(1)(B) of the Act for such programs, projects, or activities would promote the purposes of the Act or is otherwise in the national interest of the United States; and

Determine, consistent with section 110(d)(4) of the Act, with respect to Venezuela, for all programs, projects, or activities designed to strengthen the democratic process, including strengthening of political parties and supporting electoral observation and monitoring, that provision to Venezuela of the assistance described in sections 110(d)(1)(A)(i) and 110(d)(1)(B) of the Act for such programs, projects, or activities would promote the purposes of the Act or is otherwise in the national interest of the United States.

The certification required by section 110(e) of the Act is provided herewith.

You are hereby authorized and directed to submit this determination to the Congress, and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, September 10, 2004.

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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.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 02–096–3]

Oriental Fruit Fly; Designation of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Oriental fruit fly regulations by quarantining a portion of Orange County, CA, and restricting the interstate movement of regulated articles from that area. This action is necessary on an emergency basis to prevent the spread of the Oriental fruit fly into noninfested areas of the United States. We are also amending the regulations to provide for the use of spinosad bait spray as an alternative treatment for premises. This new treatment option will provide an alternative to the use of malathion bait spray for premises that produce regulated articles within the quarantined area but outside the infested core area.

DATES: This interim rule was effective September 14, 2004. We will consider all comments that we receive on or before November 19, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- EDOCKET: Go to *http://www.epa.gov/feddocket* 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 you have entered EDOCKET, click on the ''View Open APHIS Dockets'' link to locate this document.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 02–096–3, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–096–3.
- E-mail: Address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–096–3'' on the subject line.
- Agency Web Site: Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

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

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Mr. Wayne D. Burnett, National Fruit Fly Program Manager, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–4387.

SUPPLEMENTARY INFORMATION:

Background

The Oriental fruit fly, *Bactrocera dorsalis* (Hendel), is a destructive pest of citrus and other types of fruit, nuts, vegetables, and berries. The short life cycle of the Oriental fruit fly allows rapid development of serious outbreaks, which can cause severe economic losses. Heavy infestations can cause complete loss of crops.

The Oriental fruit fly regulations, contained in 7 CFR 301.93 through 301.93–10 (referred to below as the regulations), were established to prevent the spread of the Oriental fruit fly into noninfested areas of the United States.

Section 301.93–3(a) provides that the Administrator will list as a quarantined area each State, or portion of a State, in which the Oriental fruit fly has been found by an inspector, in which the Administrator has reason to believe that the Oriental fruit fly is present, or that the Administrator considers necessary to regulate because of its proximity to the Oriental fruit fly or its inseparability for quarantine purposes from localities in which the Oriental fruit fly has been found. The regulations impose restrictions on the interstate movement of regulated articles from the quarantined areas. Quarantined areas are listed in § 301.93–3(c).

Less than an entire State will be designated as a quarantined area only if the Administrator determines that: (1) The State has adopted and is enforcing restrictions on the interstate movement of the regulated articles that are substantially the same as those imposed on the interstate movement of regulated articles and (2) the designation of less than the entire State as a quarantined area will prevent the interstate spread of the Oriental fruit fly.

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service reveal that a portion of Orange County, CA, is infested with the Oriental fruit fly.

State agencies in California have begun an intensive Oriental fruit fly eradication program in the quarantined areas of Orange County. Also, California has taken action to restrict the intrastate movement of regulated articles from the quarantined area.

Accordingly, to prevent the spread of the Oriental fruit fly to noninfested areas of the United States, we are amending the regulations in § 301.93–3 by designating a portion of Orange County, CA, as a quarantined area for the Oriental fruit fly. The quarantined area is described in the rule portion of this document.

Prior Designation of Quarantined Area

In an interim rule effective on January 13, 2004, and published in the **Federal Register** on January 20, 2004 (69 FR 2653–2655, Docket No. 02–096–2), we

quarantined portions of Los Angeles and San Bernardino Counties, CA, and restricted the interstate movement of regulated articles from the quarantined area. Based on trapping surveys by inspectors of California State and county agencies, the State of California lifted its interior quarantine on May 21, 2004, based on the determination that the Oriental fruit fly had been eradicated from the quarantined area. In these types of situations, we normally follow the State's action by lifting the corresponding Federal quarantine on the particular area; however, in this case that did not occur. Therefore, in this interim rule, we are removing the quarantined area established in our January 2004 interim rule. The description of the new quarantined area discussed previously replaces the description of the January 2004 quarantined area in § 301.93–3(c).

Treatments

Section 301.93–10 of the regulations lists treatments for regulated articles. Regulated articles treated in accordance with this section may be moved interstate from a quarantined area to any destination. Section 301.93–10 contains treatments for specified fruits, treatments for soil within the treeline of plants producing specified fruits, and treatments for premises (fields, groves, or areas) that are within a quarantined area but outside the infested core area.

Under § 301.93–10(b), premises that are located within the quarantined area but outside the infested core area, and that produce regulated articles, must receive regular treatments with malathion bait spray. We are amending § 301.93–10(b) to include a new alternative chemical treatment for premises. The new chemical treatment is a spinosad bait spray. Without spinosad bait spray, the only treatment made available by the regulations for premises has been malathion bait spray. Spinosad bait spray must be applied by aircraft or ground equipment at a rate of 0.01 oz of a USDA-approved spinosad formulation and 48 oz of protein hydrolysate per acre. For ground applications, the mixture may be diluted with water to improve coverage. The spinosad bait spray provisions we are adding to the regulations in § 301.93–10(b) are the same as those currently found in the Mexican fruit fly regulations in § 301.64–10(c), the West Indian fruit fly regulations in § 301.98–10(b), and the sapote fruit fly regulations in § 301.99–10(c).

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the Oriental fruit fly from spreading to noninfested areas of the United States and to provide an alternative treatment for premises. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (*see* **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

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

This rule amends the Oriental fruit fly regulations by adding a portion of Orange County, CA, to the list of quarantined areas. The regulations restrict the interstate movement of regulated articles from a quarantined area. This rule also amends the regulations by including a new alternative chemical treatment for premises located within the quarantined area but outside the infested core area.

The quarantined area encompasses a relatively small area of Orange County, CA, covering approximately 116 square miles. County records indicated there are 9 growers, 4 nurseries, 24 mobile vendors, 3 farmers markets, 8 fruit sellers, 1 distributor, 2 haulers, 2 processors, 1 swap meet, and 34 yard and tree maintenance firms within the quarantined area that may be affected by this rule.

We expect that any small entities located within the quarantined area that sell regulated articles do so primarily for local intrastate, not interstate, movement, so the effect, if any, of this rule on those entities appears to be minimal. The effect on any small entities that may move regulated articles interstate will be minimized by the availability of various treatments that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost.

Currently, growers must treat premises that are within the quarantined area but outside the infested core area and that produce regulated articles with regular treatments of malathion bait spray. This rule provides for the use of spinosad bait spray for these premises as an alternative to malathion. Spinosad bait spray has been added to the list of approved treatment methods to help meet the requirements of organic growers. Growers and nurseries in regulated areas that choose to use spinosad bait spray may be affected by this change, as the costs of applying spinosad bait spray are greater than the costs of applying malathion bait spray. No growers or nurseries will be required to use spinosad bait spray as a result of its addition to the regulations.

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

Executive Order 12372

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

Executive Order 12988

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

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this interim rule. The site-specific environmental assessment provides a basis for the conclusion that the implementation of integrated pest management to eradicate the Oriental fruit fly will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA

(7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment and finding of no significant impact are available for viewing on the Internet at *http://www.aphis.usda.gov/ppq/ep/ff.* Copies of the environmental assessment and finding of no significant impact are also available for public inspection in our reading room (information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this proposed rule). In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

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

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

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

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

■ 2. In § 301.93–3, paragraph (c) is revised to read as follows:

§ 301.93–3 Quarantined areas.

* * * * *

(c) The areas described below are designated as quarantined areas:

CALIFORNIA

Orange County. That portion of Orange County in the Santa Ana area bounded by a line as follows: Beginning at the intersection of South Euclid Street and West Broadway; then east on West Broadway to East Broadway; then east on East Broadway to South East Street; then northwest on South East Street to East Lincoln Avenue; then east on East Lincoln Avenue to West Lincoln Avenue; then east on West Lincoln Avenue to East Lincoln Avenue; then east on East Lincoln Avenue to Nohl Ranch Road; then east and northeast on Nohl Ranch Road to South Imperial Highway; then south and southwest on South Imperial Highway to Edison Ridge Road; then east and northeast on Edison Ridge Road to Nohl Ranch Road; then southeast on Nohl Ranch Road to Serrano Avenue; then southwest on Serrano Avenue to northern boundary of Santiago Oaks Regional Park; then east, southwest, west, south, and west along the park boundary line to Santiago Creek; then southeast along Santiago Creek to the boundary of Irvine Regional Park; then northeast, southeast, south, southeast, northeast, southeast, south, southwest, and northwest along the park boundary line to Peters Canyon Road; then south and southwest on Peters Canyon Road to Santiago Canyon Road; then southeast on Santiago Canyon Road to the Eastern Transportation Corridor; then south along an imaginary line from the intersection of Santiago Canyon Road and the Eastern Transportation Corridor to the northernmost point of Culver Drive; then southwest on Culver Drive to Walnut Avenue; then northwest on Walnut Avenue to Jamboree Road; then southwest on Jamboree Road to Alton Parkway; then northwest on Alton Parkway to Red Hill Avenue; then southwest on Red Hill Avenue to Macarthur Boulevard; then northwest on Macarthur Boulevard to State Highway 55; then southwest on State Highway 55 to Interstate Highway 405; then west and northwest on Interstate Highway 405 to Magnolia Street; then north on Magnolia Street to McFadden Avenue; then west on McFadden Avenue to Newland Street; then north on Newland Street to Garden Grove Boulevard; then east on Garden Grove Boulevard to Magnolia Street; then north on Magnolia Street to Magnolia Avenue; then north on Magnolia Avenue to South Magnolia Avenue; then north on South Magnolia Avenue to West Ball Road; then east on West Ball Road to Ball Road; then east on Ball Road to South Euclid Street; then north on South Euclid Street to the point of the beginning.

■ 3. In § 301.93–10, paragraph (b) is revised to read as follows:

§ 301.93–10 Treatments.

* * * * *

(b) *Premises.* A field, grove, or area that is located within the quarantined area but outside the infested core area, and that produces regulated articles, must receive regular treatments with either malathion or spinosad bait spray. These treatments must take place at 6- to 10-day intervals, starting a sufficient time before harvest (but not less than 30 days before harvest) to allow for completion of egg and larvae development of the Oriental fruit fly. Determination of the time period must be based on the day degrees model for the Oriental fruit fly. Once treatment has begun, it must continue through the harvest period. The malathion bait spray treatment must be applied by aircraft or ground equipment at a rate of 2.4 oz technical grade malathion and 9.6 oz of protein hydrolysate per acre. The spinosad bait spray treatment must be applied by aircraft or ground equipment at a rate of 0.01 oz of a USDA-approved spinosad formulation and 48 oz of protein hydrolysate per acre. For ground applications, the mixture may be diluted with water to improve coverage.

* * * * *

Done in Washington, DC, this 14th day of September, 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–21084 Filed 9–17–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Natural Resources Conservation Service

7 CFR Part 1469

Conservation Security Program

AGENCY: Commodity Credit Corporation and the Natural Resources Conservation Service, USDA.

ACTION: Interim final rule; extension of public comment period.

SUMMARY: The Conservation Security Program (CSP) is authorized by Title XII, Chapter 2, Subchapter A, of the Food Security Act of 1985, as amended by the Farm Security and Rural Investment Act of 2002. The Natural Resources Conservation Service (NRCS) published an Interim Final Rule for CSP on June 21, 2004, (69 FR 34502), with a comment period expiring September 20, 2004. By this document, NRCS is extending the period during which it will accept public comment on the Interim Final Rule for CSP to October 5, 2004. This extension is to give the public additional time to comment on key issues that have been raised regarding the implementation of the program.

DATES: Comments must be postmarked by midnight October 5, 2004.

ADDRESSES: Send comments in writing, by mail, to Financial Assistance

Programs Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890, or by e-mail to *FarmBillRules@usda.gov*; Attn: Conservation Security Program.

The Interim Final Rule may also be accessed via the Internet through the NRCS homepage, at *http://www.nrcs.usda.gov*, and by selecting Programs. All comments, including names and addresses when provided, are placed in the record and are available for public inspection.

FOR FURTHER INFORMATION CONTACT: Craig Derickson, Conservation Security Program Manager, Financial Assistance Programs Division, NRCS, P.O. Box 2890, Washington, DC 20013–2890, telephone: (202) 720–1845; fax: (202) 720–4265. Submit e-mail to: *craig.derickson@usda.gov*, Attention: Conservation Security Program.

Signed in Washington, DC, on September 13, 2004.

Bruce I. Knight,

Chief, Natural Resources Conservation Service, Vice President, Commodity Credit Corporation.

[FR Doc. 04–21026 Filed 9–17–04; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–227–AD; Amendment 39–13796; AD 2004–19–02]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Fan Jet Falcon Series Airplanes and Model Mystere-Falcon 20 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Dassault Model Fan Jet Falcon series airplanes and Model Mystere-Falcon 20 series airplanes, that requires inspecting and testing for fatigue cracking due to stress corrosion in the vertical posts of the window frames in the flight compartment. This action is necessary to prevent fatigue cracking of the window frames, which could result in rapid depressurization of the fuselage and consequent reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective October 25, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dassault Model Fan Jet Falcon series airplanes and Model Mystere-Falcon 20 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on June 17, 2004 (69 FR 33872). That action proposed to require inspecting and testing for fatigue cracking due to stress corrosion in the vertical posts of the window frames in the flight compartment. That action also proposed to add airplanes to the applicability, to clarify which airplanes must do certain actions, and to specify which window frames to ultrasonically inspect.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Explanation of Change Made to Final Rule

We have changed paragraphs (a)(1) and (a)(2) of this final rule to specify that the actions shall be done in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Direction Générale de l'Aviation Civile (or its delegated agent). In addition, Dassault Aviation Work Card 53–30–12, titled ''Endoscopic Inspection of the Frames of Pilot, Co-Pilot, and Front Glass Panels (Aircraft Not Changed Per SB No. 701),'' of the Dassault Aviation Fan Jet Falcon Maintenance Manual, is listed as one approved method for doing the detailed (endoscopic) inspection specified in paragraph (a)(1) of this final rule. Additionally, Dassault Aviation Work Card 53–30–07, titled ''Non-Destructive Ultrasonic Testing of Vertical Posts on Screw-Mounted Windows,'' of the Dassault Aviation Fan Jet Falcon Maintenance Manual, is listed as one approved method of doing the ultrasonic test specified in paragraph (a)(2) of this final rule.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 220 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $57,200, or $260 per airplane.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory

Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–19–02 Dassault Aviation: Amendment 39–13796. Docket 2002–NM–227–AD.

Applicability: All Model Fan Jet Falcon series airplanes and Model Mystere-Falcon 20 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the window frames in the flight compartment, which could result in rapid depressurization of the fuselage and consequent reduced structural integrity of the airplane, accomplish the following:

Inspection and Test of Flight Compartment Window Frames

(a) Do an inspection and test for stress corrosion and cracking as specified in paragraphs (a)(1) and (a)(2) of this AD, at the applicable time specified in paragraph (b) of this AD.

(1) For airplanes that have not accomplished the actions specified in Dassault Service Bulletin FJF–701, dated March 25, 1986; or Revision 1 dated October 22, 1987: Do a detailed inspection (using an endoscope) to detect stress corrosion and cracking of the window frames in the flight compartment, including the pilot, co-pilot, and front windows. Do the inspection in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent). Dassault Aviation Work Card 53–30–12, titled ''Endoscopic Inspection of the Frames of Pilot, Co-Pilot, and Front Glass Panels (Aircraft Not Changed Per SB No. 701),'' of the Dassault Aviation Fan Jet Falcon Maintenance Manual is one approved method.

(2) For all airplanes: Do an ultrasonic test for cracking in the posts of window frames 2, 5, 7, 8, and 10. Do the test in accordance with a method approved by either the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent). Dassault Aviation Work Card 53–30–07, titled ''Non-Destructive Ultrasonic Testing of Vertical Posts on Screw-Mounted Windows,'' of the Dassault Aviation Fan Jet Falcon Maintenance Manual is one approved method.

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

(b) Do the inspection and test required by paragraph (a) of this AD, at the times specified in paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) For airplanes having 35 or more years since the date of issuance of the original Airworthiness Certificate or the date of issuance of the original Export Certificate of Airworthiness, whichever is first; or having accumulated 20,000 or more total flight cycles as of the effective date of this AD: Within 7 months after the effective date of this AD.

(2) For airplanes not identified in paragraph (b)(1) of this AD: Within 25 months or 2,500 flight cycles after the effective date of this AD, whichever is first.

Repair

(c) If any stress corrosion or cracking is found during any inspection or test required by paragraph (a) of this AD: Before further flight, repair per a method approved by either the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

Reporting Requirement

(d) At the applicable time specified in paragraph (d)(1) or (d)(2) of this AD: Submit a report of the findings (positive and negative) of the inspection required by paragraph (a) of this AD to: Dassault Falcon Jet, Attn: Service Engineering/Falcon 20, fax: (201) 541–4706, at the applicable time specified in paragraph (d)(1) or (d)(2) of this AD. The report must include the airplane serial number, number of landings, number of flight hours, airplane age, and the number and length of any cracks found. Submission of the Charts of Records (part of French airworthiness directive 2001–600–028(B), dated December 12, 2001), is an acceptable method of complying with this requirement. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the inspection was done after the effective date of this AD: Submit the report within 5 days after the inspection.

(2) If the inspection was done prior to the effective date of this AD: Submit the report within 5 days after the effective date of this AD.

Alternative Methods of Compliance

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

Note 2: The subject of this AD is addressed in French airworthiness directive 2001–600–028(B), dated December 12, 2001.

Effective Date

(f) This amendment becomes effective on October 25, 2004.

Issued in Renton, Washington, on September 9, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–21051 Filed 9–17–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30424; Amdt. No. 3105]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective September 20, 2004. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 20, 2004.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: PO Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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. For the same reason, the FAA certifies that this amendment 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 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on September 10, 2004.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97— STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

** * * Effective September 30, 2004*

Cleveland, OH, Cleveland-Hopkins Intl, ILS or LOC Rwy 6L, Amdt 2, ILS RWY 6L (CAT II), Amdt 2, ILS Rwy 6L (CAT III), Amdt 2

Cleveland, OH, Cleveland-Hopkins Intl, RNAV (GPS) Rwy 6L, Amdt 1

** * * Effective November 25, 2004*

King Salmon, AK, King Salmon, ILS or LOC Rwy 11, Amdt 15

King Salmon, AK, King Salmon, RNAV (GPS) Rwy 11, Orig

King Salmon, AK, King Salmon, RNAV (GPS) Y Rwy 29, Orig

King Salmon, AK, King Salmon, RNAV (GPS) Z Rwy 29, Orig

King Salmon, AK, King Salmon, LOC/DME BC Rwy 29, Amdt 2

King Salmon, AK, King Salmon, VOR/DME or TACAN Rwy 29, Amdt 9

King Salmon, AK, King Salmon, VOR or TACAN Rwy 11, Amdt 12

King Salmon, AK, King Salmon, GPS Rwy 11, Orig, Cancelled

King Salmon, AK, King Salmon, GPS Rwy 29, Orig, Cancelled

Shungnak, AK, Shungnak, RNAV (GPS) Rwy 9, Orig

Shungnak, AK, Shungnak, RNAV (GPS) Rwy 27, Orig

Payson, AZ, Payson, RNAV (GPS)–A, Amdt 1A

Window Rock, AZ, Window Rock, RNAV (GPS)–B, Orig-A

Window Rock, AZ, Window Rock, RNAV (GPS) Rwy 2, Orig-A

Inyokern, CA, Inyokern, RNAV (GPS) Y Rwy 2, Orig-A

Inyokern, CA, Inyokern, RNAV (GPS) Z Rwy 2, Orig-A
Kailua-Kona, HI, Kona Intl at Keahole, RNAV (GPS) Rwy 17, Orig-B
Kailua-Kona, HI, Kona Intl at Keahole, RNAV (GPS) Z Rwy 35, Orig-B
Lihue, HI, Lihue, RNAV (GPS) Rwy 35, Orig-B
Champaign-Urbana, IL, University of Illinois-Willard, VOR/DME Rwy 22, Amdt 8
Champaign-Urbana, IL, University of Illinois-Willard, RNAV (GPS) Rwy 22, Orig
Moline, IL, Quad City Intl, RNAV (GPS) Rwy 9, Orig
Moline, IL, Quad City Intl, RNAV (GPS) Rwy 13, Orig
Moline, IL, Quad City Intl, RNAV (GPS) Rwy 31, Orig
Moline, IL, Quad City Intl, RNAV (GPS) Y Rwy 27, Orig
Moline, IL, Quad City Intl, RNAV (GPS) Z Rwy 27, Orig
Moline, IL, Quad City Intl, ILS or LOC Rwy 9, Amdt 30
Moline, IL, Quad City Intl, ILS or LOC Rwy 27, Amdt 1
Moline, IL, Quad City Intl, NDB Rwy 9, Amdt 28
Moline, IL, Quad City Intl, VOR/DME RNAV Rwy 31, Amdt 10
Johnson, KS, Stanton County Muni, NDB Rwy 17, Amdt 1
Frederick, MD, Frederick Muni, ILS or LOC Rwy 23, Amdt 5
Battle Mountain, NV, Battle Mountain, RNAV (GPS) Rwy 3, Orig-A
Ely, NV, Ely Airport-Yelland Field, RNAV (GPS) Rwy 18, Orig-B
Albuquerque, NM, Albuquerque Intl Sunport, RNAV (GPS) Rwy 8, Orig
Albuquerque, NM, Albuquerque Intl Sunport, VOR or TACAN Rwy 8, Amdt 20
Deming, NM, Deming Muni, RNAV (GPS) Rwy 4, Orig
Deming, NM, Deming Muni, RNAV (GPS) Rwy 26, Orig
Deming, NM, Deming Muni, VOR Rwy 26, Amdt 10
Deming, NM, Deming Muni, GPS Rwy 4, Orig-A, Cancelled
Deming, NM, Deming Muni, GPS Rwy 26, Orig-A, Cancelled
Portales, NM, Portales Muni, RNAV (GPS) Rwy 1, Orig
Portales, NM, Portales Muni, NDB Rwy 1, Amdt 1
Portales, NM, Portales Muni, GPS Rwy 1, Orig-A, Cancelled
Findlay, OH, Findlay, RNAV (GPS) Rwy 7, Orig
Findlay, OH, Findlay, RNAV (GPS) Rwy 18, Orig
Findlay, OH, Findlay, RNAV (GPS) Rwy 25, Orig
Findlay, OH, Findlay, RNAV (GPS) Rwy 36, Orig
Findlay, OH, Findlay, NDB Rwy 36, Amdt 11
Findlay, OH, Findlay, VOR Rwy 7, Amdt 12
Findlay, OH, Findlay, VOR Rwy 25, Amdt 5
Findlay, OH, Findlay, VOR Rwy 36, Amdt 6
Findlay, OH, Findlay, GPS Rwy 18, Amdt 1A, Cancelled
Wilmington, OH, Airborne Airpark, ILS or LOC Rwy 22R, Amdt 5, ILS Rwy 22R (CAT II), Amdt 5, ILS Rwy 22R (CAT III) , Amdt 5
Quinton, VA, New Kent County, RNAV (GPS) Rwy 10, Orig-A
Quinton, VA, New Kent County, RNAV (GPS) Rwy 28, Orig-A
Quinton, VA, New Kent County, VOR–A, Amdt 1A

[FR Doc. 04–21008 Filed 9–17–04; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CO–001–0076a, CO–001–0077a; FRL–7815–4]

Approval and Promulgation of Air Quality Implementation Plans; CO; Designation of Areas for Air Quality Planning Purposes, Lamar and Steamboat Springs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; withdrawal.

SUMMARY: On August 5, 2004 EPA published a direct final rule (69 FR 47366) approving, and an accompanying proposed rule (69 FR 47399) proposing to approve a revision submitted by the State of Colorado on July 31, 2002, for the purpose of redesignating the Lamar, Colorado and Steamboat Springs, Colorado areas from nonattainment to attainment for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}) under the 1987 standards. In the direct final rule, EPA stated that if adverse comments were received by September 7, 2004, the rule would be withdrawn and not take effect. EPA subsequently received adverse comments. EPA will summarize and respond to the comments received based on the proposed action published on August 5, 2004 (69 FR 47399). EPA will not institute a second comment period on this action.

DATES: The direct final rule published at 69 FR 47366 is withdrawn as of September 20, 2004.

FOR FURTHER INFORMATION CONTACT: Libby Faulk, Air Quality Planning and Management Unit, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202. Telephone: (303) 312–6083. E-mail address: *faulk.libby@epa.gov*.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Particulate Matter.

40 CFR Part 81

Air pollution control.

Dated: September 9, 2004.

Patricia D. Hull,

Acting Regional Administrator, Region 8.

[FR Doc. 04–20971 Filed 9–17–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04–OAR–2004–NC–0002–200417(a); FRL–7815–9]

Approval and Promulgation of Implementation Plans; North Carolina: Raleigh/Durham Area and Greensboro/Winston-Salem/High Point Area Maintenance Plan Updates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to the State Implementation Plan (SIP) submitted by the North Carolina Department of Environment and Natural Resources (NCDENR) on June 4, 2004. This SIP revision satisfies the requirement of the Clean Air Act (CAA) as amended in 1990 for the second 10-year updates of both the Raleigh/Durham area (Durham and Wake Counties, and a portion of Granville County) and the Greensboro/Winston-Salem/High Point area (Davidson, Forsyth, and Guilford Counties, and a portion of Davie County) 1-hour ozone maintenance plans.

DATES: This direct final rule is effective November 19, 2004, without further notice, unless EPA receives adverse comment by October 20, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID No. R04–OAR–2004–NC–0002, by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

2. Agency Web site: *http://docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment

system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: *delatorre.rosymar@epa.gov*
4. Fax: 404–562–9019
5. Mail: ''R04–OAR–2004–NC–0002'', Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
6. Hand Delivery or Courier. Deliver your comments to: Rosymar De La Torre Colón, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division 12th floor, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to RME ID No. R04–OAR–2004–NC–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov, or e-mail. The EPA RME Web site and the federal regulations.gov Web site are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Rosymar De La Torre Colón, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960, (404) 562–8965, *delatorre.rosymar@epa.gov,* or Matt Laurita, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960, (404) 562–9044, *laurita.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

In addition to the publicly available docket materials available for inspection electronically in Regional Material in EDocket, and the hard copy available at the Regional Office, which are identified in the **ADDRESSES** section above, copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency, North Carolina Department of Environment and Natural Resources, Division of Air Quality, 2728 Capital Boulevard, Raleigh, North Carolina 27604.

II. Background

The air quality maintenance plan is a requirement of the 1990 CAA for nonattainment areas that come into compliance with the national ambient air quality standard (NAAQS). The Raleigh/Durham area (Durham and Wake Counties and a portion of Granville County) was not in compliance with the 1-hour ozone standard until air quality measurements from 1990 to 1992 showed that the area had attained the standard. The State subsequently requested that EPA redesignate these counties as attainment for the 1-hour ozone standard. Included with this request was a 10-year air quality maintenance plan covering the years 1993 through 2004. EPA found that this plan was developed in accordance with the appropriate guidelines and published approval of the plan on April 18, 1994, with an effective date of June 17, 1994 (59 FR 18300).

The Greensboro/Winston-Salem/High Point area (Davidson, Forsyth, and Guilford Counties and a portion of Davie County) was not in compliance with the 1-hour ozone standard until air quality measurements from 1990 to 1992 showed that the area had attained the standard. The State subsequently requested that EPA redesignate these counties as attainment for the 1-hour ozone standard. Included with this request was a 10-year air quality maintenance plan covering the years 1993 through 2004. EPA found that this plan was developed in accordance with the appropriate guidelines and published approval of the plan on September 9, 1993, with an effective date of November 8, 1993 (58 FR 47391).

III. Analysis of State's Submittal

On June 4, 2004, the NCDENR submitted revisions to North Carolina's SIP to provide a 10-year update to the maintenance plans as required by section 175A(b) of the CAA as amended in 1990. The underlying strategy of the maintenance plan is to maintain compliance with the 1-hour ozone standard by assuring that current and future emissions of Volatile Organic Compounds (VOC) and Nitrogen Oxides (NO_X) remain at or below attainment year emission levels. The NCDENR has developed a comprehensive emissions inventory for the new base year of 2000 for use in projecting future emissions. The choice of a new base year is allowed because the areas were still in attainment in 2000. The estimated emissions of ozone precursors (*i.e.*, VOC and NO_X) for the Raleigh/Durham and Greensboro/Winston-Salem/High Point

areas during the 2000 ozone season are provided in the following table. Projected VOC and NO_X emissions for 2004, 2007, 2010, 2012, and 2015 are also provided.

VOLATILE ORGANIC COMPOUNDS—RALEIGH/DURHAM AREA

[Tons per day]

VOC	Category	2000	2004	2007	2010	2012	2015
Durham	Point	1.80	1.77	1.77	1.90	1.91	1.98
	Area	8.01	6.98	7.26	7.59	7.82	8.15
	On-road mobile	10.76	8.74	7.09	5.69	4.95	4.31
	Non-road mobile	5.07	4.61	4.05	3.81	3.82	3.92
Total	n/a	25.64	22.10	20.17	18.99	18.50	18.36
Safety Margin	2000 base year minus projected year total.	n/a	3.54	5.47	6.65	7.14	7.28
Granville*	Point	0.79	0.77	0.77	0.80	0.85	0.89
	Area	1.17	1.11	1.14	1.17	1.19	1.22
	On-road mobile	0.73	0.61	0.47	0.39	0.34	0.30
	Non-road mobile	0.30	0.28	0.24	0.23	0.23	0.24
Total	n/a	2.99	2.77	2.62	2.59	2.61	2.65
Safety Margin	2000 base year minus projected year total.	n/a	0.22	0.37	0.40	0.38	0.34
Wake	Point	9.04	9.16	9.48	9.90	10.15	10.54
	Area	27.52	25.72	27.46	29.37	30.63	32.59
	On-road mobile	24.95	20.36	17.13	14.59	13.03	11.76
	Non-road mobile	15.66	13.40	10.76	9.61	9.61	9.89
Total	n/a	77.17	68.64	64.83	63.47	63.42	64.78
Safety Margin	2000 base year minus projected year total.	n/a	8.53	12.34	13.70	13.75	12.39
Overall Total	n/a	105.81	93.52	87.63	85.04	84.53	85.79
Total Safety Margin	n/a	n/a	12.29	18.18	20.76	21.28	20.02

*Partial County.

NITROGEN OXIDES—RALEIGH/DURHAM AREA

[Tons per day]

NO_X	Category	2000	2004	2007	2010	2012	2015
Durham	Point	3.84	4.10	4.29	4.54	4.70	4.93
	Area	0.37	0.39	0.41	0.43	0.44	0.45
	On-road mobile	22.38	17.99	13.65	9.96	7.90	5.55
	Non-road mobile	9.64	9.39	9.04	8.58	8.37	8.27
Total	n/a	36.23	31.87	27.39	23.51	21.41	19.20
Safety Margin	2000 base year minus projected year total.	n/a	4.36	8.84	12.72	14.82	17.03
Granville*	Point	0.28	0.30	0.31	0.33	0.34	0.35
	Area	0.07	0.07	0.08	0.08	0.08	0.09
	On-road mobile	2.65	1.80	1.30	0.99	0.77	0.53
	Non-road mobile	0.44	0.42	0.40	0.38	0.37	0.37
Total	n/a	3.44	2.59	2.09	1.78	1.56	1.34
Safety Margin	2000 base year minus projected year total.	n/a	0.85	1.35	1.66	1.88	2.10
Wake	Point	2.68	2.83	2.98	3.16	3.27	3.42
	Area	1.42	1.64	1.79	1.93	2.03	2.19
	On-road mobile	55.28	46.86	36.95	26.23	21.23	15.30
	Non-road mobile	19.05	18.39	17.54	16.44	15.93	15.58
Total	n/a	78.43	69.72	59.26	47.76	42.46	36.49
Safety Margin	2000 base year minus projected year total.	n/a	8.71	19.17	30.67	35.97	41.94
Overall Total	n/a	118.09	104.18	88.74	73.06	65.43	57.03

NITROGEN OXIDES—RALEIGH/DURHAM AREA—Continued

[Tons per day]

NO_X	Category	2000	2004	2007	2010	2012	2015
Total Safety Margin	n/a	n/a	13.91	29.35	45.04	52.66	61.06

*Partial County.

VOLATILE ORGANIC COMPOUNDS—GREENSBORO/WINSTON-SALEM/HIGH POINT AREA

[Tons per day]

VOC	Category	2000	2004	2007	2010	2012	2015
Davidson	Point	17.51	17.26	17.31	17.35	17.41	17.40
	Area	8.77	7.41	7.61	7.82	7.93	8.12
	On-road mobile	8.37	6.49	5.44	4.46	3.91	3.43
	Non-road mobile	2.19	1.99	1.76	1.62	1.61	1.64
Total	n/a	36.84	33.15	32.12	31.25	30.86	30.59
Safety Margin	2000 base year minus projected year total.	n/a	3.69	4.72	5.59	5.98	6.25
Davie*	Point	0.00	0.00	0.00	0.00	0.00	0.00
	Area	0.11	0.11	0.12	0.12	0.13	0.13
	On-road mobile	0.02	0.01	0.01	0.01	0.01	0.01
	Non-road mobile	0.01	0.01	0.01	0.01	0.01	0.01
Total	n/a	0.14	0.13	0.14	0.14	0.15	0.15
Safety Margin	2000 base year minus projected year total.	n/a	0.01	0.00	0.00	−0.01	−0.01
Forsyth	Point	13.58	13.34	13.42	13.98	14.34	14.84
	Area	12.48	10.88	11.34	11.82	12.13	12.58
	On-road mobile	17.00	13.77	11.38	9.37	8.14	7.08
	Non-road mobile	5.65	4.96	4.18	3.83	3.85	3.97
Total	n/a	48.71	42.95	40.32	39.00	38.46	38.47
Safety Margin	2000 base year minus projected year total.	n/a	5.76	8.39	9.71	10.25	10.24
Guilford	Point	23.81	24.63	25.94	27.58	28.73	30.26
	Area	20.01	17.19	17.93	18.71	19.19	19.90
	On-road mobile	25.00	20.21	16.56	13.51	11.70	10.14
	Non-road mobile	11.99	10.56	8.85	8.08	8.15	8.40
Total	n/a	80.81	72.59	69.28	67.88	67.77	68.70
Safety Margin	2000 base year minus projected year total.	n/a	8.22	11.53	12.93	13.04	12.11
Overall Total	n/a	166.50	148.82	141.85	138.27	137.25	137.91
Total Safety Margin	n/a	n/a	17.68	24.65	28.23	29.26	28.59

* Partial County.

NITROGEN OXIDES—GREENSBORO/WINSTON-SALEM/HIGH POINT AREA

[Tons per day]

NO_X	Category	2000	2004	2007	2010	2012	2015
Davidson	Point	14.60	10.23	7.40	7.89	8.21	8.64
	Area	0.45	0.48	0.50	0.51	0.52	0.54
	On-road mobile	16.23	12.78	9.90	7.35	5.94	4.29
	Non-road mobile	4.27	4.10	3.92	3.76	3.68	3.61
Total	n/a	35.55	27.59	21.72	19.51	18.35	17.08
Safety Margin	2000 base year minus projected year total.	n/a	7.96	13.83	16.04	17.20	18.47
Davie*	Point	0.00	0.00	0.00	0.00	0.00	
	Area	0.002	0.002	0.002	0.002	0.002	0.002
	On-road mobile	0.05	0.04	0.03	0.02	0.02	0.01
	Non-road mobile	0.02	0.01	0.01	0.01	0.01	0.01
Total	n/a	0.07	0.05	0.04	0.03	0.03	0.02

NITROGEN OXIDES—GREENSBORO/WINSTON-SALEM/HIGH POINT AREA—Continued

[Tons per day]

NO_X	Category	2000	2004	2007	2010	2012	2015
Safety Margin	2000 base year minus projected year total.	n/a	0.02	0.03	0.4	0.04	
Forsyth	Point	9.33	12.40	7.86	8.17	8.37	8.64
	Area	0.48	0.51	0.53	0.55	0.56	0.58
	On-road mobile	31.50	24.18	18.42	13.67	11.06	7.99
	Non-road mobile	7.03	6.97	6.81	6.58	6.49	6.52
Total	n/a	48.34	44.06	33.62	28.97	26.48	23.73
Safety margin	2000 base year minus projected year total.	n/a	4.28	14.72	19.37	21.86	24.61
Guilford	Point	2.42	2.57	2.69	2.84	2.94	3.07
	Area	0.85	0.91	0.96	1.01	1.04	1.08
	On-road mobile	44.7	34.03	25.74	18.97	15.36	11.07
	Non-road mobile	14.71	15.22	14.84	14.29	14.07	14.03
Total	n/a	62.68	52.73	44.23	37.11	33.41	29.25
Safety margin	2000 base year minus projected year total.	n/a	9.95	18.45	25.57	29.27	33.43
Overall total	n/a	146.64	124.42	99.62	85.62	78.27	70.09
Total Safety Margin	n/a	n/a	22.21	47.01	61.01	68.36	76.55

* Partial County.

This SIP revision satisfies the requirement of the CAA for the second 10-year updates for the Raleigh/Durham area and Greensboro/Winston-Salem/High Point area 1-hour ozone maintenance plans. Changes to the current maintenance plans include revisions to the emissions inventory for both on-road and non-road mobile sources, reflecting improved methodologies contained in the MOBILE6 and NONROAD emission models. New emissions data for the year 2000 and the projected years (2004, 2007, 2010, 2012 and 2015) have been calculated.

IV. Motor Vehicle Emissions Budgets

Maintenance plans and other control strategy SIPs create motor vehicle emission budgets (MVEBs) for criteria pollutants and/or their precursors to address pollution from cars and trucks. The MVEB is the portion of the total allowable emissions that is allocated to highway and transit vehicle use and emissions. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the MVEBs in the SIP and how to revise the MVEBs.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (*e.g.*, be consistent with) the part of the State's air quality plan that addresses pollution from cars and trucks. ''Conformity'' to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. If a transportation plan does not ''conform,'' most projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

Specific MVEBs are defined for both VOC and NO_X for the Raleigh/Durham and Greensboro/Winston-Salem/High Point areas in the North Carolina submittal. Pursuant to 40 CFR 93.124(d), North Carolina has elected to allocate subarea budgets for each of the counties (including partial counties) for the purpose of transportation conformity. With this allocation, each county must demonstrate conformity to the county-specific subarea budgets. Metropolitan Planning Organizations (MPOs) with planning area boundaries that cross county borders must coordinate to ensure that all applicable county-specific subarea budgets are met. The chart below provides a summary of the county-specific subarea budgets.

RALEIGH/DURHAM AREA MVEB

[Tons per day]

County	Pollutant	2004	2007	2010	2012	2015
Durham	VOC	9.53	8.30	6.77	5.94	5.26
	NO_X	19.61	15.29	11.35	9.09	6.49
Granville*	VOC	0.66	0.55	0.46	0.41	0.37
	NO_X	1.96	1.46	1.13	0.89	0.62
Wake	VOC	22.19	20.04	17.36	15.64	14.35
	NO_X	51.08	41.38	29.90	24.41	17.90

*Partial County.

GREENSBORO/WINSTON-SALEM/HIGH POINT AREA MVEB

[Tons per day]

County	Pollutant	2004	2007	2010	2012	2015
Davidson	VOC	6.49	5.77	4.73	4.38	3.94
	NO_X	12.78	10.49	7.79	6.36	4.72
Davie*	VOC	0.01	0.01	0.01	0.01	0.01
	NO_X	0.04	0.03	0.02	0.02	0.01
Forsyth	VOC	13.77	12.06	9.93	9.12	8.14
	NO_X	24.18	19.53	14.49	11.83	8.79
Guilford	VOC	20.21	17.55	14.32	13.10	11.66
	NO_X	34.03	27.28	20.11	16.44	12.18

*Partial County.

The MVEBs have been defined for each county for 2004, 2007, 2010, 2012 and 2015 in the State's submittal. The values for a given year are equal to the on-road mobile source projected level of emissions for that year plus an adjustment. The adjustments are allocations from the safety margins, which account for uncertainty in the projections. They are available because of significant reductions of VOC and NO_X that have occurred, and are projected to occur, primarily due to mobile sources. The MVEBs are constrained in each of the budget years to assure that the total emissions (*i.e.*, all source categories) do not exceed the 2000 base year emissions. In no case are the projected total emissions from mobile sources for any year greater than the base year emissions totals for either VOC or NO_X.

Under 40 CFR 93.101, the term safety margin is the difference between the attainment level (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the air quality health standard. The safety margin credit can be allocated to the transportation sector, although the total emission level must stay below the attainment level.

SAFETY MARGINS—RALEIGH/DURHAM AREA

[Tons per day]

VOC	2004	2007	2010	2012	2015
Safety Margin	12.29	18.18	20.76	21.28	20.02
Allocated to MVEB	2.67	4.20	3.92	3.67	3.61
Remaining Safety Margin	9.62	13.98	16.84	17.61	16.41
NO_X					
Safety Margin	13.91	29.35	45.04	52.66	61.06
Allocated to MVEB	6.00	6.23	5.20	4.49	3.63
Remaining Safety Margin	7.91	23.12	39.84	48.17	57.43

SAFETY MARGINS—GREENSBORO/WINSTON-SALEM/HIGH POINT AREA

[Tons per day]

VOC	2004	2007	2010	2012	2015
Safety Margin	17.68	24.65	28.23	29.26	28.59
Allocated to MVEB	0.00	2.00	1.64	2.85	3.09
Remaining Safety Margin	17.68	22.65	26.59	26.41	25.50
NO_X					
Safety Margin	22.21	47.01	61.01	68.36	76.55
Allocated to MVEB	0.00	3.24	2.40	2.27	2.34
Remaining Safety Margin	22.21	43.77	58.61	66.09	74.21

V. Final Action

EPA is approving the second 10-year updates for the Raleigh/Durham and Greensboro/Winston-Salem/High Point 1-hour ozone maintenance plans. In this action EPA is approving the MVEBs for 2004, 2007, 2010, 2012, and 2015. The MVEBs for 2007, 2010, 2012, and 2015 for the Raleigh/Durham and Greensboro/Winston-Salem/High Point areas were previously found adequate for transportation conformity purposes. This finding of adequacy was announced in a letter to the State of North Carolina dated June 23, 2004 and was subsequently announced in the **Federal Register** (69 FR 43979, July 23, 2004). As a result of this prior adequacy determination, the MVEBs for 2007, 2010, 2012, and 2015 became available for use on August 9, 2004. As a result of today's SIP revision approval, the revised 2004 MVEBs and the MVEBs for 2007, 2010, 2012, and 2015 must be used for future transportation conformity determinations effective on November 19, 2004. The MVEBs, based on the on-road mobile sources, are to be used by the local metropolitan planning organizations and transportation authorities to assure that transportation plans, programs, and projects are consistent with, and conform to, the long term maintenance of acceptable air quality in the Raleigh/Durham and Greensboro/Winston-Salem/High Point areas.

The EPA is publishing this rule without prior proposal because the

Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective November 19, 2004, without further notice unless the Agency receives adverse comments by October 20, 2004.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 19, 2004, and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this 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 action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this 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 approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This 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 approves 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 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 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.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA 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).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 19, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 8, 2004.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart II—North Carolina

■ 2. Section 52.1770 (e), is amended by adding two new entries at the end of the table for ''10 Year Maintenance Plan Update for the Raleigh/Durham Area'' and ''10 Year Maintenance Plan Update for the Greensboro/Winston-Salem/High Point Area'' to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED NORTH CAROLINA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	Federal Register citation
* * *	*	*	* *
10 Year Maintenance Plan Update for the Raleigh/Durham Area	6/4/04	9/20/04	[Insert citation of publication]
10 Year Maintenance Plan Update for the Greensboro/Winston-Salem/High Point Area.	6/4/04	9/20/04	[Insert citation of publication]

[FR Doc. 04–21060 Filed 9–17–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD153–3111; FRL–7813–1]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Revised Major Stationary Source Applicability for Reasonably Available Control Technology and Permitting and Revised Offset Ratios for the Washington Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision pertains to changes in Maryland's regulations for new source permitting for major sources of volatile organic compound (VOC) and nitrogen oxides (NO_X) emissions and regulations requiring reasonably available control technology on major stationary sources of nitrogen oxides in the Washington, DC ozone nonattainment area. The revision modifies the currently approved SIP to make the following changes applicable in the Washington, DC ozone nonattainment area: modify the emissions offset ratio; lower the applicability threshold of the new source review (NSR) permit program; and, lower the applicability threshold of the NO_X reasonable available control technology (NO_X RACT) rule. Maryland made these changes in response to the reclassification of the Washington, DC ozone nonattainment area to severe nonattainment. The intended effect of this action is to approve these changes to Maryland's NSR permitting program and NO_X RACT regulations for the Washington, DC ozone nonattainment area.

EFFECTIVE DATE: This final rule is effective on October 20, 2004.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814–2179, or by e-mail at *cripps.christopher@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On June 14, 2004, (69 FR 32928), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed approval of a SIP revision that pertains to changes in Maryland's regulations for new source permitting for major sources of VOC and NO_X emissions and NO_X RACT regulations requiring RACT on major stationary sources of NO_X emissions in the Washington, DC ozone nonattainment area. The formal SIP revision was submitted by Maryland on December 1, 2003.

II. Summary of SIP Revision

On December 1, 2003, the Maryland Department of the Environment submitted a revision (MD SIP Revision Number 03–08) to the Maryland State Implementation Plan (SIP) for the Washington, DC ozone nonattainment area. This revision amends the approved Maryland SIP to: revise the definition of major stationary source in the Code of Maryland Regulations (COMAR) 26.11.17.01B(13); incorporate changes in the general provisions found in COMAR 26.11.17.03B(3), which require proposed new major stationary sources to obtain emission reductions, or offsets, of the same pollutant from existing sources in the area of the proposed source at a ratio of 1.3 tons of existing emissions for every 1 ton of proposed emissions; and change the threshold of applicability of Maryland's NO_X RACT regulation, COMAR 26.11.09.08 to sources with emission of 25 or more tons per year of NO_X.

Other specific requirements of these changes to COMAR 26.11.17.01B(13), COMAR 26.11.17.03B(3) and COMAR 26.11.09.08 and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is approving changes to COMAR 26.11.17.01B(13), COMAR 26.11.17.03B(3) and COMAR 26.11.09.08 submitted by the Maryland Department of the Environment on December 1, 2003 as a revision to the Maryland SIP.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this 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 action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this 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 approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This 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 approves 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 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 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.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA 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**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 19, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve Maryland's December 1, 2003 SIP revision pertaining to changes to Maryland's regulations for permitting of major sources of VOC and NO_X emissions and for NO_X RACT regulations may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 3, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

■ 2. Section 52.1070 is amended by adding paragraph (c)(191) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(191) Revision to the Maryland Regulations pertaining to changes to control of fuel-burning equipment, stationary internal combustion engines and certain fuel-burning installations and to changes to requirements for major new sources and modifications submitted on December 1, 2003 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of December 1, 2003 from the Maryland Department of the Environment transmitting changes to control of fuel-burning equipment, stationary internal combustion engines and certain fuel-burning installations and to changes to requirements for major new sources and modifications in Maryland's air quality regulations, Code of Maryland Administrative Regulations (COMAR).

(B) Revisions to COMAR 26.11.09.08A(1), pertaining to control of NO_X emissions for major stationary sources adopted by the Secretary of the Environment on October 21, 2003, and effective on November 24, 2003.

(*1*) Revision to COMAR 26.11.09.08A(1)(a).

(*2*) Deletion of COMAR 26.11.09.08A(1)(b).

(*3*) Renumbering of COMAR 26.11.09.08A(1)(c) to COMAR 26.11.09.08A(1)(b).

(C) Revisions to COMAR 26.11.17.01B(13) pertaining to requirements for major new sources and modifications adopted by the Secretary of the Environment on October 21, 2003, and effective on November 24, 2003.

(*1*) Revisions to COMAR 26.11.17.01B(13)(a)(i) and (13)(a)(ii).

(*2*) Deletion of COMAR 26.11.17.01B(13)(a)(iii).

(*3*) Renumbering of COMAR 26.11.17.01B(13)(a)(iv) to 01B(13)(a)(iii), and 26.11.17.01B(13)(a)(v) to 01B(13)(a)(iv).

(D) Revisions to COMAR 26.11.17.03B pertaining to requirements for major new sources and modifications adopted by the Secretary of the Environment on October 21, 2003, and effective on November 24, 2003.

(*1*) Revision to COMAR 26.11.17.03B(3)(a).

(*2*) Deletion of COMAR 26.11.17.03B(3)(b).

(*3*) Renumbering of COMAR 26.11.17.03B(3)(c) to 03B(3)(b), and 03B(3)(d) to 03B(3)(c).

(ii) Additional Material—Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(191)(i) of this section.

[FR Doc. 04–21063 Filed 9–17–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY 146, 148—200419; IN 121–4; FRL–7812–4]

Approval and Promulgation of Implementation Plans; Kentucky and Indiana: Approval of Revisions to 1-Hour Ozone Maintenance Plan for Louisville Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is finalizing approval of the June 27, 2003, and June 26, 2003, revisions to the State implementation plans (SIPs) of the Commonwealth of Kentucky and the State of Indiana to revise the 2012 motor vehicle emission budgets (MVEBs) using MOBILE6 for the Louisville 1-hour ozone maintenance area. The Louisville maintenance area includes Jefferson County, Kentucky and portions of Bullitt and Oldham Counties in Kentucky; and Clark and Floyd counties in Indiana.

DATES: This rule will be effective October 20, 2004.

ADDRESSES: Copies of Kentucky's submittal are available at the following address for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Copies of Indiana's submittal are available at the following address for inspection during normal business hours: Environmental Protection Agency Region 5, Air Programs Branch, Air and Radiation Division, 77 W. Jackson Blvd., Chicago, Illinois 60604–3590.

The interested persons wanting to examine these documents should make an appointment at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT:

Kentucky Submittal—Michele Notarianni, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Phone: (404) 562–9031. E-mail: *notarianni.michele@epa.gov.*

Indiana Submittal—Patricia Morris, Air Programs Branch, U.S. Environmental Protection Agency Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. Phone: (312) 353–8656. E-mail: *morris.patricia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Today's Action
II. Background
III. Clarification
IV. Final Action
V. Statutory and Executive Order Reviews

I. Today's Action

In this final rulemaking, EPA is approving revisions to the Kentucky and Indiana SIPs submitted by the Commonwealth of Kentucky, through the Kentucky Department of Air Quality (KDAQ), on June 27, 2003, and submitted by the State of Indiana, through the Indiana Department of Environmental Management (IDEM) on June 26, 2003. KDAQ made this submittal on behalf of the Louisville Metro Air Pollution Control District (''District''). The States'' revisions update the 2012 MVEBs and projected mobile source emissions using MOBILE6 for the Kentucky and Indiana portions of the Louisville 1-hour ozone maintenance area.

In this action, EPA is approving Kentucky's and Indiana's MVEBs. In two rules published August 7, 2003 (68 FR 47059 and 68 FR 47060), EPA found these MVEBs adequate for transportation conformity purposes. The ''Louisville transportation partners'' are currently using these MVEBs to determine conformity. The Louisville transportation partners include the Atlanta and Chicago regional offices of EPA; the Kentucky and Indiana offices of the Federal Highway Administration; the Atlanta and Indianapolis offices of the Federal Transit Administration; the Kentucky Transportation Cabinet; the Indiana Department of Transportation; the Louisville Metro Air Pollution Control District; the Kentucky Department of Air Quality; the Indiana Department of Air Quality; and, the Kentuckiana Planning Development Agency.

II. Background

The primary purpose of the SIP revisions that are the subject of this action is to meet a commitment the District made in association with the ozone redesignation request and maintenance plans for the Louisville 1-hour ozone maintenance area that EPA approved on October 23, 2001 (66 FR 53665). As part of the ozone maintenance demonstration, the District committed to update the 2012 MVEBs associated with the maintenance demonstration for the Kentucky and Indiana portions of this area within two years of the release of the EPA MOBILE6 emission factor model. Briefly, a MVEB, in the context of a maintenance plan, is the projected emissions of mobile sources that support a demonstration that the area will continue to maintain the air quality standard for ten years into the future.

In the District's maintenance demonstration, EPA initially allowed the area to use interim emission projections to claim credit for emission reductions associated with EPA's Tier 2/Low Sulfur fuel program through a MOBILE5-based MVEB, on the condition that the area make a commitment to revise the MOBILE5-based MVEB within two years of the release of the new MOBILE6 emissions model. EPA did this because of uncertainties associated with the ability of MOBILE5 to quantify the benefits of the Tier 2/Low Sulfur fuel program. EPA officially released MOBILE6 for use on January 29, 2002, and the Kentucky and Indiana SIP revisions were developed to meet the original commitment noted above.

On January 5, 2004, EPA published a proposed rule (69 FR 302) to simultaneously approve the June 27, 2003, and June 26, 2003, revisions to the Kentucky and Indiana SIPs which include revised 2012 MVEBs using MOBILE6 for both the Kentucky and Indiana portions of the Louisville 1-hour ozone maintenance area. A detailed description of these revisions and EPA's rationale for approving them is provided in the January 5, 2004, proposal and will not be restated here. The public comment period ended February 4, 2004. No adverse comments were received on EPA's proposal. EPA did receive, however, a request to clarify a particular aspect of the rule, as discussed further below. The revised 2012 MVEBs for the total Louisville area are 47.28 tons per day (tpd) for volatile organic compounds (VOC) and 111.13 tpd for nitrogen oxides (NO_X).

III. Clarification

During the 30-day comment period for the proposed action, EPA received a request to clarify whether EPA's proposed action on Indiana's and Kentucky's June 26, 2003, and June 27, 2003, SIP submittals removed the requirement for the Jefferson County inspection and maintenance program, known as the Vehicle Emissions Testing or ''VET'' Program, from the Kentucky SIP because no credit was taken for this program in the maintenance plan.

In developing the June 27, 2003, SIP revision, the District elected not to take credit for reductions from the VET Program in Jefferson County, Kentucky in Louisville's 1-Hour Ozone Maintenance Plan. (*See* proposed rule published January 5, 2004, column 1, at page number 69 FR 303.) The District was able to demonstrate continued maintenance of the 1-hour ozone standard for the requisite timeframe without taking credit for reductions from the Jefferson County VET Program. Nothing in the Clean Air Act would require the District to take credit for any program, even a mandatory one, that it does not need to demonstrate continued maintenance. In fact, Clean Air Act section 175A provides for transferring previously applicable programs in a SIP to the contingency measures portion of a maintenance plan; the exercise of this authority would require a revised SIP showing maintenance without the

mandatory measure. The relevant EPA policy concerning SIP revisions of this type is contained in a May 12, 2004, Memorandum from Tom Helms, Group Leader, Ozone Policy and Strategies Group, Office of Air Quality Planning and Standards, and Leila H. Cook, Group Leader, State Measures and Conformity Group, Office of Transportation and Air Quality, to the Air Program Managers, the subject of which is ''1-Hour Ozone Maintenance Plans Containing Basic I/M Programs.''

On September 22, 2003, Kentucky submitted a SIP revision to transfer the Jefferson County VET Program from a mandatory measure to a contingency measure in the SIP. This pending submittal is separate from and unrelated to the revised budgets in the Louisville 1-Hour Ozone Maintenance Plan, and will be addressed by EPA in the future in a separate action. EPA was not, and is not, in this rulemaking taking action on Kentucky's September 22, 2003, SIP revision to transfer the Jefferson County VET Program to a contingency measure in the SIP. Today's action only concerns approval of the revised MVEBs which do not contain emission reductions from the VET Program. Approval of the SIP revision to transfer the VET Program to the contingency portion of the SIP will require review of that SIP revision and determination that it complies with section 110(l) of the Act. That analysis has not yet been completed.

IV. Final Action

EPA is finalizing approval of the 2012 MVEBs for both the Kentucky and Indiana portions of the Louisville 1-hour ozone maintenance area. The revised 2012 MVEBs for the total Louisville area are 47.28 tpd for VOC and 111.13 tpd for NO_X. EPA is approving the Kentucky and Indiana SIP revisions because they are consistent with section 110 of the Clean Air Act, as interpreted by Agency policy and guidance. Additionally, these SIP revisions meet the applicable requirements of the Transportation Conformity Rule.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this 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 action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this 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 approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This 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 approves 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 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 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.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress, and to the Comptroller General of the United States. EPA 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).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 19, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 6, 2004.

Bharat Mathur,

Acting Regional Administrator, Region 5.

Dated: August 30, 2004.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart P—Indiana

■ 2. Section 52.777 is amended by adding paragraph (z) to read as follows:

§ 52.777 Control strategy: Photochemical oxidants (hydrocarbons).

* * * * *

(z) EPA is approving a revision to the Indiana SIP submitted by Indiana on June 26, 2003. The revision is for transportation conformity budgets for the Clark and Floyd portion of the Louisville area. The revised 2012 motor vehicle emission budgets (MVEBs) for the total Louisville area are 47.28 tons per day (tpd) for volatile organic compounds (VOC) and 111.13 tpd for oxides of nitrogen.

Subpart S—Kentucky

■ 3. Section 52.920(e) is amended by removing the entry for ''Louisville Ozone Maintenance Plan'' and adding a new entry in it's place entitled, ''Louisville 1–Hour Ozone Maintenance Plan'' to read as follows:

§ 52.920 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED KENTUCKY NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/effective date	EPA approval date	Explanations
*	*	*	*	*
Louisville 1-Hour Ozone Maintenance Plan.	Jefferson County and portions of Bullitt and Oldham Counties.	06/27/03	9/20/04 [Insert page citation publication in **Federal Register**].	
*	*	*	*	*

[FR Doc. 04–21062 Filed 9–17–04; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 69, No. 181
Monday, September 20, 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.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064–AC50

Community Reinvestment

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On August 20, 2004, the Federal Deposit Insurance Corporation (FDIC), requested public comment on proposed revisions to 12 CFR part 345 implementing the Community Reinvestment Act (CRA) (69 FR 51611, August 20, 2004). The FDIC is extending the comment period on the proposal until October 20, 2004. This action will allow interested persons additional time to analyze the issues and prepare their comments.

DATES: Comments must be received on or before October 20, 2004.

ADDRESSES: You may submit comments, identified by RIN number 3064–AC50 by any of the following methods:

- Agency Web site: *http://www.FDIC.gov/regulations/laws/federal/propose.html.*
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- Hand Delivered/Courier: The guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.
- E-mail: *comments@FDIC.gov.* Include RIN number 3064–AC50 in the subject line of the message.
- Public Inspection: Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

Instructions: Submissions received must include the agency name and RIN for this rulemaking. Comments received will be posted without change to *http://www.FDIC.gov/regulations/laws/federal/propose.html,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Richard M. Schwartz, Counsel, Legal Division, (202) 898–7424; or Susan van den Toorn, Counsel, Legal Division, (202) 898–8707; Robert W. Mooney, Chief, CRA and Fair Lending Policy Section, Division of Supervision and Consumer Protection; Deirdre Ann Foley, Senior Policy Analyst, Division of Supervision and Consumer Protection, (202) 898–6612; or Pamela Freeman, Policy Analyst, Division of Supervision and Consumer Protection, (202) 898–6568,Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

On August 20, 2004, the FDIC requested comment on revisions to 12 CFR 345 implementing the CRA that would (a) change the definition of ''small bank'' to raise the asset size threshold to $1 billion regardless of holding company affiliation; (b) add a community development activity criterion to the streamlined evaluation method for small banks with assets greater than $250 million and up to $1 billion; and (c) expand the definition of ''community development'' to encompass a broader range of activities in rural areas. In addition, the FDIC also sought comments on other options.

The proposal was published for a 30-day comment period, which was scheduled to close on September 20, 2004. In order to ensure that as many interested parties as possible have time to comment on the proposal, the comment period is being extended to October 20, 2004.

You should submit your comments on the proposal on or before October 20, 2004.

By order of the Board of Directors.

Dated at Washington, DC, this 16th day of September, 2004.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 04–21162 Filed 9–16–04; 12:12 pm]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18744; Directorate Identifier 2004–CE–24–AD]

RIN 2120–AA64

Airworthiness Directives; Great Lakes Aircraft Company, LLC, Models 2T–1A–1 and 2T–1A–2 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 79–20–08, which applies to all Great Lakes Aircraft Company, LLC, (Great Lakes) Models 2T–1A–1 and 2T–1A–2 airplanes with a Lycoming IO–360–B1F6 or AIO–360–B1G6 engine installed. AD 79–20–08 currently requires you to inspect the engine induction system and the alternate air door for any signs of damage and repairing or replacing any damaged components. AD 79–20–08 also requires you to inspect the induction system for the presence of a drain fitting. If the drain fitting is blocked, restricted, or does not exist, AD 79–20–08 requires you to clear the fitting or drill a hole in the elbow at the fitting location. This proposed AD is the result of the FAA inadvertently omitting Lycoming engine AEIO–360–B1G6 from the applicability section of AD 79–20–08. Consequently, this proposed AD would retain the actions required in AD 79–20–08 and add Lycoming engine AEIO–360–B1G6 to the applicability section. We are issuing this proposed AD to prevent the aircraft induction system from becoming blocked or restricted, which could result in engine failure. This failure could lead to loss of control of the airplane.

DATES: We must receive any comments on this proposed AD by November 16, 2004.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov*

and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *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.

You may view the comments to this proposed AD in the AD docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Roger Caldwell, Aerospace Engineer, Denver Aircraft Certification Office (ACO), Federal Aviation Administration (FAA), 26805 E. 68th Ave., Rm 214 Denver, CO 80249–6361; telephone: (303) 342–1086; facsimile: (303) 342–1088.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include the docket number, ''FAA–2004–18744; Directorate Identifier 2004–CE–24–AD'' at the beginning of your comments. We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA–2004–18744. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Docket Information

Where can I go to view the docket information? You may view the AD docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern standard time), Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated in **ADDRESSES.** You may also view the AD docket on the Internet at *http://dms.dot.gov.* The comments will be available in the AD docket shortly after the DMS receives them.

Discussion

Has FAA taken any action to this point? The alternate air source door on the original aircraft configuration of Great Lakes Models 2T–1A–1 and 2T–1A–2 airplanes was operated by push-pull cable in the cockpit and had an induction system drain provision. Later modifications changed the configuration of the alternate air source door to automatic operation.

All fuel-injected engines are required to have an alternate air source. If the primary induction air source becomes blocked or restricted, the lower pressure differential in the induction system would overcome a spring tension on the alternate air door and provide a secondary airflow path for the engine.

Inspections of Lycoming engines IO–360–B1F6 and AIO–360–B1G6 revealed instances of heat distortion, damage, and cracks in the alternate air door. Extensive damage to the alternate air door could cause pieces to break off and get sucked into the induction system blocking the airflow to the engine.

Additional inspections revealed that some of the affected engines did not have an induction system drain to remove fluid and/or moisture away from the engine.

These conditions caused us to issue AD 79–20–08. AD 79–20–08 currently requires the following on all Great Lakes Models 2T–1A–1 and 2T–1A–2 airplanes that have a Lycoming engine IO–360–B1F6 or AIO–360–B1G6 installed:

—Visually inspecting the aircraft induction system drain fitting located in the induction elbow below the fuel injector for blockage or restriction;
—Clearing the blocked drain hole or drilling a hole in the elbow at the fitting location if the drain hole is restricted in the weld area or not drilled through the elbow;
—Visually inspecting the alternate air door for damage and repairing or replacing any damaged alternate air door; and
—Visually inspecting the aircraft induction system (including the filter) for cleanliness, security, and damage and repairing or replacing any dirty or damaged components.

What has happened since AD 79–20–08 to initiate this proposed action? During a recent inspection, it was discovered that the Lycoming engine AEIO–360–B1G6 has the same configuration as Lycoming engines IO–360–B1F6 and AIO–360–B1G6.

What is the potential impact if FAA took no action? If not detected and corrected, blockage or restriction of the aircraft induction system could cause engine failure. This failure could result in loss of control of the airplane.

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are proposing AD action.

What would this proposed AD require? This proposed AD would supersede AD 79–20–08 with a new AD that would retain the actions required in AD 79–20–08 and would add Lycoming engine AEIO–360–B1G6 to the applicability section.

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

Costs of Compliance

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 130 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the proposed inspections of the aircraft induction system, the induction system drain fitting, and the alternate air door:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
3 workhours × $65 = $195	Not Applicable	$195	$195 × 130 = $25,350.

We estimate the following costs to accomplish any necessary repairs and/or replacements that would be required based on the results of this proposed inspections. We have no way of determining the number of airplanes that may need these repairs and/or replacements:

Labor cost	Parts cost	Total cost per component
3 workhours per component × $65 = $195	Approximately $113 per component	$195 + $113 = $308.

What is the difference between the cost impact of this proposed AD and the cost impact of AD 79–20–08? The only difference between this proposed AD and AD 79–20–08 is the correction to the applicability. No additional actions are being proposed. The FAA has determined that this proposed AD action does not increase the cost impact over that already required by AD 79–20–08.

Regulatory Findings

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

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2004–CE–24–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 79–20–08, Amendment 39–3580, and by adding a new AD to read as follows:

Great Lakes Aircraft Company, LLC: Docket No. FAA–2004–18744; Directorate Identifier 2004–CE–24–AD; Supersedes AD 79–20–08; Amendment 39–3580

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by November 16, 2004.

What Other ADs Are Affected by This Action?

(b) This AD supersedes AD 79–20–08, Amendment 39–3580.

What Airplanes Are Affected by This AD?

(c) This AD affects all Model 2T–1A–1 and 2T–1A–2 airplanes that have a Lycoming IO–360–B1F6, AIO–360–BIG6, or AEIO–360–BIG6 engine installed and that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of heat distortion, damage, and cracks found in the aircraft induction system on Lycoming IO–360–B1F6, AIO–360–B1G6, and AEIO–360–BIG6 engines. The actions specified in this AD are intended to prevent the aircraft induction system from becoming blocked or restricted, which could result in engine failure. This failure could lead to loss of control of the airplane.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Perform the following: (i) Visually inspect the aircraft induction system drain fitting located in the induction elbow below the fuel injector for blockage or restriction. (ii) If the hole is blocked or restricted in the weld area or not drilled through the elbow, open up the restricted hole or drill a hole in the elbow at the fitting location using a No. 10 (.193) drill.	*For all affected airplanes:* Inspect within the next 25 hours time-in-service (TIS) after the effective date of this AD. Before further flight, modify the blocked or restricted aircraft induction system drain fitting.	Not applicable.

Actions	Compliance	Procedures
(2) Visually inspect the alternate air door for distortion, heat damage, and cracks. If any damage is found, repair or fabricate a new door following Figure 1, Figure 2, and Figure 3 in this AD.	*For airplanes previously affected by Ad 79–20–08:* Initially inspect at the next scheduled inspection required by Ad 79–20–08 or within the next 25 hours TIS after the effective date of this AD, whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 100 hours TIS. *For airplanes not previously affected by AD 79–20–08:* Inspect within the next 25 hours TIS after the effective date of this AD. Repetitively inspect thereafter at intervals not to exceed 100 hours TIS. *For all affected airplanes:* If damage is found during any inspection, before further flight, repair or replace the damaged alternate air door.	Not applicable.
(3) Visually inspect the aircraft induction system for cleanliness of the air filter, distortion, security, and damage from backfire or induction system fire. If the air filter is dirty, if any distortion, damage, or lack of security is found, repair, replace or modify all affected components.	*For airplanes previously affected by AD 79–20–08:* Initially inspect at the next scheduled inspection required by AD 79–20–08 or within the next 25 hours TIS after the effective date of this AD, whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 100 hours TIS. *For airplanes not previously affected by AD 79–20–08:* Inspect within the next 25 hours TIS after the effective date of this AD. Repetitively inspect thereafter at intervals not to exceed 100 hours TIS. *For all affected airplanes:* If damage is found during any inspection, before further flight, repair, replace, or modify any damaged components.	Not applicable.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Denver Aircraft Certification Office, FAA. For information on any already approved alternative methods of compliance, contact Roger Caldwell, Aerospace Engineer, Denver ACO, FAA, 26805 E. 68th Ave., Rm 214 Denver, CO 80249–6361; telephone: (303) 342–1086; facsimile: (303) 342–1088.

May I Get Copies of the Documents Referenced in This AD?

(g) You may view the AD docket at the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov.*

BILLING CODE 4910–13–P

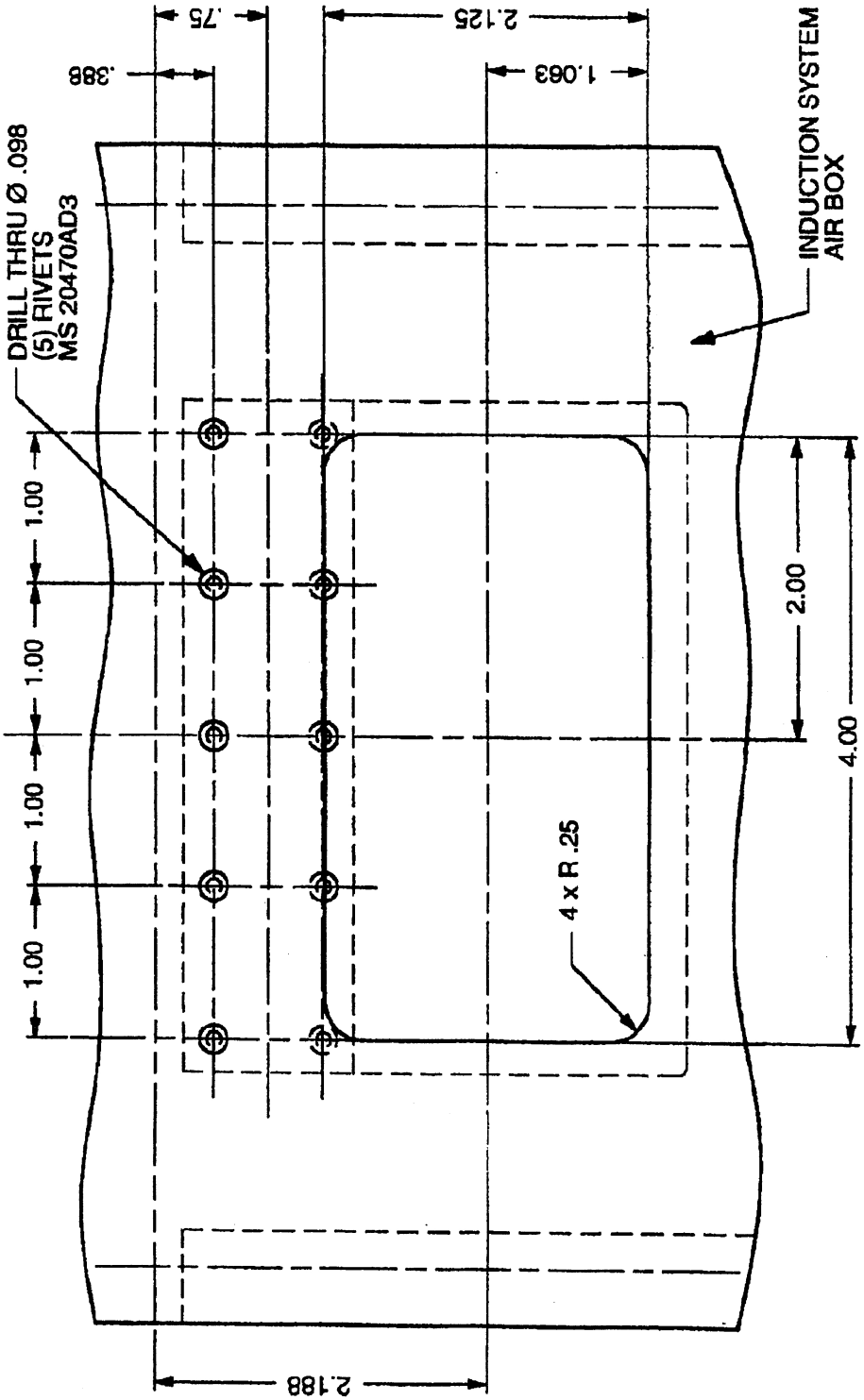

Fig. 1

GREAT LAKES AIRCRAFT, TYPES 2T-1A-1 AND 2T-1A-2
ENGINE INDUCTION SYSTEM AD 79-20-08
ALTERNATE AIR DOOR INSTALLATION
FULL SCALE

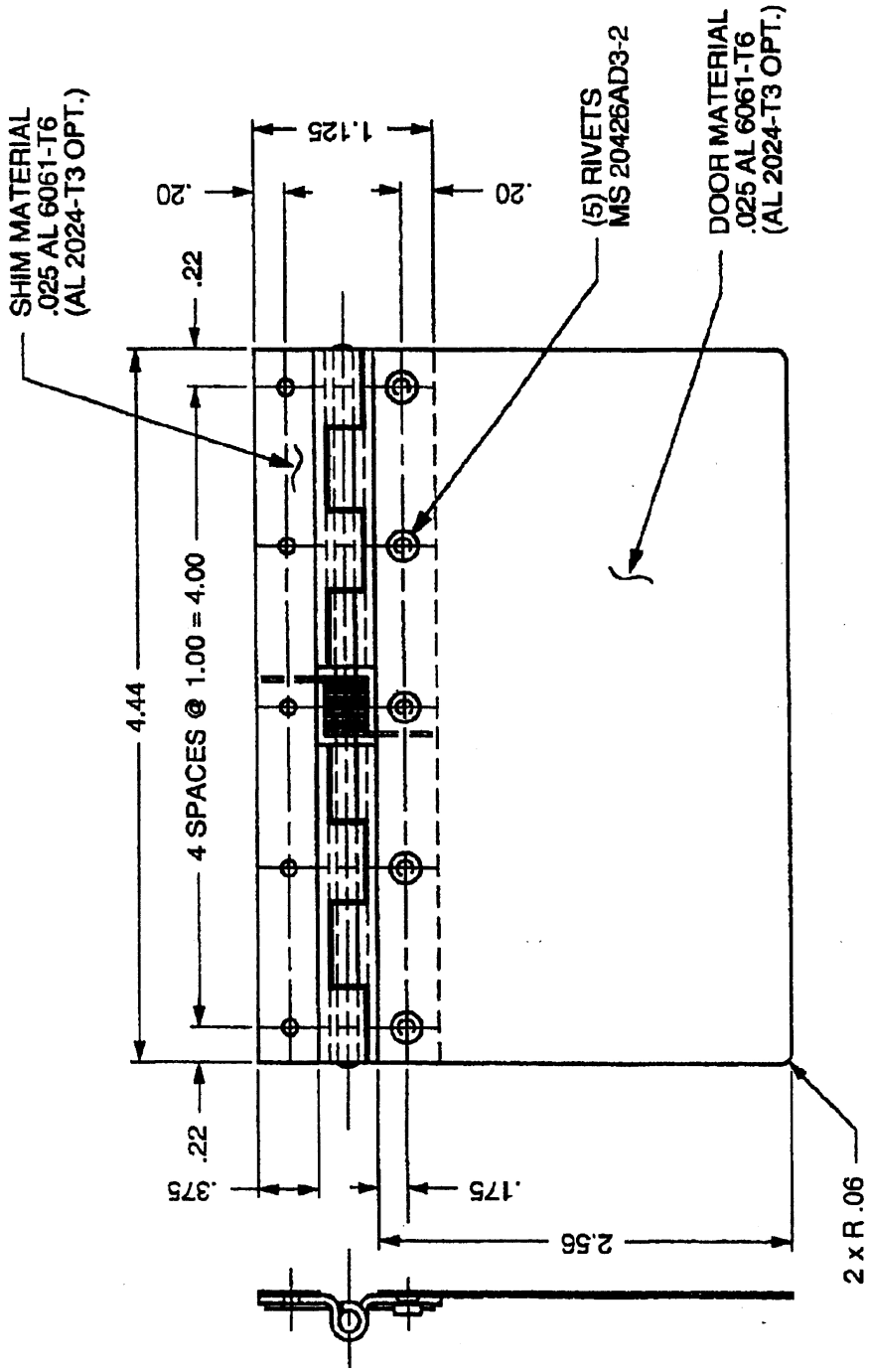

Fig. 2

GREAT LAKES AIRCRAFT, TYPES 2T-1A-1 AND 2T-1A-2
ENGINE INDUCTION SYSTEM AD 79-20-08
ALTERNATE AIR DOOR FABRICATION DETAIL
FULL SCALE

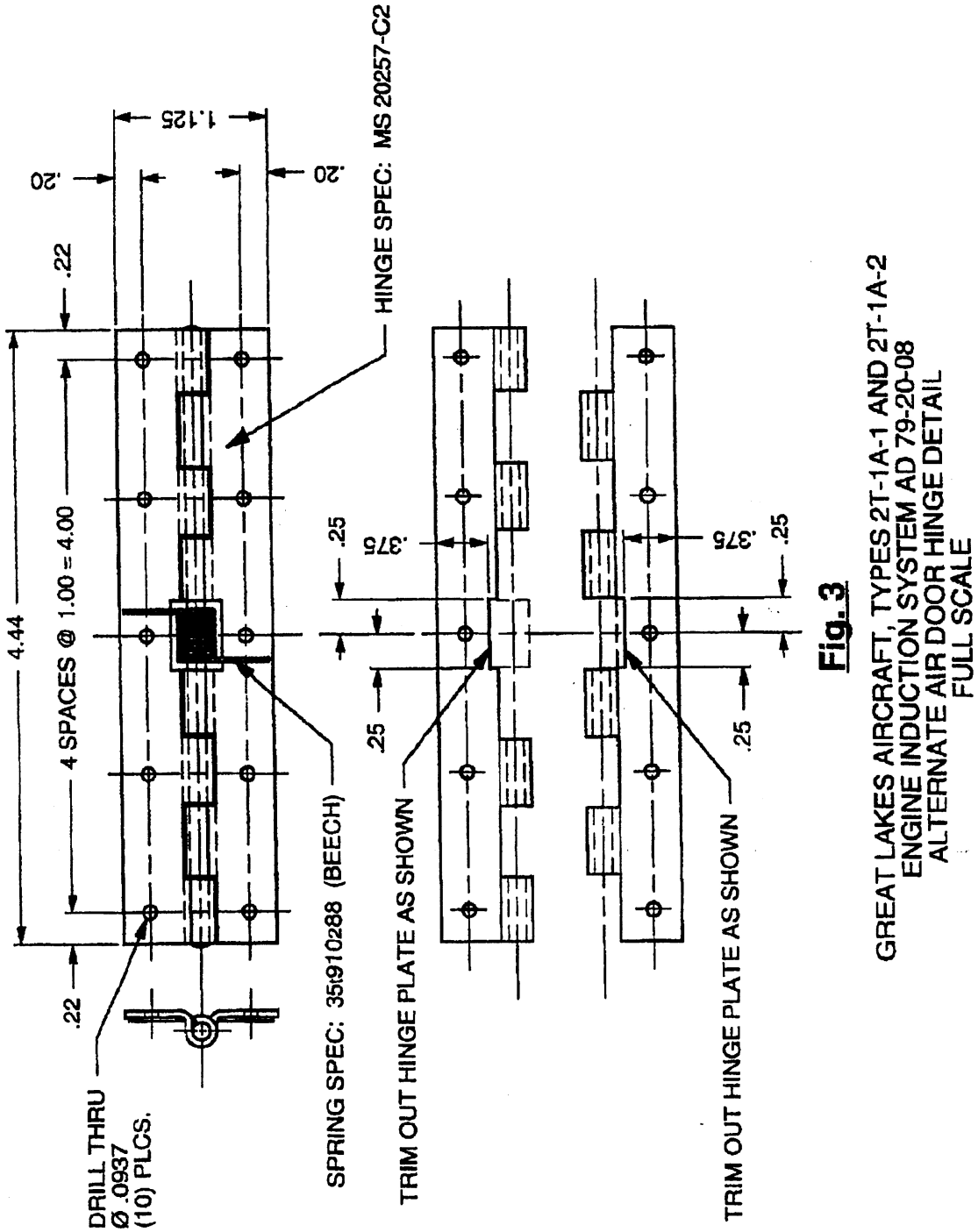

Fig. 3

GREAT LAKES AIRCRAFT, TYPES 2T-1A-1 AND 2T-1A-2
ENGINE INDUCTION SYSTEM AD 79-20-08
ALTERNATE AIR DOOR HINGE DETAIL
FULL SCALE

Issued in Kansas City, Missouri, on September 10, 2004.

Dorenda D. Baker,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–21052 Filed 9–17–04; 8:45 am]

BILLING CODE 4910–13–C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7815–7]

Protection of Stratospheric Ozone: Process for Exempting Critical Uses From the Phaseout of Methyl Bromide; Extension of Deadline To Request a Hearing, New Hearing Date, and New Deadline for Submission of Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment deadline; and new hearing date.

SUMMARY: With this document, EPA is advising individuals of an extension of the deadline to request a hearing, of the new hearing date, and of the revised deadline for submitting comments to the Agency on the notice of proposed rulemaking (NPRM) entitled ''Protection of Stratospheric Ozone: Process for Exempting Critical Uses from the Phaseout of Methyl Bromide'' published in the **Federal Register** on August 25, 2004 (69 FR 52366). At the request of members of the public, EPA has extended the date for the hearing and has scheduled a hearing to take place on Monday, September 20th in Washington, DC at EPA headquarters, 1201 Constitution Avenue (EPA East), Room 1153 from 1–5 p.m. The revised deadline for submitting comments on the NPRM therefore will change from Tuesday, October 12th to Thursday, October 21st.

The proposed exemption to the phaseout of methyl bromide for critical uses is allowed under section 604 of the Clean Air Act (CAA) and the *Montreal Protocol on Substances that Deplete the Ozone Layer* (''Montreal Protocol'').

DATES: The new deadline to request a hearing is September 17, 2004. A hearing has been requested and is scheduled to take place on September 20, 2004. The revised deadline to submit comments on the NPRM to the Agency is October 21, 2004.

FOR FURTHER INFORMATION CONTACT: For further information about the hearing, contact Hodayah Finman by telephone at (202) 343–9246, or by e-mail at *finman.hodayah@epa.gov,* or by mail at Hodayah Finman, U.S. Environmental Protection Agency, Stratospheric Protection Division, Stratospheric Program Implementation Branch (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC, 20460. Overnight or courier deliveries should be sent to 1310 L Street, NW., Washington, DC, 20005, Attn: Hodayah Finman at 343–9410. You may also visit the methyl bromide phaseout web site of EPA's Stratospheric Protection Division at *http://www.epa.gov/ozone/mbr* for further information about the critical use exemption.

Dated: September 14, 2004.

Drusilla Hufford,

Director, Stratospheric Protection Division.

[FR Doc. 04–21053 Filed 9–17–04; 11:35 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04–OAR–2004–NC–0002–200417(b); FRL–7815–8]

Approval and Promulgation of Implementation Plans; North Carolina: Raleigh/Durham Area and Greensboro/Winston-Salem/High Point Area Maintenance Plan Updates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the State Implementation Plan (SIP) revision submitted by the North Carolina Department of Environment and Natural Resources on June 4, 2004. This SIP revision satisfies the requirement of the Clean Air Act (CAA) for the second 10-year update for the Raleigh/Durham area (Durham and Wake Counties and a portion of Granville County) and Greensboro/Winston-Salem/High Point area (Davidson, Forsyth, and Guilford Counties and a portion of Davie County) 1-hour ozone maintenance plans.

In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before October 20, 2004.

ADDRESSES: Comments may be submitted by mail to: Rosymar De La Torre Colón, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in the direct final rule, **ADDRESSES** section, which is published in the Rules Section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Rosymar De La Torre Colón, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960, (404) 562–8965, *delatorre.rosymar@epa.gov*, or Matt Laurita, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960, (404) 562–9044, *laurita.matthew@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: September 8, 2004.

A. Stanley Meiburg,

Acting Regional Administrator,Region 4.

[FR Doc. 04–21061 Filed 9–17–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[OPA–2004–0007; FRL–7810–5]

RIN 2050–AF11

Oil Pollution Prevention and Response; Non-Transportation-Related Onshore and Offshore Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability (NODA) and request for comments.

SUMMARY: This document announces the availability of information we have acquired that might be relevant to determining whether alternate regulatory requirements are appropriate for facilities under the Clean Water Act that handle oil below a certain threshold amount (''certain facilities''). We are

making this information available for public review and comment as part of our process of considering possible streamlined approaches that would ensure protection of human health and the environment from oil spills occurring at such facilities.

In addition to this document, the EPA is also publishing in today's **Federal Register** a Notice of Data Availability concerning facilities with oil-filled and process equipment.

DATES: Written comments must be received by November 19, 2004.

ADDRESSES: Submit your comments, identified by Docket ID No. OPA–2004–0007, by one of the following methods:

I. *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

II. *Agency Web site: http://www.epa.gov/edocket* EDOCKET, EPA's electronic public and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

III. *Mail:* The docket for this rulemaking is located in the EPA Docket Center at 1301 Constitution Ave., NW., EPA West, Suite B–102, Washington, DC 20460. The docket number for the proposed rule is OPA–2004–0007. The docket is contained in the EPA Docket Center and is available for inspection by appointment only, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. You may make an appointment to view the docket by calling 202–566–0276.

IV. *Hand Delivery:* Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OPA–2004–0007. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov or e-mail. The EPA EDOCKET and federal regulations.gov websites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the EPA Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number to make an appointment to view the docket is (202) 566–0276.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/CERCLA Call Center at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703–412–9810 or TDD 703–412–3323. For more detailed information on specific aspects of this notice, contact Hugo Paul Fleischman at 703–603–8769 (*fleischman.hugo@epa.gov*); or Mark W. Howard at 703–603–8715 (*howard.markw@epa.gov*), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002, Mail Code 5203G.

SUPPLEMENTARY INFORMATION:

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 fully and clearly.
2. Describe in detail and explain all assumptions you used.
3. Provide all technical information, data, and analyses you used to support your views.
4. If you estimate potential burden or costs, provide all data and analyses that you used to arrive at your estimate.
5. Provide specific examples to illustrate all your concerns.
6. Make sure to submit your comments by the comment period deadline identified.
7. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

Statutory Authority: 33 U.S.C. 1251 *et seq.*; 33 U.S.C. 2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351

Background: On July 17, 2002, EPA published a final rule amending the Oil Pollution Prevention regulation (40 CFR part 112) promulgated under the authority of the Clean Water Act. This rule included requirements for Spill Prevention, Control, and Countermeasure (SPCC) Plans, and for Facility Response Plans (FRPs). It also included new subparts outlining the requirements for various classes of oil; revising the applicability of the regulation; amending the requirements for completing SPCC Plans; and made other modifications. (*See* 67 FR 47042.) The rule was effective on August 16, 2002. The compliance dates in 40 CFR 112.3(a) and (b) have been extended several times. *See* 69 FR 48794, August 11, 2004 for further discussion on the compliance extensions.

Today's NODA: EPA is considering an initiative that would provide more focused regulation for certain facilities. To assist the Agency in this effort, we are making available to the public a number of documents for review and comment to help inform us as to what measures, if any, we should consider. We believe that as long as protection of human health and the environment is maintained, we should consider alternatives/options that accomplish the stated objectives of the applicable statutes and minimize impacts of the requirement. The documents being made available today for comment describe possible streamlined alternatives that could replace parts of existing regulations for certain facilities. Because this approach may have merit, we are very interested in your comments. Specifically, we are interested in receiving any evidence, including data and analyses, related to

claims made within the documents. In order for the data you submit to be considered in making a determination, the data should be collected, transported, and analyzed under the proper quality assurance and quality control protocols as described at *http://www.epa.gov/quality/*.

Data Available for Comment: The documents available for comment today can be found at *http://www.epa.gov/oilspill* under the title ''Notice of Data Availability for Certain Facilities'' in the EDOCKET index at *http://www.epa.gov/edocket*. These documents include relevant portions of a June 10, 2004 letter from the U.S. Small Business Administration's Office of Advocacy to Thomas P. Dunne, Acting Assistant Administrator for the Office of Solid Waste and Emergency Response of the U.S. Environmental Protection Agency; relevant sections of a background document, *Proposed Reforms to the SPCC Professional Engineer Certification Requirement: Designing a More Cost Effective Approach for Small Facilities*; and additional documents submitted by members of the agricultural industry and other industry stakeholders.

Request for Comments: We believe that affected parties should be given an opportunity to participate in the Agency's process of considering whether possible streamlined approaches are appropriate. We are especially interested in data relating to the regulatory approaches described in the documents available for your review today. We are listing the following areas, which are discussed in the documents available to you today, as examples of the kinds of data we request be submitted.

1—Data to support development of criteria (*e.g.* facility oil capacity, activity, *etc.*) to define a threshold for streamlined requirements for ''certain facilities.''

2—Spill rates for facilities handling oil in various amounts.

3—Cost differences for preparation and professional engineer certification for the SPCC Plan related to size of facility or amount of oil handled.

4—SPCC compliance rates for facilities handling oil in various amounts.

The Agency is soliciting comments only on the data referenced in this NODA; we are not soliciting comments in this NODA on any other topic. The data may be found at Docket No. OPA–2004–0007 (*http://www.epa.gov/edocket*), and on our Web site (*i.e.*, *http://www.epa.gov/oilspill*).

Dated: August 30, 2004.

Thomas P. Dunne,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 04–21065 Filed 9–17–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[OPA–2004–0008; FRL–7810–4]

RIN 2050–AF11

Oil Pollution Prevention and Response; Non-Transportation-Related Onshore and Offshore Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability (NODA) and request for comments.

SUMMARY: This document announces the availability of information that might be relevant to determining whether alternate regulatory requirements for facilities with oil-filled and process equipment under the Clean Water Act would be appropriate. We are making this information available for public review and comment as part of our process of considering possible streamlined approaches that would ensure protection of human health and the environment from oil spills occurring at facilities with such oil-filled and process equipment.

In addition to this document, the EPA is also publishing in today's **Federal Register** a Notice of Data Availability concerning facilities that handle oil below a certain threshold amount.

DATES: Written comments must be received by November 19, 2004.

ADDRESSES: Submit your comments, identified by Docket ID No. OPA–2004–0008, by one of the following methods:

I. Federal Rulemaking Portal: http://www.regulations.gov. Follow the on-line instructions for submitting comments.

II. Agency Web site: http://www.epa.gov/edocket. EDOCKET, EPA's electronic public and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

III. Mail: The docket for this rulemaking is located in the EPA Docket Center at 1301 Constitution Ave., NW., EPA West, Suite B–102, Washington, DC 20460. The docket number for the proposed rule is OPA–2004–0008. The docket is contained in the EPA Docket Center and is available for inspection by appointment only, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. You may make an appointment to view the docket by calling 202–566–0276.

IV. Hand Delivery: Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OPA–2004–0008. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov or e-mail. The EPA EDOCKET and federal regulations.gov websites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going throughEDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the EPA Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday,

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SUPPLEMENTARY INFORMATION:

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 fully and clearly.
2. Describe in detail and explain all assumptions you used.
3. Provide all technical information, data, and analyses you used to support your views.
4. If you estimate potential burden or costs, provide all data and analyses that you used to arrive at your estimate.
5. Provide specific examples to illustrate all your concerns.
6. Make sure to submit your comments by the comment period deadline identified.
7. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

Statutory Authority: 33 U.S.C. 1251 *et seq.*; 33 U.S.C. 2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

Background: On July 17, 2002, EPA published a final rule amending the Oil Pollution Prevention regulation (40 CFR part 112) promulgated under the authority of the Clean Water Act. This rule included requirements for Spill Prevention, Control, and Countermeasure (SPCC) Plans, and for Facility Response Plans (FRPs). It also included new subparts outlining the requirements for various classes of oil; revising the applicability of the regulation; amending the requirements for completing SPCC Plans; and made other modifications. (*See* 67 FR 47042.) The compliance dates in 40 CFR 112.3(a) and (b) have been extended several times. *See* 69 FR 48794, August 11, 2004 for further discussion on the compliance extensions.

Today's NODA: EPA is considering an initiative that would provide more focused regulation for facilities with oil-filled [1] and process equipment. To assist the Agency in this effort, we are making available to the public a number of documents for review and comment to help inform us as to what measures, if any, we should consider. We believe that as long as protection of human health and the environment is maintained, we should consider alternatives/options that accomplish the stated objectives of the applicable statutes and minimize impacts of applicable requirements. The documents being made available today for comment describe streamlined alternatives that could replace parts of existing regulations for this type of equipment. Because this approach may have merit, we are very interested in your comments. Specifically, we are interested in receiving any evidence, including data and analyses, related to claims made within the documents. In order for the data you submit to be considered in making a determination, the data should be collected, transported, and analyzed under the proper quality assurance and quality control protocols as described at *http://www.epa.gov/quality/.*

Data Available for Comment: The documents available for comment today can be found at *http://www.epa.gov/oilspill* under the title ''Notice of Data Availability for Oil-Filled and Process Equipment'' in the EDOCKET index at *http://www.epa.gov/edocket.* These documents include the relevant portion of: (1) A white paper regarding oil in operational equipment dated April 2, 2003 submitted by the American Petroleum Institute Coalition to the Oil Program Center in the Office of Solid Waste and Emergency Response of the Environmental Protection Agency; (2) a white paper regarding machining coolant systems dated May 22, 2003 from the Alliance of Automobile Manufacturers submitted to the Oil Program Center; (3) a white paper regarding manufacturing process systems and operational equipment dated September 30, 2003 from the U.S. Small Business Administration's Office of Advocacy submitted to the Oil Program Center; (4) a white paper regarding on-shore oil-filled electrical equipment dated February 5, 2004 from the Utility Solid Waste Activities Group (USWAG); and additional documents submitted to EPA by members of the electrical industry and other industry stakeholders.

Request for Comments: We believe that affected parties should be given an opportunity to participate in the Agency's process of considering whether possible streamlined approaches are appropriate. We are especially interested in data relating to the regulatory approaches described in the documents available for your review today. We are listing the following areas, which are discussed in the documents available to you today, as examples of the kinds of data we request be submitted.

1—Data to support development of criteria to define oil-filled and process equipment

2—Data to support the development of streamlined requirements for facilities with oil-filled and process equipment

The Agency is soliciting comments only on the data provided; we are not soliciting comments in this NODA on any other topic. The data may be found at Docket No. OPA–2004–0008 (*http://www.epa.gov/edocket*), and on our Web site (*i.e.*, *http://www.epa.gov/oilspill*).

Dated: August 30, 2004.

Thomas P. Dunne,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 04–21066 Filed 9–17–04; 8:45 am]

BILLING CODE 6560–50–P

[1] In the preamble to the July 2002 SPCC rule (67 FR 47054), we distinguished between the requirements for bulk storage of oil and for the operational use of oil. Oil-filled electrical, operating, or manufacturing equipment are specifically excluded from the definition of ''bulk storage container'' at § 112.2 and thus, this NODA does not address such bulk oil storage containers. However, oil-filled equipment must meet other SPCC requirements, such as the general requirements found in § 112.7(c) to provide appropriate containment and/or diversionary structures to prevent discharged oil from reaching navigable waters (67 FR 47055).

Notices

Federal Register

Vol. 69, No. 181

Monday, September 20, 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

Intent To Prepare an Environmental Impact Statement; Fernow Experimental Forest, Tucker County, WV

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The USDA Forest Service will prepare an Environmental Impact Statement (EIS) to document the analysis and disclose environmental impacts of proposed actions to continue long-term research on the Fernow Experimental Forest, to initiate new research, and to manage the Fernow Experimental Forest for long-term research. The purpose of the proposed research is to evaluate the effectiveness of silvicultural tools that include harvesting, herbicide control of vegetation, and prescribed burning on central Appalachian forest, to better understand ecological dynamics within these forest ecosystems, and to develop management tools, practices and guidelines for central Appalachian hardwood forests.

The 4700-acre Fernow Experimental Forest is situated within the boundary of the Monongahela National Forest in Tucker County, West Virginia and is managed by the Northeastern Research Station of the USDA Forest Service. These proposed research activities are in compliance with the Monongahela National Forest Management Plan, which provides overall guidance for management of the area, including direction for management of the Fernow Experimental Forest.

Public Involvement: The public is invited to comment on the Proposed Action during the analysis process. In order to best use your comments, please submit them in writing within 45 days of this announcement. Additional information at is available on the Web at *http://www.fs.fed.us/ne/parsons/Environmental_Impact_Statement.* Comments may also be submitted electronically. Contact addresses are provided below.

DATES: Initial comments concerning the proposed action should be received in writing, no later than 45 days from the publication of this notice of intent, in order to be of most use during the analyses. The draft environmental impact statement is expected in January 2005, and the final environmental impact statement is expected June 2005.

ADDRESSES: Please send comments to USDA Forest Service, Timber and Watershed Laboratory, Attn: Fernow EIS, P.O. Box 404, Parsons, WV 26287.

FOR FURTHER INFORMATION CONTACT: Mary Beth Adams, Project leader, USDA Forest Service, Northeastern Research Station, P.O. Box 404, Parsons, WV 26287; (304) 478–2000; *mbadams@fs.fed.us.*

SUPPLEMENTARY INFORMATION:

Purpose of and Need for Action

Proper management of central Appalachian hardwood forests is important for maintaining the productivity and diversity of these woodlands, and to sustain their value for the many owners and users of forest land throughout the central Appalachians. To do this, management guidelines based on sound scientific research are needed. Often, it is necessary that this research be long-term in scope and duration to adequately describe long-lived forests. Accordingly, to meet these information needs, the purpose of the proposed actions is to: (1) Conduct research on effects of various silvicultural practices on forest productivity, species composition and diversity, wildlife populations and ecosystem processes, and (2) manage the Fernow Experimental Forest for long-term ecosystem research.

Proposed Action

The proposed action involves using the following silvicultural treatments in existing research studies: diameter-limiting cutting treatment on 32.7 acres, single-tree selection on 169.9 acres, financial maturity harvesting method on 189.7 acres, 20.8 acres of small clearcuts, and a shelterwood/prescribed fire treatment of 74 acres. Other treatments include fertilization of a 84.7-acre watershed with ammonium sulfate fertilizer, herbicide treatment of selected trees and prescribed burning on 392 acres, mechanical and chemical treatments of invasive exotic plants to prevent their spread, and maintenance of roads, decks, and other infrastructure.

Responsible Official: Mary Beth Adams, Project Leader, USDA Forest Service, Northeastern Research Station, P.O. Box 404, Parsons, WV 26287.

Nature of Decision To Be Made

The decision to be made is whether or not to conduct research and management activities, including harvesting, prescribed fire fertilization, and use of herbicides, on approximately 900 acres of the Fernow Experimental Forest.

Scoping Process

The Forest Service is soliciting comments form Federal, State and local agencies, and other individuals or organizations that may be interested in or affected by the proposed research activities, by contacting persons and organizations on the Fernow's mailing list and publishing a notice in the local newspaper. No scoping meetings are planned at this time. The present solicitation is for comments on this Notice of Intent and scoping material available elsewhere.

Preliminary Issues

Preliminary or potential issues have been identified from previous public comments:

(1) Timber harvesting and prescribed burning may decrease land productivity through increased erosion, and thereby increasing sediment inputs to streams.

(2) Habitat of federally endangered wildlife species may be affected by logging and prescribed burning.

(3) Addition of ammonium sulfate fertilizer to a watershed may increase acidity downstream of the treatment reach, and adversely affect trout populations.

Comments Requested

This notice of intent initiates the scoping process that guides the development of the environmental impact statement. Comments in response to this solicitation for information should focus on: (1) The proposed research manipulations and management actions (2) possible alternatives for addressing issues

associated with the proposal and (3) any possible impacts associated with proposal based on an individual's civil rights (race, color, national origin, age, relation, gender, disability, political beliefs, sexual orientation, martial or family status). We are especially interested in information that might identify a specific undesired result of implementing the proposed actions. Comments received in response to this solicitation, including names and address of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously, will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decisions under 36 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any persons may request the agency to withhold a submission from the public record by showing how the FOIA (Freedom of Information Act) permits such confidentiality. Persons requesting such confidentiality should be aware that under 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, should the request be denied, return the submission and notify the requester that the comments may be resubmitted with or without name and address within 90 days.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements 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, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of 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 very important that those interested in this proposed action participate by the close of the 45-day comment period so that 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 environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement 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.

Dated: September 14, 2004.

Mary Beth Adams,

Project Leader, NE–4353.

[FR Doc. 04–21046 Filed 9–17–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Northwest Sacramento Provincial Advisory Committee

AGENCY: USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: The Northwest Sacramento Provincial Advisory Committee (PAC) will meet on October 18, and 19, 2004, in Redding and Willows, California. The purpose of the meeting is to conduct annual implementation monitoring of two projects completed in previous years, relating to standards and guidelines in the Northwest Forest Plan (NFWP).

DATES: The meeting will be held from 8 a.m. to 5:30 p.m. October 18 and 19, 2004.

ADDRESSES: The meeting will be held in the field both days, beginning at the Trinity Conference Room in the Shasta-Trinity National Forest Headquarters, 3644 Avtech Parkway, Redding, CA, 96002.

FOR FURTHER INFORMATION CONTACT: Julie Nelson, Northwest Sacramento PAC staff liaison, USDA, Shasta-Trinity National Forest, 3644 Avtech Parkway, Redding, CA, 96002; (530) 226–2429; e-mail: *jknelson@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The two projects to be monitored are: (1) Green Mountain Prescribed Fire, Shasta Lake Ranger District of the Shasta-Trinity National Forest; and (2) Salt Log Timber Sale Burn, Grindstone Ranger District of the Mendocino National Forest. The meeting is open to the public.

Dated: September 14, 2004.

Thomas Contreras,

Acting Designated Federal Official.

[FR Doc. 04–21047 Filed 9–17–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

President's Export Council Subcommittee on Export Administration; Notice of Partially Closed Meeting

The President's Export Council Subcommittee on Export Administration (PECSEA) will meet on October 20, 2004, 10 a.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 4832, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The PECSEA provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

Public Session

1. Opening remarks by the Chairman.
2. Bureau of Industry and Security (BIS) and Export Administration update.
3. Export Enforcement update.
4. Presentation of papers or comments by the public.

Closed Session

5. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the PECSEA. Written statements may be

submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to PECSEA members, the PECSEA suggests that public presentation materials or comments be forwarded before the meeting to Ms. Lee Ann Carpenter at *Lcarpent@bis.doc.gov.*

A Notice of Determination to close meetings, or portions of meetings, of the PECSEA to the public on the basis of 5 U.S.C. 522(c)(1) was approved on October 8, 2003, in accordance with the Federal Advisory Committee Act.

For more information, call Ms. Carpenter on (202) 482–2583.

Dated: September 13, 2004.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 04–21044 Filed 9–17–04; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

Separate–Rates Practice in Antidumping Proceedings involving Non–Market Economy Countries

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Request for Comments.

SUMMARY: On May 3, 2004, the Department of Commerce published a notice in the **Federal Register** requesting comments on its separate rates practice. This practice refers to the Department's long–standing policy in antidumping proceedings of presuming that all firms within a non–market economy country (''NME'') are subject to government control and thus should all be assigned a single, country–wide rate unless a respondent can demonstrate an absence of both *de jure* and *de facto* control over its export activities. In that case, the Department assigns the respondent its own individually calculated rate or, in the case of a non–investigated or non–reviewed firm, a weighted–average of the rates of the fully analyzed companies, excluding any rates that were zero, de minimis, or based entirely on facts available. In response to its May 3, 2004, request for comments on its separate rates policy and practice and on its options for changes (69 FR 24119), the Department received 23 submissions from interested parties.

Taking into account the submissions in response to its first notice requesting comments on various changes to its separate rates policy and practice, this notice outlines revised options for such changes in order to provide the public with an opportunity to comment on whether those changes would be consistent with the statute and would redress problems that have been identified concerning separate rates appropriately. The Department intends to consider additional modifications to its NME practice and may solicit additional public comment on other potential changes, as appropriate.

DATES: Comments must be submitted by October 15, 2004.

ADDRESSES: Written comments (original and six copies) should be sent to James J. Jochum, Assistant Secretary for Import Administration, U.S. Department of Commerce, Central Records Unit, Room 1870, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Lawrence Norton, Economist, or Anthony Hill, Senior International Economist, Office of Policy, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC, 20230, 202–482–1579 or 202–482–1843.

SUPPLEMENTARY INFORMATION:

Background

In an NME antidumping proceeding, the Department presumes that all companies within the country are subject to governmental control and should be assigned a single antidumping duty rate unless an exporter demonstrates the absence of both *de jure* and *de facto* governmental control over its export activities. *See Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026, 19027 (April 30, 1996). The Department's separate rates test is not concerned, in general, with macroeconomic border–type controls (*e.g.*, export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent the dumping of merchandise in the United States. Rather, the test focuses on controls over the decision–making process on export–related investment, pricing, and output decisions at the individual firm level. *See Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate from Ukraine*, 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997); and *Preliminary Determination of Sales at Less Than Fair Value: Honey from the People's Republic of China*, 60 FR 14725, 14727 (March 20, 1995).

To establish whether a firm is sufficiently independent from government control in its export activities to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as modified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22587 (May 2, 1994) (*Silicon Carbide*). Under this test, the Department assigns separate rates in NME cases only if an exporter can demonstrate the absence of both *de jure* and *de facto* governmental control over its export activities. *See Silicon Carbide and Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995). In order to request and qualify for a separate rate, a company must have exported the subject merchandise to the United States during the period of investigation or review, and it must provide information responsive to the following considerations:

1. Absence of *De Jure* Control: The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

2. Absence of *De Facto* Control: Typically, the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or subject to the approval of, a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the central, provincial, or local governments in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

In an antidumping investigation or review, the Department will usually assign a weighted–average of the

individually calculated rates, excluding any rates that were zero, *de minimis*, or based entirely on facts available, to exporters who have not been selected as mandatory respondents if they fulfill two requirements. First, they must submit a request for separate rates treatment, along with a timely response to section A of the Department's questionnaire. Second, the Department must determine, after reviewing the requesting companies' submissions, that separate rates treatment is warranted. See *Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Carbon–Quality Steel Pipe from the People's Republic of China*, 67 FR 36570, 36571 (May 24, 2002).

As it announced in its May 3, 2004, notice in the **Federal Register** (69 FR 24119), the Department is considering changes to the practice detailed above, in particular in response to the growing administrative burden of analyzing requests for separate rates. The Department has received increasing numbers of requests for separate rates in recent years and is facing an exceptionally large number of such requests in two ongoing investigations. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Wooden Bedroom Furniture from the People's Republic of China*, 69 FR 35312 (June 24, 2004), *Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China*, 69 FR 42654 (July 16, 2004), and *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 42672 (July 16, 2004). Despite the administrative burden, the Department has analyzed the large number of separate rates requests in these cases. Nevertheless, there are concerns that processing these requests consumes an inordinate amount of the Department's resources. One particular concern which the Department faces is the complaint that parties responding to the Department's questionnaire have, in many cases, not responded fully to the initial request for information, forcing the Department to issue numerous supplemental questionnaires, which, again, create an administrative burden on the agency. Further, as noted by various parties submitting responses to the Department's May 3, 2004 notice on its separate rates policy and practice, the separate rates test, as currently constructed, may not offer the most effective means of determining whether exporters act, *de facto*, independently of the government in their export activities.

Another issue that has been raised by parties concerns potential evasion of duties. Under current practice, separate rates are assigned only to exporters, and the assigned rate applies regardless of which entity produces the subject merchandise. In cases where the rates vary widely from exporter to exporter, there is a strong incentive for exporters assigned either the country–wide rate or a high calculated rate to ship their merchandise through an exporter assigned a lower rate. Such diversion arguably undermines the effect of other antidumping or countervailing duty margins the Department calculates.

In order to address these concerns, the Department is now considering an additional set of options, set forth in the Appendix to this notice, and is particularly interested in comments relating to these possible approaches, including comments on their consistency with the statute and regulations.

Comments

Persons wishing to comment should file a signed original and six copies of each set of comments by the date specified above. The Department will consider all comments received before the close of the comment period. Consideration of comments received after the end of the comment period cannot be assured. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in development of any changes to its practice. All comments responding to this notice will be a matter of public record and will be available for public inspection and copying at Import Administration's Central Records Unit, Room B–099, between the hours of 8:30 a.m. and 5 p.m. on business days. The Department requires that comments be submitted in written form. The Department recommends submission of comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be submitted either by e–mail to the webmaster below, or on CD–ROM as comments submitted on diskettes are likely to be damaged by postal radiation treatment.

Comments received in electronic form will be made available to the public in Portable Document Format (PDF) on the Internet at the Import Administration Web site at the following address: *http://ia.ita.doc.gov/*.

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482–0866, e-mail address: *webmaster–support@ita.doc.gov.*

Dated: September 15, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix

(1) The Department is considering a change in its separate rates process from a Section A response process to an application process. The goal of the separate rates application would be to both streamline the separate rates process for NME exporters and the Department and to focus the analysis on those issues most relevant to separate rate eligibility. For example, in such an application, all exporters, including those that are 100% foreign–owned, would be required to certify their eligibility for separate rates (*i.e.*, to certify that they exported subject merchandise to the United States and that they operate *de jure* and *de facto* independently of the government), as well as to potentially identify any affiliates involved in the production or sale of the subject merchandise and the producers from whom they sourced the merchandise during the period of investigation. The Department would also list the documents required to substantiate these certifications and require that the applicant provide original and translated copies of all those documents with the application. The Department would not consider any application for separate rate eligibility unless all of the necessary fields of the application were completed and the required evidence and certifications were submitted. Moreover, the Department would continue to reserve the right to issue supplemental questionnaires and verify applicants if necessary.

Through this streamlined and more focused separate rates application process, the Department could conserve resources by receiving and reviewing only the information most relevant to separate rate eligibility, such as an

exporter's independence over its own export activities and the potential influence, direct or indirect, of affiliated parties over the exporter's sales and production activities. Moreover, in the application, the Department could ask questions not addressed currently by its standard NME Section A questionnaire that are pertinent to separate rates eligibility, including questions about provincial or local government control over exporters. Such an application system could streamline the process of applying for a separate rate and provide a procedure which is less demanding of the Department's resources and time. To streamline the process further, the application would be available as a form on the Import Administration website. After a transition period, the Department would require that parties complete and submit this form electronically on the Import Administration website. The Department welcomes comments on the general advisability of introducing an application process for separate rates, as well on the specific proposal outlined above.

(2) Under current NME practice, the Department assigns exporter–specific separate rates, and not exporter–producer combination rates, with three exceptions. The first exception concerns exclusions, in which case the exporter that is excluded receives an exporter–producer combination rate so that the exclusion from the antidumping order only applies when the exporter sources from the same supplier as in the original investigation. See Sections 733(b)(3) and 735(a)(4) of the Tariff Act of 1930, as amended, and 19 CFR 351.107(b)(1). The second exception involves the Department's enforcement of the law as it relates to middleman dumping. When a producer/exporter sells to an unaffiliated middleman with the knowledge of the ultimate destination of the merchandise, and that middleman subsequently sells merchandise to the United States at less than fair value, the Department will calculate a combination antidumping duty rate for the producer/exporter and middleman in many cases. The third exception concerns the Department's policy on new shipper reviews, where the rate is assigned to the exporter–producer combination. See *Import Administration Policy Bulletin 03.2: Combination Rates in New Shipper Reviews*, dated March 04, 2003. The Department is considering extending this practice of assigning exporter–producer combination rates to NME exporters receiving a separate rate so that only the specific exporter–producer combination that existed during the period of investigation or review receives the calculated rate for establishing the cash deposit rate for estimated antidumping duties. That is, if an exporter qualifying for a separate rate during an investigation sourced its subject merchandise from three producers during the period of investigation, the separate rate it receives would only apply as a cash deposit to merchandise produced by any of the three suppliers that had supplied the exporter during the period of investigation. While the exporter would be free to adjust its sourcing from among the three suppliers that supplied it during the investigation, merchandise sourced from new suppliers would fall outside the combination rate. This combination rate would change as the result of subsequent administrative reviews establishing changes to the sourcing of the subject merchandise provided to the exporter. However, for cash deposit purposes, these combination rates would apply until the next administrative review.

The Department welcomes comments on the legal and administrative advisability of combination rates and, if instituted, how best to construct them. In particular, the Department is interested in comments as to what rate it should assign to exporters' merchandise from suppliers for which the Department has not established a combination rate.

3) The Department is also considering changing its policy and practice concerning third–country resellers, *i.e.*, when NME producers sell subject merchandise through exporters located outside the NME country (for example, Hong Kong, Taiwan, or Malaysia). Under current practice, the Department applies a knowledge test to determine the entity to which the rate applies, only where there is evidence that the producer knows that the ultimate destination of the merchandise is the United States does the Department apply a rate to the NME producer. Otherwise, the Department considers the third–country reseller to be the exporter and assigns it an antidumping duty rate.

Recent antidumping investigations indicate that the relationship between Chinese producers, in particular, and resellers outside China can be complex and difficult to assess given the limited resources of the Department. Therefore, the Department is considering instituting a rebuttable presumption that NME producers shipping subject merchandise through third countries are aware that their goods are bound for the United States. In other words, the Department would assume that NME producers shipping through third countries set the export price to the United States and assign to them, and not the reseller, antidumping duty rates, unless evidence were presented to the contrary. In accordance with standard practice, the NME producer/exporter would be required to demonstrate lack of *de facto* and *de jure* government control in order to receive a separate rate. The Department is interested in comments as to whether there are grounds for such a rebuttable presumption.

[FR Doc. 04–21208 Filed 9–17–04; 8:45 am]

BILLING CODE: 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–405]

Continuation of Antidumping Duty Order: Barbed Wire and Barbless Fencing Wire From Argentina

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Continuation of Antidumping Duty Order: Barbed Wire and Barbless Fencing Wire From Argentina.

SUMMARY: As a result of the determinations by the Department of Commerce (''the Department'') and the International Trade Commission (''Commission'') that revocation of the antidumping duty order on Barbed Wire and Barbless Fencing Wire From Argentina would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing notice of the continuation of this antidumping duty order.

EFFECTIVE DATE: September 20, 2004.

FOR CONTACT INFORMATION: Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–5050.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 2004, the Department initiated and the Commission instituted a sunset review of the antidumping duty order on Barbed Wire and Barbless Fencing Wire from Argentina, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act'').[1] As a

[1] *See Initiation of Five-year (''Sunset'') Reviews,* 69 FR 17129 (April 1, 2004).

result of its review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margins likely to prevail were the order to be revoked.[2]

On September 3, 2004, the Commission determined pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on Barbed Wire and Barbless Fencing Wire From Argentina would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

Scope of the Order

The merchandise covered by this order is Barbed Wire and Barbless Fencing Wire From Argentina, which is currently classifiable under Harmonized Tariff Schedule (''HTS'') item number 7313.00.00. The HTS item numbers are provided for convenience and customs purposes. The written product description remains dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of this antidumping duty order would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on Barbed Wire and Barbless Fencing Wire From Argentina. The effective date of continuation of this order will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to sections 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year review of this order not later than August 2009.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–2256 Filed 9–17–04; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See Barbed Wire and Barbless Fencing Wire From Argentina, Expedited Sunset Review of Antidumping Duty Order;* 69 FR 47404 (August 5, 2004) (Final Results).

[3] *See Barbed Wire and Barbless Wire Strand From Argentina;* 69 FR 53944 (September 3, 2004) and USITC Publication 3718 (August 2004), Investigation No. 731–TA–208 (Second Review).

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Solicitation of Requests for Modification of Tariff Rate Quotas on the Import of Certain Worsted Wool Fabrics

AGENCY: Department of Commerce, International Trade Administration.

ACTION: The Department of Commerce (Department) is soliciting requests for the modification of the limitations on the quantity of imports of certain worsted wool fabric under the 2004 tariff rate quotas established by the Trade and Development Act of 2000 (TDA 2000).

SUMMARY: The Department hereby solicits requests for the modification of the limitations on the quantity of imports of certain worsted wool fabric under the 2005 tariff rate quotas established by the TDA 2000, and amended by the Trade Act of 2002. To be considered, a request must be received or postmarked by 5 p.m. on October 5, 2004 and must comply with the requirements of 15 CFR 340. If a request is received, the Department will solicit comments on the request in the **Federal Register** and provide a twenty-day comment period. Thirty days after the end of the comment period, the Department will determine whether the limitations should be modified.

ADDRESSES: Requests must be submitted to: Industry Assessment Division, Office of Textiles and Apparel, Room 3100, United States Department of Commerce, Washington, DC 20230. Six copies of any such requests must be provided.

FOR FURTHER INFORMATION CONTACT: Sergio Botero, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4058.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Title V of the TDA 2000 created two tariff rate quotas (TRQs), providing for temporary reductions for three years in the import duties on limited quantities of two categories of worsted wool fabrics suitable for use in making suits, suit-type jackets, or trousers: (1) for worsted wool fabric with average fiber diameters greater than 18.5 microns (Harmonized Tariff Schedule of the United States (HTS) heading 9902.51.11); and (2) for worsted wool fabric with average fiber diameters of 18.5 microns or less (HTS heading 9902.51.12).

On August 6, 2002, President Bush signed into law the Trade Act of 2002, which includes several amendments to Title V of the TDA 2000. These include the extension of the program through 2005; the reduction of the in-quota duty rate on HTS 9902.51.12 (average fiber diameter 18.5 microns or less) from 6 percent to zero, effective for goods entered, or withdrawn from warehouse for consumption, on or after January 1, 2002; and an increase in the 2003 through 2005 TRQ levels to 3,500,000 square meters for HTS 9902.51.12 and to 4,500,000 square meters for HTS 9902.51.11. Both of these limitations may be modified by the President, not to exceed 1,000,000 square meters per year for each tariff rate quota.

The TDA 2000 requires the annual consideration of requests by U.S. manufacturers of men's or boys' worsted wool suits, suit-type jackets and trousers for modification of the limitation on the quantity of fabric that may be imported under the tariff rate quotas, and grants the President the authority to proclaim modifications to the limitations. In determining whether to modify the limitations, specified U.S. market conditions with respect to worsted wool fabric and worsted wool apparel must be considered. On January 22, 2001, the Department published regulations establishing procedures for considering requests for modification of the limitations. Modification of Tariff Rate Quota Limitation on Worsted Wool Fabric Imports, 66 FR 6459 (Jan. 22, 2001) (15 CFR 340).

To be considered, requests must be submitted by a manufacturer of men's or boys' worsted wool suits, suit-type jackets, and trousers in the United States and must comply with the requirements of 15 CFR 340.

A request must include: (1) The name, address, telephone number, fax number, and Internal Revenue Service number of the requester; (2) The relevant worsted wool apparel product(s) manufactured by the person(s), that is, worsted wool suits, worsted wool suit-type jackets, or worsted wool trousers; (3) The modification requested, including the amount of the modification and the limitation that is the subject of the request (HTS heading 9902.51.11 and/or 9902.51.12); and (4) A statement of the basis for the request, including all relevant facts and circumstances. 15 CFR 340.3(b).

A request should include the following information for each limitation that is the subject of the request, to the extent available: (1) A list of suppliers from which the requester purchased domestically produced worsted wool fabric during the period July 1, 2003 to June 30, 2004, the dates of such purchases, the quantity purchased, the quantity of imported

worsted wool fabric purchased, the countries of origin of the imported worsted wool fabric purchased, the average price paid per square meter of the domestically produced worsted wool fabric purchased, and the average price paid per square meter of the imported worsted wool fabric purchased; (2) A list of domestic worsted wool fabric producers that declined, on request, to sell worsted wool fabric to the requester during the period July 1, 2003 to June 30, 2004, indicating the product requested, the date of the order, the price quoted, and the reason for the refusal; (3) The requester's domestic production and sales for the period January 1, 2004 to June 30, 2004 and the comparable six month period in the previous year, for each of the following products: worsted wool suits, worsted wool suit-type jackets, and worsted wool trousers; (4) Evidence that the requester lost production or sales due to an inadequate supply of domestically-produced worsted wool fabric on a cost competitive basis; and (5) Other evidence of the inability of domestic producers of worsted wool fabric to supply domestically produced worsted wool fabric to the requester. 15 CFR 340.3(c).

Requests must be accompanied by a statement by the person submitting the request or comments (if a natural person), or an employee, officer or agent of the legal entity submitting the request, with personal knowledge of the matters set forth therein, certifying that the information contained therein is complete and accurate, signed and sworn before a Notary Public, and acknowledging that false representations to a federal agency may result in criminal penalties under federal law. 15 CFR 340.5(a).

Any business confidential information provided that is marked ''business confidential'' will be kept confidential and protected from disclosure to the full extent permitted by law. To the extent business confidential information is provided, a non-confidential submission should also be provided, in which business confidential information is summarized or, if necessary, deleted. 15 CFR 340.5(b).

If a request is received, the Department will cause to be published a notice in the **Federal Register** summarizing the request or requests and soliciting comments from any interested person, including U.S. manufacturers of worsted wool fabric, wool yarn, wool top and wool fiber, regarding the requested modification. A twenty-day comment period will be provided. 15 CFR 340.4(a). Thirty days after the end of the comment period, the Department will determine whether the limitations should be modified. 15 CFR 340.7(b).

Dated: September 14, 2004.

D. Michael Hutchinson,

Acting Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. E4–2236 Filed 9–17–04; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF COMMERCE

[I.D. 091404H]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Small Craft Facility Questionnaire.

Form Number(s): NOAA Form 77–1.

OMB Approval Number: 0648–0021.

Type of Request: Regular submission.

Burden Hours: 213.

Number of Respondents: 1,600.

Average Hours Per Response: 8 minutes.

Needs and Uses: NOAA's National Ocean Service produces nautical charts to ensure safe navigation. Small-craft charts are designed for recreational boaters and include information on local marina facilities and the services they provide (fuel, repairs, etc.). Information is collected from marinas to update the information provided to the public.

Affected Public: Business or other for-profit organizations..

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David__Rostker@omb.eop.gov*.

Dated: September 10, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–21090 Filed 9–17–04; 8:45 am]

BILLING CODE 3510–JE–S

DEPARTMENT OF COMMERCE

[I.D. 091404F]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Pacific Tuna Fisheries Logbook.

Form Number(s): None.

OMB Approval Number: 0648–0148.

Type of Request: Regular submission.

Burden Hours: 119.

Number of Respondents: 20.

Average Hours Per Response: 5 minutes per logbook entry.

Needs and Uses: The operators of U.S. purse seine vessels fishing for tuna in the eastern tropical Pacific Ocean are required (50CFR 300.22) to maintain logbooks of catch and effort. The information requirements include the date, noon position, and tonnage of fish on board by species. The data collected is used to meet U.S. obligations to the Inter-American Tropical Tuna Commission (IATTC) and for the management of tuna stocks.

Affected Public: Business or other for-profit organizations.

Frequency: Daily.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number 202–395–7285, or *David__Rostker@omb.eop.gov*.

Dated: September 10, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–21091 Filed 9–17–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 091404E]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Tag Recapture Card.

Form Number(s): None.

OMB Approval Number: 0648–0259.

Type of Request: Regular submission.

Burden Hours: 8.

Number of Respondents: 240.

Average Hours Per Response: 2 minutes for tag recapture card.

Needs and Uses: The primary objectives of a tagging program are to obtain scientific information on fish growth and movements necessary to assist in stock assessment and management. This is accomplished by the random recapture of tagged fish by fishermen and the subsequent voluntary submission of the appropriate data.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David__Rostker@omb.eop.gov*.

Dated: September 10, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–21092 Filed 9–17–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091404C]

Proposed Information Collection; Comment Request; Weather Modification Activities Reports

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before November 19, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Karen King, R/WA, 1315 East-West Hwy, Silver Spring, MD 20910–3282 (phone 301–713–0460, ext. 202.

SUPPLEMENTARY INFORMATION:

I. Abstract

Section 6(b) of Public Law 92–205 requires that persons who engage in weather modification activities (e.g., cloud-seeding) provide reports prior to and after the activity. They are also required to maintain certain records. The requirements are detailed in 15 CFR 908. NOAA uses the data for scientific research, historical statistics, international reports, and other purposes.

II. Method of Collection

Paper forms and recordkeeping are used.

III. Data

OMB Number: 0648–0025.

Form Number: NOAA forms 17–4 and 17–4A.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 55.

Estimated Time Per Response: 30 minutes per report; and 5 hours per year for recordkeeping.

Estimated Total Annual Burden Hours: 240.

Estimated Total Annual Cost to Public: $275.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 10, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–21093 Filed 9–17–04; 8:45 am]

BILLING CODE 3510–KD–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091404A]

Proposed Information Collection; Comment Request; Reporting of Sea Turtle Entanglement in Pot Gear Fisheries

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before November 19, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Kara Dodge, NOAA/NMFS/NERO, Protected Resources Division, One Blackburn Drive, Gloucester, MA 01930 (Phone 978–281–9328 x6529).

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information involves sea turtles becoming accidentally entangled in active or discarded fixed fishing gear. These entanglements may prevent the recovery of endangered and threatened sea turtle populations. NOAA Fisheries had established the Sea Turtle Disentanglement Network to promote reporting and increase successful disentanglement of sea turtles. As there is limited to no observer coverage of pot gear fisheries, NOAA Fisheries relies on the U.S. Coast Guard, fishing industry, stranding network, federal , state, and local authorities, and the public for this information. The information provided will help NOAA Fisheries better assess pot gear fisheries (lobster, whelk/conch, crab, fish trap) and their impacts on sea turtle populations in the northeast region (Maine to Virginia).

II. Method of Collection

Members of the Disentanglement Network and the public are requested to call and inform NOAA Fisheries of any sea turtle entanglements they encounter. Information provided in these phone calls (or by fax or mail) will include: name and type of reporting vessel, vessel cell phone number or radio call channel, reporter name and home phone number, date/time of report (and/or sighting event), location (latitude and longitude), description of turtle for species identification, status of turtle alive or dead, description of entangling gear (rope, line, buoys, colors, ID numbers), location of entangling gear on turtle (head, flippers, single wrap, multiple wraps), description of any visible injuries, and weather/sea conditions at the scene. Information will be collected by NOAA Fisheries when a sea turtle entanglement event occurs. Reports and documentation of dead or injured sea turtles are also requested. NOAA Fisheries may request assistance from the responder to bring injured sea turtles to the appropriate stranding and rehabilitation facility for veterinary care when practical. NOAA Fisheries may also request assistance to bring fresh dead sea turtles to the appropriate stranding facility for necropsy.

III. Data

OMB Number: 0648–0496.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for profit organizations; Individuals or households; Not-for-profit institutions; Federal Government; and State, Local or Tribal Government.

Estimated Number of Respondents: 15.

Estimated Time Per Response: 60 minutes for a telephone call.

Estimated Total Annual Burden Hours: 30.

Estimated Total Annual Cost to Public: $450.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 10, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–21094 Filed 9–17–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091404B]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings.

DATES: The meetings will be held October 11–15, 2004.

ADDRESSES: These meetings will be held at the Edgewater Beach Resort, 11212 Front Beach Road, Panama City FL 34207.

Council address: Gulf of Mexico Fishery Management Council, 3018 North U.S. Highway 301, Suite 1000, Tampa, FL 33619; 850–235–4977.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: These meetings were previously scheduled to be held on September 13–17, 2004, but were rescheduled due to Hurricane Ivan.

Council

Thursday, October 14, 2004

8:30 a.m.—Convene.

8:45 a.m.—10 a.m.—Receive public testimony on the Reef Fish Amendment 23 (Vermilion Snapper Rebuilding Plan) and Applications for Exempted Fishing Permits (if any).

10 a.m.—10:30 a.m.—Receive the Habitat Protection Committee report.

10:30 a.m.—10:45 a.m.—Receive the report of the Joint Personnel/Administrative Policy Committee.

10:45 a.m.—11 a.m.—Receive the report of the Budget Committee.

11 a.m.—11:15 a.m.—Receive the Joint Reef Fish/Mackerel Management Committee report.

11:15 a.m.—11:30 a.m.—Receive the Shrimp Management Committee report.

1 p.m.—1:15 p.m.—Receive the Data Collection Committee report.

1:15 p.m.—1:30 p.m.—Receive the Ecosystem Management Committee report.

1:30 p.m.—3:30 p.m.—Receive the Reef Fish Management Committee report.

3:30 p.m. -4:30 p.m.-Receive the Migratory Species Committee report.

4:30 p.m.—5:30 p.m.—Receive the Sustainable Fisheries Committee report.

Friday, October 15, 2004

8 a.m.—9 a.m.—Receive the Coral Management Committee report.

9 a.m.—9:15 a.m.—Receive the Joint Advisory Panel (AP) Selection/Scientific and Statistical Committee (SSC) Selection Committee report.

9:15 a.m.—9:30 a.m.—Receive the ICCAT Advisory Committee report.

9:30 a.m.—9:45 a.m.—Receive Enforcement Reports.

9:45 a.m.—10 a.m.—Receive the NMFS Regional Administrator's Report.

10 a.m.—10:15 a.m.—Receive Director's Reports.

10:15 a.m.—10:30 a.m.—Other Business.

10:30 a.m.—10:45 a.m.—Election of Chair and Vice-Chair.

Committees

Monday, October 11, 2004

8:30 a.m.—9:30 a.m.—The Joint Personnel/Administrative Policy Committees will review the disciplinary action section of the Council's Standard Operating Practices and Procedures (SOPPS) and the SEDAR Process and Pool Section of SOPPs.

9:30 a.m.—10:30 a.m.—The Budget Committee will review the 2005–09 budgets.

10:30 a.m.—11:30 a.m.—The Joint Reef Fish/Mackerel Management Committee will review amendments for commercial limited access systems for reef fish and mackerels.

1 p.m.—3:30 p.m.—The Shrimp Management Committee will discuss NOAA Fisheries' bycatch reduction device (BRD) technical developments; proposed revision of BRD certification rule; report on Shrimp Summit meeting; and Draft Shrimp Amendment 13/SEIS.

3:30 p.m.—5:30 p.m.—The Ecosystem Management Committee will meet and presentations on the NOAA Fisheries' ecosystem management will be given. There will also be a presentation on the South Atlantic Fishery Management Council (SAFMC) approach to ecosystem management.

Tuesday, October 12, 2004

8 a.m—9:30 a.m.—The Data Collection Committee will meet to hear a presentation of the recreational data needs and data collection.

9:30 a.m.—11 a.m.—The Habitat Protection Committee will review a Preliminary Public Hearing Draft of Generic Essential Fish Habitat (EFH) Amendment and a report on NOAA Fisheries' Liquid Natural Gas (LNG) Facilities Workshop.

11 a.m.—5:30 p.m.—The Reef Fish Management Committee will meet to review the Final Reef Fish Amendment 23 for rebuilding vermilion snapper; an Options Paper for Reef Fish 18A pertaining to the grouper fishery; scoping comments on Red Snapper IFQ Profile; and public testimony on grouper quota and trip limits.

6:30 p.m—8:30 p.m.—NOAA Fisheries' Southeast Regional Office (SERO) will hold the Gulf Coast Recreational Data Forum in the same meeting room as the Council meeting. Dr. Roy Crabtree, SE Regional Administrator, SERO staff, and fisheries statistics staff from NOAA Fisheries Headquarters will be on hand to provide up-to-date program information and answer questions about NOAA Fisheries' recreational data collection program. The informal two-hour session is open to the public and will begin at 6:30 p.m. For more information on the Gulf Coast Recreational Data Forum, contact Michael Bailey at 727–570–5474.

Wednesday, October 13, 2004

8:30 a.m.—10:30 a.m.—The Highly Migratory Species Committee will meet to suggest changes to the NOAA Fisheries HMS/Billfish Amendments.

10:30 a.m.—1 p.m.—The Sustainable Fisheries Committee will suggest changes to the draft proposed guidelines for National Standard One.

2:30—4:30 p.m.—The Coral Management Committee will meet from to review the Oceana petition for rulemaking on deep-water coral and draft a Council letter commenting on it.

4:30—5:30 p.m.—The Joint Advisory Panel (AP)/Scientific and Statistical Committee (SSC) selection Committee will meet in a Closed Session to discuss the appointment of 2 persons to the Ad Hoc Red Snapper AP and appointment of members to the Ad Hoc Ecosystem SSC.

Although other non-emergency issues not on the agendas may come before the Council and Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the Council and Committees will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency. The established times for addressing items on the agenda may be adjusted as necessary to accommodate the untimely completion of discussion relevant to other agenda items. In order to further allow for such adjustments and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dawn Aring at the Council (see **ADDRESSES**) by October 4, 2004.

Dated: September 15, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–2243 Filed 9–17–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091404J]

Mid-Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council or MAFMC), its Tilefish Committee; its Squid, Mackerel, Butterfish Committee; its Ecosystem Committee; its Joint Dogfish Committee; its Law Enforcement Committee; and, its Executive Committee will hold public meetings.

DATES: The meetings will be held on Monday, October 4, 2004 through Thursday, October 7, 2004. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be at the Holiday Inn, 3845 Veterans Memorial Highway, Ronkonkoma, NY 11779; telephone: 631–585–9500.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION:

Monday, October 4, 2004

12 noon to 1 p.m., the Tilefish Committee will meet.

1 p.m. to 3 p.m., the Squid, Mackerel, Butterfish Committee will meet.

3 p.m. to 5:30 p.m., the Joint Dogfish Committee and the Ecosystem Committee will meet concurrently.

Tuesday, October 5, 2004

8 a.m. to 9 a.m., the Law Enforcement Committee will meet.

9 a.m., the Council will convene.

9 a.m. to 9:15 a.m., election of Council Officers will be held.

9:15 a.m. to 12 noon, dogfish specifications setting will take place.

1 p.m. to 5 p.m., a Research Set-Aside (RSA) Workshop will be held.

7 p.m. to 8:30 p.m., Research Set-Aside (RSA) Workshop continues.

Wednesday, October 6, 2004

8:30 a.m., Council will convene.

8:30 a.m. to 11 a.m., Council will meet to approve the August Council meeting minutes and receive various organizational reports, Council liaison reports, the Executive Director's report, and report on the status of fishery management plans.

11 a.m. to 2 p.m., Monkfish Amendment 2 will be reviewed and discussed.

2 p.m. to 5:30 p.m., priorities for Summer Flounder, Scup, and Black Sea Bass plan actions in conjunction with the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup, and Black Sea Bass Board will be developed.

5:30 p.m. to 7:30 p.m., the ASMFC will hold a Summer Flounder, Scup, and Black Sea Bass Board meeting to approve Summer Flounder, Scup, and Black Sea Bass FMP addenda, including the allocation of quotas and timing of management measures.

7:30 p.m. to 9 p.m., a Public Hearing will be held from regarding the South Atlantic Fishery Management Council's (SAFMC) King Mackerel Amendment 15.

Thursday, October 7, 2004

8 a.m. to 9 a.m., the Executive Committee will meet.

9 a.m. to 9:45 a.m., Council will convene and review the SAFMC's King Mackerel Amendment 15.

9:45 a.m. to 10:30 a.m., Council will receive a presentation on the Long Island Wind Energy Proposal.

Council will then meet until 2 p.m. to receive Committee reports and address any continuing and/or new business.

Agenda items for the Council's committees and the Council itself are: On October 4, meeting of Tilefish Committee to address and discuss considerations regarding Amendment 1; meeting of the Squid, Mackerel, Butterfish Committee to finalize the public hearing document for Amendment 9; meeting of the Ecosystem Committee to review and discuss outcomes from the NMFS initiated meetings and workshops on GIS, survey instruments and management tools; and, meeting of the Joint Dogfish Committee to review the Monitoring Committee's recommendations regarding 2005/06 fishing year quota and associated management measures, and to develop and adopt recommended quota and management measures for 2005/06 fishing year and set specifications for the same.

On October 5, meeting of the Law Enforcement Committee to address and recommend Council Fishery Achievement Award recipient; Council will elect officers for the new year; approve and adopt Dogfish Management measures for 2005/06; and, conduct a RSA Workshop with the ASMFC and NMFS to review, discuss and establish RSA priorities for 2006 and project selection criteria for 2006.

On October 6, the Council will receive organizational reports, liaison reports, and internal staff reports; review and approve Monkfish Amendment 2 for submission to the Secretary and discuss New England Fishery Management Council's (NEFMC) actions regarding Amendment 2 issues directly impacting the MAFMC such as permits for North Carolina fishermen, closure of deep sea corals and effects of DAS usage for multispecies and scallops; in conjunction with the ASMFC Summer Flounder, Scup, and Black Sea Bass Board, Council will develop 2005 priorities for Summer Flounder, Scup and Black Sea Bass, and will review the outcome of the ASMFC's September workshop on the same.

On October 7, the Executive Committee will meet to review the 2005 annual work plan, discuss committee structures, and address staff benefits; the Council will review and discuss the SAFMC's King Mackerel Amendment 15; and hear a presentation on the Long Island Wind Energy Proposal; receive committee reports; and, act on any new and/or continuing business.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, these issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final actions to address such emergencies.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Debbie Donnangelo (302–674–2331) at least 5 days prior to the meeting date.

Dated: September 15, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–2240 Filed 9–17–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090904D]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad Hoc Channel Islands Marine Reserve Committee (CIMRC) will hold a work session to consider information related to proposed marine reserves and marine conservation areas within Channel Islands National Marine Sanctuary (CINMS) and to develop recommendations for the Council. The work session is open to the public.

DATES: The CIMRC will meet Tuesday, October 5, 2004 from 10 a.m. to 5 p.m. and Wednesday, October 6, 2004 from 9 a.m. until business for the day is completed.

ADDRESSES: The meeting will be held at The Benson Hotel, 309 SW Broadway, Portland, OR 97205; telephone: 503–228–2000.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Waldeck, Pacific Fishery Management Council; telephone: 503–820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the meeting will be to review the *Staff Preliminary Working Draft*

Document for Consideration of a Network of Marine Reserves and Marine Conservation Areas within the Channel Islands National Marine Sanctuary (CINMS), receive reports from Council advisory subpanels, Enforcement Consultants, Habitat Committee, and Scientific and Statistical Committee. Based on their review and advisory committee reports, the CIMRC will develop recommendations for the Council's November 2004 meeting. CINMS and National Oceanic and Atmospheric Administration staff involved with the development of the draft document will be available for discussions with the CIMRC.

At the November 2004 Council meeting, it is anticipated the Council would be scheduled to review the comments of the advisory bodies and public and provide formal comment to CINMS for completing the range of alternatives and analytical elements of a draft environmental impact statement for proposed marine reserves and marine conservation areas within CINMS.

More information about the proposed CINMS project and draft document is available at: *http://www.cinms.nos.noaa.gov/marineres/enviro_review.html*

This is a public meeting, and time for public comment will be provided at the discretion of the committee chair. Generally, a public comment period will be provided just prior to the end of each day. Please note, this is not a public hearing, rather it is a work session to develop information for Council consideration.

Although non-emergency issues not contained in the meeting agenda may come before the CIMRC for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the CIMRC's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–820–2280 at least 5 days prior to the meeting date.

Dated: September 15, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–2241 Filed 9–17–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091404D]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council (Council) will convene a meeting of the Ad Hoc Vessel Monitoring System (VMS) Committee, which is open to the public. The primary purpose of the meeting is to review the Council recommendations on expanding the VMS program for West Coast groundfish fisheries to additional fishery sectors and to develop recommendations for the November 2004 Council meeting.

DATES: The Ad Hoc VMS Committee will meet Thursday, October 7, 2004 beginning at 8:30 a.m. and continuing until business for the day is completed.

ADDRESSES: The meeting will be held at the Benson Hotel, 309 SW Broadway, Portland, OR 97205–3725; telephone: 503–228–2000.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Burner, Pacific Fishery Management Council Groundfish Staff Officer; telephone: 503–820–2280.

SUPPLEMENTARY INFORMATION: The Council approved and the National Marine Fisheries Service implemented a pilot VMS program which began on January 1, 2004 for the limited entry trawl and limited entry fixed gear groundfish fishery sectors. The committee needs to consider expanding the VMS program to ensure effective monitoring and enforcement of area closures in commercial and recreational groundfish fisheries. At the September 2004 Council meeting, the Council is scheduled to review a draft Environmental Assessment which builds on the existing program and consider adopting a range of program expansion alternatives for public review. The Ad Hoc VMS Committee will review the current VMS program, consider Council recommendations on expanding the program, and develop recommendations for the November 2004 Council meeting.

At the November 2004 Council meeting, it is anticipated the Council would be scheduled to review the comments of the advisory bodies and public and identify a preferred alternative for expansion of the current monitoring program.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–820–2280 at least 5 days prior to the meeting date.

Dated: September 15, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–2242 Filed 9–17–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091504A]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

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

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator) has made a preliminary determination that the subject EFP application contains all the

required information and warrants further consideration. The Assistant Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Assistant Regional Administrator proposes to recommend that an EFP be issued that would allow one commercial fishing vessel to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would allow for exemptions from the FMP as follows: The Western Gulf of Maine (GOM) Closure Area and the minimum gillnet mesh size. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this document must be received on or before October 5, 2004.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on GOM Gillnet Study.'' Comments may also be sent via facsimile (fax) to (978) 281–9135, or submitted via e-mail to the following address: *da660@noaa.gov*

FOR FURTHER INFORMATION CONTACT: Karen Tasker, Fishery Management Specialist, phone 978–281–9273.

SUPPLEMENTARY INFORMATION: The Gulf of Maine Research Institute, Massachusetts Division of Marine Fisheries, and Angelica Fisheries, Inc., submitted an application for an EFP on August 13, 2004. The primary goal of the research is to establish gillnet selectivity curves for haddock in the GOM, and to test whether it is possible to catch legal-size haddock with gillnet gear with mesh size that is less than 6.5 inches (16.5 cm) while avoiding catching cod or other species of concern in an area east of Cape Ann, Massachusetts, during the period January through April 2005. The EFP would allow for exemptions from the regulations implementing the FMP as follows: The Western GOM Closure Area specified at § 648.81(e) and the minimum gillnet mesh size specified at § 648.80(a)(3)(iv)(B)(*1*).

Five gillnets of mesh sizes ranging from 4.5 to 6.5 inches (11.4 to 16.5 cm), in 0.5–inch (1.3 cm) increments, would be fished in six groups (each group containing one net of each mesh size), for a total of 30 nets. The nets would be of standard commercial length, 300 ft (91.4 m), and approximately two-thirds the standard commercial height, resulting in a height of 7.5 ft (2.3 m). This net size was selected based on the applicants' belief that cod typically are captured in the upper meshes of standard nets when standard nets are fished in this area. The soak times in the early stages of the study would be approximately 3 to 6 hours in order to reduce the likelihood of unwanted bycatch. Soak times may be slowly increased up to 20 hours if doing so can be accomplished with minimal bycatch.

Researchers would fish in area off of Cape Ann, Massachusetts, between 42°35′ and 42°50′ N. lat. and 69°50′ to 70°15′ W. long. (30–minute squares 131 and 132). This area includes the Western GOM Closure Area. The research would take place over a total of 14 sea days and would occur on one commercial fishing vessel.

Researchers speculate that they will be able to catch haddock with minimal cod bycatch based on commercial fishing experience that indicates that small cod are not present in this area of relatively deep water during the proposed study period. Furthermore, commercial fishing experience indicates that haddock are present in high densities in the research area during the study period.

Researchers estimate that the total catch for the sampling days would be 30,000 lb (13,608 kg), of which less than 2,000 lb (907 kg) would be cod. Should researchers capture more than 2,000 lb (907 kg) of cod, access to the Western GOM Closure Area would be terminated.

The data collection activities aboard the participating vessels would be conducted by observers from the Gulf of Maine Research Institute and Massachusetts Division of Marine Fisheries to ensure compliance with the experimental fishery objectives.

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

Dated: September 15, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–2247 Filed 9–17–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Technology Administration

Roundtable on Electronics Recycling; Notice of Meeting

The U.S. Department of Commerce Technology Administration is hosting Technology Recycling: Achieving Consensus for Stakeholders, a roundtable on market issues affecting electronics recycling. Stakeholders including selected representatives of electronics manufacturers, retailers, recyclers, and environmental organizations have been invited to participate. Topics of discussion will include collection and funding mechanisms for electronics recycling, current electronics recycling activities, and creating a market for recycled technology products. The event is open to the public and the press. In order to pre-register, email *technologyrecycling@doc.gov* or call (202) 482–2475 and leave your name and organization affiliation. If you wish to contribute brochures or display information regarding an ongoing electronics recycling project, please include that information and your phone number in your email or voice mail. Updated information will be available at *http://www.ta.doc.gov.*

DATES: Tuesday, September 21, 2004, from 1 to 4 p.m.

ADDRESSES: U.S. Department of Commerce Auditorium, 1401 Constitution Avenue, NW., Washington, DC. Enter through the Department of Commerce main entrance on 14th Street between Pennsylvania and Constitution Avenues. Bring a photo ID for security purposes.

FOR FURTHER INFORMATION CONTACT: Mae Ellis-Covell, 202–482–1581.

Dated: September 10, 2004.

Michelle O'Neill,

Deputy Under Secretary of Commerce for Technology.

[FR Doc. 04–21073 Filed 9–17–04; 8:45 am]

BILLING CODE 3510–18–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

September 14, 2004.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting a limit.

EFFECTIVE DATE: September 20, 2004.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.cbp.gov.* For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov.*

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 342/642 is being increased for the recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 69 FR 4926, published on February 2, 2004). Also see 68 FR 59923, published on October 20, 2003.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 14, 2004.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 14, 2003, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 2004 and extends through December 31, 2004.

Effective on September 20, 2004, you are directed to increase the current limit for Categories 342/642 to 1,033,101 dozen [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing:

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E4–2237 Filed 9–17–04; 8:45 am]

BILLING CODE 3510–DR–S

[1] The limit has not been adjusted to account for any imports exported after December 31, 2003.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the Republic of Korea

September 15, 2004.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: September 21, 2004.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.cbp.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 69 FR 4926, published on February 2, 2004). Also see 68 FR 59919, published on October 20, 2003.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 15, 2004.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 14, 2003, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man–made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the Republic of Korea and exported during the twelve-month period which began on January 1, 2004 and extends through December 31, 2004.

Effective on September 21, 2004, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Sublevels within Group II	
340	957,421 dozen of which not more than 497,124 dozen shall be in Category 340–D [2].
341	258,049 dozen.
347/348	735,281 dozen.
640–D [3]	3,074,849 dozen.
640–O [4]	2,910,285 dozen.
641	1,152,954 dozen of which not more than 44,747 dozen shall be in Category 641–Y [5].
645/646	4,170,269 dozen.
647/648	1,439,749 dozen.
Levels not in a group	
846	468,375 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2003.

[2] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030.

[3] Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

[4] 640–O: only HTS numbers 6203.23.0080, 6203.29.2050, 6205.30.1000, 6205.30.2050, 6205.30.2060, 6205.30.2070, 6205.30.2080 and 6211.33.0040.

[5] Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E4–2259 Filed 9–17–04; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Nepal

September 14, 2004.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: September 20, 2004.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.cbp.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and special swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 69 FR 4926, published on February 2, 2004). Also see 68 FR 68598, published on December 9, 2003; and 69 FR 22008, published on April 23, 2004.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 14, 2004.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directives issued to you on December 3, 2003 and April 19, 2004 by the Chairman, Committee for the Implementation of Textile Agreements. These directives concern imports of certain cotton and man-made fiber textile products, produced or manufactured in Nepal and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004.

Effective on September 20, 2004, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
341	1,226,253 dozen.
347/348	1,256,107 dozen.
641	469,593 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2003.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[Doc. E4–2257 Filed 9–17–04; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in Romania

September 15, 2004.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: September 20, 2004.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.cbp.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 435 is being increased for special shift, reducing the limit for Category 444 to account for the special shift being applied to Category 435.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 69 FR 4926, published on February 2, 2004). Also see 68 FR 55037, published on September 22, 2003.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 15, 2004.

Commissioner, Bureau of Customs and Border Protection,
Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 16, 2003, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and wool textiles and textile products in the following categories, produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 2004 and extends through December 31, 2004.

Effective on September 20, 2004, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
435	18,671 dozen.
444	11,107 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2003.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E4–2258 Filed 9–17–04; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in Ukraine

September 14, 2004.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: September 21, 2004.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Commissioner, Bureau of Customs and Border Protection Web site at *http://www.cbp.gov.* For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov.*

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 69 FR 4926, published on February 2, 2004). Also see 68 FR 69671, published on December 15, 2003.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 14, 2004.

Commissioner,
Commissioner, Bureau of Customs and Border Protection, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 10, 2003, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool textile products, produced or manufactured in Ukraine and exported during the twelve-month period which began on January 1, 2004 and extends through December 31, 2004.

Effective on September 21, 2004, you are directed to adjust the limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Ukraine:

Category	Adjusted twelve-month limit [1]
435	108,458 dozen.
442	18,750 dozen.
444	13,601 numbers.
448	81,253 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2003.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E4–2238 Filed 9–17–04; 8:45 am]

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, October 1, 2004.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–21144 Filed 9–16–04; 9:40 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, October 8, 2004.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–21145 Filed 9–16–04; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, October 15, 2004.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–21146 Filed 9–16–04; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, October 22, 2004.

PLACE: 1155 21st St., NW,. Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–21147 Filed 9–16–04; 9:43 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, October 29, 2004.

PLACE: 1155 21st St., NW,. Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–21148 Filed 9–16–04; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 04–C0006]

Battat Incorporated, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Battat Incorporated, containing a civil penalty of $125,000.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by October 5, 2004.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 04–C0006, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Michelle Faust Gillice, Trial Attorney, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7667.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: September 13, 2004.

Todd A. Stevenson,

Secretary.

Settlement Agreement and Order

1. Battat Incorporated (hereinafter ''Battat'' or ''Respondent'') enters into this Settlement Agreement and Order (hereinafter, ''Settlement Agreement'' or ''Agreement'') with the staff of the Consumer Product Safety Commission (the ''Commission''), and agrees to the entry of the attached Order incorporated by reference herein. The Settlement Agreement resolves the Commission staff's allegations set forth below.

I. The Parties

2. The Commission is an independent federal regulatory commission responsible for the enforcement of the Consumer Product Safety Act (''CPSA''), 15 U.S.C. 2051–2084.

3. Respondent was incorporated on December 30, 1981. It is organized and existing under the laws of the State of Delaware. Its principal office is located at 44 Martina Circle, Plattsburgh, NY 12901. Respondent manufactures games, toys and children's vehicles.

II. Staff Allegations

4. Between November 2001 and January 2003 (one month prior to the Commission's request for a full report under section 15(b) of the CPSA, 15 U.S.C. 2064(b)), Respondent manufactured and distributed approximately 300,000 toys called the ''Bee Bop Band Drum Set'' (''drum sets''). The drum sets are intended and labeled for children eighteen months and up. The drum sets contain several musical objects including a pair of ten inch long drumsticks shaped like centipedes. The drumsticks are the subject of this Settlement Agreement and Order.

5. The drum sets were produced and distributed for sale to consumers for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise and are therefore, ''consumer products'' as defined in section 3(a)(1) of the CPSA, 15 U.S.C. 2052(a)(1). Respondent was a ''manufacturer'' of the drum sets which were ''distributed in commerce'' as those terms are defined in sections 3(a)(4), (11) and (12) of the CPSA, 15 U.S.C. 2052(a)(4), (11) and (12).

6. The drumsticks contained in the Bee Bop Band Drum Set are defective because the rubber end cap, the screw affixing some end caps and the ball tip could break off or detach during use. These pieces are of a size that present choking and aspiration hazards and fit into the ''small parts'' test cylinder specified in 16 CFR 1501.4.

7. The drumsticks are defective and could create a substantial product hazard under the CPSA, 15 U.S.C. 2064(b)(2) because the parts may present choking and aspiration hazards to small children. Further, the drumsticks created an unreasonable risk of serious injury or death under the CPSA, 15 U.S.C. 2064(b)(3).

8. While the drum sets when subjected to ''use and abuse'' tests of 16 CFR 1500(51) & (52) (conducted on behalf of Respondent, Respondent's retail customers, and the Commission) did not produce small parts, the drumsticks produced small parts in actual use by young children.

9. Between November 2001 and January 2003, Respondent received over 330 complaints from consumers that either the end cap, the screw, or the tip detached from the drumstick. There were no injuries reported.

10. Respondent modified the product six times between the aforementioned dates in an attempt to eliminate the end cap, screw, and ball tip failures.

11. By the time Respondent modified the drumsticks by adding screws to affix the rubber end caps on May 24, 2002, it had received at least 45 consumer complaints concerning the small parts problem. Certainly by this point in time, Respondent had obtained information which reasonably supported the conclusion that the drumsticks were defective and could create a substantial product hazard or created an unreasonable risk of serious injury or death, but failed to report such information in a timely manner to the Commission as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. 2064(b)(2), (3).

12. On February 6, 2003, after receiving notice of 25 incidents, the Commission requested that Respondent submit a full report pursuant to section 15(b) of the CPSA. Respondent did so on February 25, 2003.

13. By failing to furnish information to the Commission in a timely manner as required by section 15(b) of the CPSA 15 U.S.C. 2064(b), Respondent violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

14. Respondent committed this failure to report to the Commission ''knowingly'' as the term ''knowingly'' is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d), thus, subjecting Respondent to civil penalties under section 20 of the CPSA, 15 U.S.C. § 2069.

III. Response of Battat Incorporated

15. Respondent denies the staff's allegations that the drumsticks are defective and that it violated the CPSA as set forth in paragraphs 4 through 14.

16. The drum set, manufactured by Respondent's subcontractor, was tested by third party testing facilities for the presence of small parts under the testing requirements set forth in the Commission's regulations at 16 CFR 1501 in each of the subcontractor's 167 individual shipments for the years 2002 through April 2004. A single failure of the test for small parts would have resulted in the rejection of the entire lot. At no time did the testing of the drumsticks produce small parts.

17. The Commission staff tested 12 drum sets in April 2002 and tested another 12 drum sets in October 2002, pursuant to 16 CFR 1501, and on neither occasion did the drumsticks produce small parts.

18. Outside laboratories employed by various customers of Respondent tested the drum sets pursuant to 16 CFR 1501 and none of the drumsticks produced small parts.

19. Because testing results always evidenced compliance with the Commission's small parts regulations, Respondent believes the drumsticks can not be considered defective under 15 U.S.C. 2064.

20. Respondent further alleges that at no time did its products injure or choke a child or present a risk of a choking, aspiration or ingestion hazard to children.

IV. Agreement of The Parties

21. The Consumer Product Safety Commission has jurisdiction over this matter and over Respondent under the Consumer Product Safety Act, 15 U.S.C. 2051–2084.

22. Respondent agrees to be bound by, and comply with, this Settlement Agreement and Order.

23. This Agreement is entered into for settlement purposes only and does not constitute an admission by Respondent, or a determination by the Commission, that Respondent knowingly violated the CPSA's reporting requirement.

24. In settlement of the staff's allegations, Respondent agrees to pay in three installments a civil penalty of one hundred and twenty-five thousand 00/100 dollars ($125,000.00) in full settlement of this matter. The first payment of $41,000.00 shall be paid within twenty (20) calendar days of service of the final Settlement Agreement and Order. The second payment of $41,000.00 shall be paid within 110 days of such service. The third and final payment of $43,000.00 shall be paid within 200 days of such service.

25. Upon provisional acceptance of this Agreement by the Commission, this Agreement shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). If the Commission does not receive any written objections within 15 days, the Agreement will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**.

26. Upon final acceptance of this Agreement by the Commission, and issuance of the Final Order, Respondent knowingly, voluntarily, and completely waives any rights it may have in this matter (1) To an administrative hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Respondent failed to comply with CPSA and the underlying regulations, (4) to a statement of findings of fact and conclusion of law, and (5) to any claims under the Equal Access to Justice Act.

27. The Commission may publicize the terms of the Settlement Agreement and Order.

28. The Commission's Order in this matter is issued under the provisions of the CPSA, 15 U.S.C. 2051–2084. Violation of this Order may subject Respondent to appropriate legal action.

29. This Settlement Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations apart from those contained in this Settlement Agreement and Order may not be used to vary or contradict its terms.

30. If, after the effective date hereof, any provision of this Settlement Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Settlement Agreement and Order, such provision shall be fully severable. The rest of the Settlement Agreement and Order shall remain in full effect, unless the Commission and Respondent determine that severing the provision materially affects the purpose of the Settlement Agreement and Order.

31. This Settlement Agreement and Order shall not be waived, changed, amended, modified, or otherwise altered, except in writing executed by the party against whom such amendment, modification, alteration, or waiver is sought to be enforced and approved by the Commission.

32. The provisions of this Settlement Agreement and Order shall apply to Respondent and each of its successors and assigns.

Dated: July 22, 2004.

Battat Incorporated

Joseph Battat,

President.

Aaron Locker,

Respondent's Attorney.

The U.S. Consumer Product Safety Commission

Alan H. Schoem,

Director, Office of Compliance.

Eric L. Stone,

Director, Legal Division, Office of Compliance.

Dated: July 30, 2004.

Michelle Faust Gillice,

Trial Attorney, Legal Division, Office of Compliance.

Order

Upon consideration of the Settlement Agreement between Respondent Battat Incorporated and the staff of the Consumer Product Safety Commission, and the Commission having jurisdiction over the subject matter and over Battat Incorporated, and it appearing that the Settlement Agreement and Order is in the public interest, it is *Ordered* that the Settlement Agreement be, and hereby is, accepted, and it is *Further ordered* that Battat Incorporated shall pay the United States Treasury in three installments a civil penalty in the amount of one hundred and twenty-five thousand and 00/100 dollars, ($125,000.00). The first payment of $41,000.00 shall be paid within twenty (20) calendar days of service of the final Settlement Agreement and Order. The second payment of $41,000.00 shall be paid within 110 days of such service. The third and final payment of $43,000.00 shall be paid within 200 days of such service. Upon the failure of Respondent Battat Incorporate to make a payment or upon the making of a late payment by Respondent Battat Incorporated (a) the entire amount of the civil penalty shall be due and payable, and (b) interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. 1961(a) and (b).

Provisionally accepted and Provisional Order issued on the 13th day of September, 2004.

By Order of the Commission:

Todd A. Stevenson,

Secretary Consumer Product Safety Commission.

[FR Doc. 04–21025 Filed 9–17–04; 8:45 am]

BILLING CODE 6355–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), has submitted a public information collection request (ICR) entitled AmeriCorps Alumni Profile Card to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. Chapter 35). Copies of this

ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Mr. Tim McManus at (202) 606–5000, ext. 221, or by e-mail to: *tmcmanus@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. e.s.t., Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of information and Regulatory Affairs, Attn: Ms. Katherine Astrich, OMB Desk Office for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in this **Federal Register**.

(1) By fax to: (202) 395–6974, Attention: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service; and

(2) Electronically by e-mail to: *Katherine_T._Astrich@omb.eop.gov.*

The initial 60-day public **Federal Register** notice for the AmeriCorps Alumni Profile Card was published in the **Federal Register** on January 27, 2004. This comment period ended on March 29, 2004; no comments were received.

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the Corporation's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Alumni Profile Card. (Previously named the AmeriCorps*VISTA Locator Card.)

OMB Number: 3045–0048.

Agency Number: None.

Affected Public: Individuals and households.

Total Respondents: 12,000.

Frequency: Continuous.

Average Time Per Response: 4 minutes.

Estimated Total Burden Hours: 800 hours.

Total Burden Cost (Capital/Startup): None.

Total Burden Cost (Operating/Maintenance): None.

Description: The Corporation proposes to reinstate, with change, the AmeriCorps Alumni Profile Card to send to former AmeriCorps and VISTA members' home addresses requesting that they complete the card and return it to the AmeriCorps Recruitment Office. The card will be used by Corporation personnel and other organizations (only with the explicit written permission of the respondent). The purpose of the card is to enhance communications between the Corporation and former AmeriCorps members, to provide them with information on Corporation activities, and to seek their assistance in volunteer recruitment activities.

The Corporation proposes to revise the AmeriCorps Alumni Profile Card by changing the name to more accurately describe the information collection and to include the members who served in all AmeriCorps programs. In addition, the Corporation will delete unused information from the existing version of the card, including removing questions pertaining to meeting facilities and housing and collecting the following data from the former member:

- The exact dates of service from the person filling out the AmeriCorps Alumni Profile Card.
- Detailed information about the person's current interests, occupation and expertise.
- Collecting the person's cell phone number for those who prefer to be contacted in that manner.

The Corporation also plans to gather additional information about former members' current education levels. This will help the Corporation to more accurately gear communication to former members who may be interested in furthering their education or who may benefit from a particular new initiative.

Further, the Corporation proposes to revise the AmeriCorps Alumni Profile Card by asking former members to identify their involvement with the Corporation or community.

Dated: August 13, 2004.

Timothy J. McManus,

Director, AmeriCorps Recruitment.

[FR Doc. 04–21043 Filed 9–17–04; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 19, 2004.

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, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be

collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 14, 2004.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: Reinstatement.

Title: Common Core of Data Survey System.

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 58.

Burden Hours: 12,040.

Abstract: The Common Core of Data (CCD) is the National Center for Education Statistics' universe data collection for finance and non-finance information about public school districts and schools. Information is collected annually from school districts about the districts and their member schools including enrollment by grade, race/ethnicity, and gender. Information is also collected about students receiving various types of services such as English Language Learner services. The CCD also collects information about the occurrence of high school dropouts. Information about teachers and staffing is also collected. The information that institutions provide will be used for a variety of administrative and statistical purposes by the Department of Education and will also be publicly available in identifiable form on the Department of Education's Web site.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2615. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. 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 *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. E4–2244 Filed 9–17–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–295]

Application To Export Electric Energy; Merrill Lynch Commodities, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Merrill Lynch Commodities, Inc. (MLCI), has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before October 20, 2004.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Systems (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) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On September 7, 2004, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from MLCI to transmit electric energy from the United States to Canada. MLCI is a Delaware corporation with its principal place of business located in New York City, NY. MLCI is an indirect wholly-owned subsidiary of Merrill Lynch & Co. Inc., a Delaware corporation. MLCI has requested an electricity export authorization with a 5-year term. MLCI does not own or control any transmission or distribution assets, nor does it have a franchised service area. The electric energy which MLCI proposes to export to Canada would be purchased from electric utilities and Federal power marketing agencies within the U.S.

MLCI proposes to arrange for the delivery of electric energy to Canada over the existing international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnekota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, Vermont Electric Power Company and Vermont Electric Transmission Company. The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by MLCI, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

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 section 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 DOE on or before the date listed above.

Comments on the MLCI application to export electric energy to Canada should be clearly marked with Docket EA–295. Additional copies are to be filed directly with Locke R. McMurray, Merrill Lynch Commodities, Inc., Four World Financial Center, 12th Floor, New York, NY 10080 and David J. Levine and Donna M. Sauter, McDermott Will & Emery LLP, 600 13th Street, NW., Washington, DC 20005–3096.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

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.de.gov*. Upon reaching the Fossil Energy Home page, select ''Electricity Regulation,'' and then ''Pending Procedures'' from the options menus.

Issued in Washington, DC, on September 14, 2004.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 04–21057 Filed 9–17–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket Nos. 04–75–NG, 04–76–NG, 04–77–NG, 04–39–LNG, 04–40–LNG, 04–80–NG, 04–78–NG, 04–81–NG, 04–82–NG]

Alcoa Inc., IGI Resources, Inc., BP Energy Company, BG LNG Services, LLC, BG LNG Services, LLC, Union Gas Limited, Select Energy, Inc., Concord Energy LLC, Central Valle Hermoso, S.A. de C.V.; Orders Granting and Amending Authority To Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during August 2004, it issued Orders granting authority to import and export natural gas. These Orders are summarized in the attached appendix and may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation). They are also available for inspection and copying in the Office of Natural Gas Regulatory Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on September 3, 2004.

Yvonne Caudillo,

Acting Manager, Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Fossil Energy.

Appendix; Orders Granting and Amending Import/Export Authorizations

DOE/FE AUTHORITY

Order No.	Date issued	Importer/Exporter FE docket No.	Import volume	Export volume	Comments
2007	8–2–04	Alcoa Inc., 04–75–NG	15 Bcf		Import natural gas from Canada, beginning on May 1, 2004, and extending through April 30, 2006.
2008	8–2–04	IGI Resources, Inc., 04–76–NG	400 Bcf		Import natural gas from Canada, beginning on August 1, 2004, and extending through July 31, 2006.
2009	8–4–04	BP Energy Company, 04–77–NG	1200 Bcf		Import liquefied natural gas from various international sources, beginning on August 22, 2004, and extending through August 21, 2006.
1977–A	8–17–04	BG LNG Services, LLC, 04–39–LNG			Amendment to long-term authority to include the requirement of country of origin.
1975–A	8–17–04	BG LNG Services, LLC, 04–40–LNG			Amendment to long-term authority to include the requirement of country of origin.
2010	8–13–04	Union Gas Limited, 04–80–NG	216 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on August 15, 2004, and continuing through August 14, 2006.
2011	8–17–04	Select Energy, Inc., 04–78–NG	100 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on August 17, 2004, and continuing through August 16, 2006.
2012	8–19–04	Concord Energy LLC, 04–81–NG	100 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on September 1, 2004, and continuing through August 31, 2006.
2013	8–24–04	Central Valle Hermoso, S.A. de C.V., 04–82–NG.	30 Bcf		Import and export a combined total of natural gas from and to Mexico, beginning on September 5, 2004, and continuing through September 4, 2006.

[FR Doc. 04–21056 Filed 9–17–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–1197–000]

Allegheny Energy Supply Company, LLC, Allegheny Energy Supply Gleason Generating Facility, LLC, Allegheny Energy Supply Hunlock Creek, LLC, Allegheny Energy Supply Lincoln Generating Facility, LLC, Allegheny Energy Supply Wheatland Generating Facility, LLC, Buchanan Generation, LLC, and Green Valley Hydro, LLC; Notice of Filing

September 14, 2004.

On August 18, 2004, Allegheny Energy Supply Company, LLC (AE Supply) and its affiliates, Allegheny Energy Supply Gleason Generating Facility, LLC; Allegheny Energy Supply Hunlock Creek, LLC; Allegheny Energy Supply Lincoln Generating Facility, LLC; Allegheny Energy Supply Wheatland Generating Facility, LLC; Buchanan Generation, LLC; and Green Valley Hydro, LLC (collectively, AE Supply Affiliates), in Docket No. ER00–814–000, *et al.,* submitted proposed revisions to the Code of Conduct sections of their FERC Electric Tariffs to comply with the Commission's November 17, 2003 Order in Docket Nos. EL01–118–000 and 001. On August 25, 2004 the Commission issued a ''Notice of Filing'' in Docket No. ER00–814–000, *et al.,* regarding the August 18 Filing. An Errata correcting one of the associated subdockets listed in the August 25 Notice is being issued today, September 14, 2004. The August 25 Notice established September 8, 2004 as the deadline for submitting interventions or protests to August 18 filing.

The August 18 filing by AE Supply and the AE Supply Affiliates included proposed revisions to their tariffs associated with the harmonization of the Codes of Conduct among AE Supply and AE Supply Affiliates and proposed revisions associated with brokering provisions. Docket No. ER04–1197–000 has been assigned to the harmonization and brokering provisions included in the August 18, 2004 filing and those revisions are the subject of the instant notice.

Any person desiring to intervene or to protest the harmonization and brokering provisions in the August 18, 2004 filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on September 24, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–2251 Filed 9–17–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–130]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rate

September 14, 2004.

Take notice that on September 9, 2004, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing the Tariff sheet listed below to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, which contains agreements between CEGT and Hot Spring Power Company, L.L.C. with respect to a substitute index price for a negotiated rate contract, due to Platt's discontinuation of publication of the Oklahoma West index price in its Gas Daily price surveys.

First Revised Sheet No. 880

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing is also accessable on-line at *http://www.ferc.gov,* using the ''eLibrary'' link. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–03676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–2249 Filed 9–17–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–410–000]

Southern Natural Gas Company; Notice of Request Under Blanket Authorization

September 14, 2004.

Take notice that on September 10, 2004, Southern Natural Gas Company

(Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP04–410–000, an application pursuant to sections 157.20 and 157.216 of the Commission's Regulations for authorization to abandon in place a portion of its Montgomery-Columbus pipeline located in Tuscaloosa, Hale, Bibb, and Perry Counties Alabama pursuant to Southern's blanket certificate of public convenience and necessity issued in Docket No. CP82–406–000, all as more fully set forth in the request on file with the Commission and open to pubic inspection.

Specifically, Southern seeks to abandon approximately 22.066 miles of 12-inch pipeline between mile post 29.084 (Duncanville Compressor Station) and mile post 51.150 (Brent and Centerville Gate) on its Montgomery-Columbus Pipeline. Southern states that the pipeline segment is old and in need of extensive repair and that the abandonment will reduce costs resulting from replacement and maintenance. Southern states that this segment of line has not been used to provide transportation service for any customers during the past 12 months and, therefore, no customer consents are required.

Any questions concerning this application may be directed to John C. Griffin, Senior Counsel, at (205) 325–7133, or Patrick B. Pope, Vice President and General Counsel, at (205) 325–7626.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–2250 Filed 9–17–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–136–007, et al.]

Allegheny Power, et al.; Electric Rate and Corporate Filings

September 10, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Allegheny Power

[Docket No. ER02–136–007]

Take notice that, on September 7, 2004, Allegheny Power submitted a compliance filing pursuant to the Commission's Order of August 5, 2004 in Docket No. ER02–136–005.

Allegheny Power states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. eastern time on September 28, 2004.

2. Geysers Power Company, LLC

[Docket Nos. ER02–188–001; ER02–236–002; ER02–407–002]

Take notice that on September 7, 2004, Geysers Power Company, LLC (Geysers Power) filed a refund report in compliance with the Commission's February 27, 2003 Order in *Geysers Power Company, LLC,* 102 FERC ¶ 61,221 (2003).

Geysers Power states that copies of the filing were served on all parties on the official service list in the above-captioned proceedings.

Comment Date: 5 p.m. eastern time on September 28, 2004.

3. California Independent System Operator Corporation

[Docket No. ER03–1046–006]

Take notice that on September 7, 2004, the California Independent System Operator Corporation (ISO) submitted a filing in compliance with the Commission's August 5, 2004 ''Order on Rehearing and Compliance on Proposed Tariff Amendment No. 54'', 108 FERC ¶ 61,142.

The ISO states that this filing has been served upon all parties on the official service list for the captioned docket. In addition, the ISO has posted this filing on the ISO Home Page.

Comment Date: 5 p.m. eastern time on September 28, 2004.

4. Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.

[Docket No. ER04–375–008]

Take notice that on September 7, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and PJM Interconnection, L.L.C. (PJM), in compliance with the Commission's order in *Midwest Independent Transmission System Operator, Inc.,* 108 FERC ¶ 61,431, submitted revisions to the Joint Operating Agreement Between The Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C., including Attachment 2 thereto entitled Congestion Management Process.

Midwest ISO states that copies of this filing were served upon all persons on the official service list compiled by Secretary in this proceeding, as well as all PJM members, and each State electric utility regulatory commission in the PJM regions.

Comment Date: 5 p.m. eastern time on September 28, 2004.

5. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–458–003]

Take notice that, on September 7, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted a compliance filing pursuant to the Commission's July 8, 2004 Order, *Midwest Independent Transmission System Operator, Inc.,* 108 FERC ¶ 61,027 (2004). Midwest ISO states that the purpose of this filing is to revise the Midwest ISO's OATT to amend and clarify the application of Attachment X, Large Generator Interconnection Procedures (LGIP) in compliance with the Commission's directives in the July 8 Order.

The Midwest ISO states it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all State commissions within the region and in

addition, the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: 5 p.m. eastern time on September 28, 2004.

6. California Independent System Operator Corporation

[Docket No. ER04–609–004]

Take notice that on September 7, 2004, the California Independent System Operator Corporation (ISO) submitted a filing in compliance with the Commission's August 5, 2004 ''Order on Tariff Amendment No. 58'', 108 FERC ¶ 61,141.

The ISO states that this filing has been served upon all parties on the official service list for the above-captioned docket. In addition, the ISO has posted this filing on the ISO Home Page.

Comment Date: 5 p.m. eastern time on September 28, 2004.

7. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–691–004]

Take notice that, on September 7, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted a compliance filing pursuant to the Commission's August 6, 2004 Order, *Midwest Independent Transmission System Operator, Inc.,* 108 FERC ¶ 61,163 (2004). Midwest ISO states that the purpose of this filing is to revise the Midwest ISO's Energy Markets Tariff to eliminate the Michigan specific energy imbalance provisions provided in Schedule 4.

The Midwest ISO states it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all State commissions within the region and in addition, the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: 5 p.m. Eastern Time on September 28, 2004.

8. Lower Mount Bethel Energy, LLC

[Docket No. ER04–1142–001]

Take notice that on September 10, 2004, Lower Mount Bethel Energy, LLC (LMBE) submitted an amendment to its Reactive Revenue Requirement Filing filed on August 20, 2004, in this proceeding. LMBE states that the amendment includes supplemental testimony and attachments to further support LMBE's reliance on the AEP allocators as proxies in LMBE's August 20, 2004 filing.

LMBE states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. eastern time on September 24, 2004.

9. American Transmission Systems, Incorporated

[Docket No. ER04–1195–000]

Take notice that on September 7, 2004, American Transmission Systems, Incorporated (ATSI), filed a Construction Agreement with Buckeye Power, Inc. and Lorain-Medina Rural Electric Cooperative for construction of two new delivery points. The proposed effective date for the agreement is September 1, 2004.

ATSI states that copies of this filing have been served on Buckeye Power, Inc., Lorain-Medina Rural Electric Cooperative, and the Midwest ISO, and the public utility commissions of Ohio and Pennsylvania.

Comment Date: 5 p.m. eastern time on September 28, 2004.

10. California Independent System Operator Corporation

[Docket No. ER04–1198–000]

Take notice that on September 7, 2004, the California Independent System Operator Corporation (ISO) submitted an amendment to the ISO Tariff (Amendment No. 63). ISO states that Amendment No. 63 modifies its Tariff to accommodate the transfer by Western Area Power Administration, Sierra Nevada Region (Western) of Operational Control over Western's interest in the upgrade of Path 15 to the ISO. ISO further states that the amendment also modifies the ISO Tariff to provide several clarifications concerning cost recovery.

The ISO states that this filing has been served upon the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, the Participating TOs, Western, and all parties with effective Scheduling Coordinator Agreements under the ISO Tariff and in addition, the ISO has posted this filing on the ISO Home Page.

Comment Date: 5 p.m. eastern time on September 28, 2004.

11. New England Power Pool

[Docket No. ER04–1199–000]

Take notice that on September 7, 2004, the New England Power Pool (NEPOOL) Participants Committee filed arrangements to compensate NRG Power Marketing, Inc., Connecticut Jet Power LLC, Middletown Power LLC and Montville Power LLC for costs incurred in connection with the operation of certain of its units at various times during the period of July 22, 2003 through January 24, 2004 at the direction of ISO New England Inc. A November 8, 2004 effective date is requested for the filing.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants and the New England State governors and regulatory commissions.

Comment Date: 5 p.m. eastern time on September 28, 2004.

12. SESCO Enterprises Canada Ltd.

[Docket No. ER04–1200–000]

Take notice that on September 7, 2003, SESCO Enterprises Canada Ltd. (SESCO) petitioned the Commission for acceptance of SESCO Rate Schedule No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

SESCO states that it intends to engage I wholesale electric power and energy purchases and sales as a marketer. SESCO further states it is not in the business of generating or transmitting electric power. SESCO also states that its only operating affiliate is also a marketer and is also not in the business of generating or transmitting electric power.

Comment Date: 5 p.m. eastern time on September 28, 2004.

13. Dynegy Power Marketing, Inc.

[Docket Nos. ER04–1203–000]

Take notice that on September 7, 2004, Dynegy Power Marketing, Inc. (DYPM) submitted for filing DYPM Rate Schedule FERC No. 5, an agreement between DYPM and Illinois Power and SYPM Rate Schedule No. 6, an agreement between DYPM and Illinois Power.

DYPM states that copies of the filing were served upon all parties to Docket Nos. ER04–673–000 and ER04–711–000.

Comment Date: 5 p.m. Eastern Time on September 28, 2004.

14. Xcel Energy Service Inc.

[Docket No. ER04–1207–000]

Take notice that on September 7, 2004, Xcel Energy Services Inc. (XES) filed an amendment to its market-based rate tariff. XES states that the purpose of this amendment is to delete the provision allowing for affiliate sales.

Comment Date: 5 p.m. eastern time on September 28, 2004.

15. Midwest Independent Transmission System Operator, Inc.

[Docket No. ES04–48–000]

Take notice that on September 2, 2004, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to incur long-term indebtedness under a credit agreement in an amount not to exceed $60 million.

Midwest ISO also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: 5 p.m. eastern time on September 23, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2233 Filed 9–17–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–152–000, et al.]

Great Lakes Hydro America, LLC, et al.; Electric Rate and Corporate Filings

September 9, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Great Lakes Hydro America, LLC, GNE Holding, ULC, GNE L.P., GNE Trust, Great Lakes Power Trust, Great Lakes Hydro Income Fund

[Docket No. EC04–152–000]

Take notice that on August 31, 2004, Great Lakes Hydro America, LLC, GNE Holding ULC, GNE L.P., GNE GP Inc., GNE Trust, Great Lakes Power Trust, and Great Lakes Hydro Income Fund submitted an application pursuant to section 203 of the Federal Power Act for authorization to complete the proposed intra-corporate reorganization described more fully in the Application.

Comment Date: 5 p.m. eastern time on September 21, 2004.

2. Georgia Power Company

[Docket No. EC04–153–000]

Take notice that on September 1, 2004, Georgia Power Company (Georgia Power) submitted an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities. Georgia Power states that the transfer will be made pursuant to an Agreement of Exchange which provides for Georgia Power to sell and exchange certain transmission facilities with Georgia Transmission Corporation.

Comment Date: 5 p.m. eastern standard time on September 22, 2004

3. InterGen (North America), Inc., Indigo Generation LLC, Larkspur Energy LLC, Wildflower Energy LP, Diamond Generating Corporation

[Docket No. EC04–154–000]

Take notice that on September 3, 2004, InterGen (North America), Inc., Indigo Generation LLC, Larkspur Energy LLC, Wildflower Energy LP and Diamond Generating Corporation (collectively, the Applicants) submitted an application pursuant to section 203 of the Federal Power Act for authorization of an indirect disposition of jurisdictional facilities. Applicants state that the proposed indirect disposition of jurisdictional facilities will occur in connection with the sale by InterGen (North America) to Diamond Generating Corporation of all of its interests in Wildflower Development LLC. Wildflower Development LLC indirectly owns all of the equity interests of Wildflower Energy LP, which owns and operates two gas-fired, simple-cycle, electric generating facilities in Southern California with an approximate 232 MW nameplate generation capacity, through its wholly-owned subsidiaries, Indigo Generation LLC and Larkspur Energy LLC.

Comment Date: 5 p.m. eastern time on September 24, 2004.

4. Consolidated Edison Company of New York v. Public Service Electric and Gas Company, PJM Interconnection, L.L.C., New York Independent System Operator, Inc.

[Docket No. EL02–23–004]

Take notice that on September 1, 2004, in compliance with Opinion No. 476 (Consolidated Edison Co. of New York v. Public Service Electric & Gas Co. 108 FERC ¶ 61,120 (2004)), PJM Interconnection, L.L.C. (PJM) submitted a compliance filing certifying that the provisions of the PJM Open Access Transmission Tariff provide the PJM Market Monitoring Unit with the authority necessary to pursue the investigations required by Opinion No. 476, and amending the confidentiality provisions of the Amended and Restated Operating Agreement of PJM.

PJM states that copies of this filing have been served on all PJM members, the utility regulatory commissions in the PJM region, and all persons on the official service list.

Comment Date: 5 p.m. eastern time on September 22, 2004.

5. Consolidated Edison Company of New York v. Public Service Electric and Gas Company, PJM Interconnection, L.L.C., and New York Independent System Operator, Inc.

[Docket No. EL02–23–005]

Take notice that, on September 1, 2004, the New York Independent System Operator, Inc. (NYISO) submitted a compliance filing pursuant to Opinion No. 476 issued August 2, 2004, in Docket No. EL02–23–000.

The NYISO states that copies of this filing are being served on all parties designated on the official service list maintained by the Secretary of the Commission in these proceedings. The NYISO states that it is also serving a copy of this filing on all parties that have executed Service Agreements under the NYISO's OATT or Services Tariff, the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: 5 p.m. eastern time on September 22, 2004.

6. California Independent System Operator, Inc.

[Docket No. EL04–132–000]

Take notice that on September 7, 2004, the California Independent System Operator, Inc. (CAISO) submitting a filing requesting a conditional temporary waiver to potentially advance the deadline for submitted Supplemental Energy Bids in accordance with the ISO Tariff.

Comment Date: 5 p.m. eastern time on September 14, 2004.

7. California Independent System Operator Corporation

[Docket No. EL04–133–000]

Take notice that on September 7, 2004, the California Independent System Operator Corporation (ISO) submitted a petition to modify the Transmission Control Agreement (TCA), under which the ISO assumes Operational Control of the transmission facilities that constitute the ISO Controlled Grid. In the alternative, the ISO submitted its pleading as a complaint against the TCA for being unjust and unreasonable and unduly discriminatory if the ISO is precluded from assuming Operational Control of the portion of the upgrade of Path 15 owned by Western Area Power Administration, Sierra Nevada Region (Western).

The ISO states that this filing has been served upon the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, the Participating TOs, Western, and all parties with effective Scheduling Coordinator Agreements under the ISO Tariff. In addition, the ISO has posted this filing on the ISO home page.

Comment Date: 5 p.m. eastern time on September 29, 2004.

8. PJM Interconnection, L.L.C.

[Docket No. ER03–406–006]

Take notice that on September 1, 2004, PJM Interconnection, L.L.C. (PJM) pursuant to the Commission's Order issued August 2, 2004, in Docket Nos. ER04–406–004 and 005, submitted revisions to the PJM Open Access Transmission Tariff (PJM Tariff) and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (Operating Agreement) to state that the initial allocation of financial transmission rights in new zones will be filed with the Commission under section 205 of the Federal Power Act. PJM requests an effective date of September 1, 2004, for the proposed revisions.

PJM states that copies of the filing were served on all PJM members, the utility regulatory commissions in the PJM region, and all persons on the Commission's service list for this proceeding.

Comment Date: 5 p.m. eastern time on September 22, 2004.

9. Devon Power LLC, *et al.*

[Docket Nos. ER03–563–043 and EL04–102–003]

Take notice that on August 31, 2004, ISO New England Inc. pursuant to the Commission's Order issued June 2, 2004, in Docket Nos. ER03–563–030 and EL04–102–000, submitted a report regarding progress made in the siting, permitting and construction of transmission and generation upgrades within the New England control area.

Comment Date: 5 p.m. eastern time on September 21, 2004.

10. Alabama Power Company

[Docket No. ER04–815–000]

Take notice that on September 1, 2004, Alabama Power Company (APC), filed with the Federal Energy Regulatory Commission a Notice of Cancellation of its May 5, 2004, filing of the Transmission Facilities Agreement between APC and Georgia Power Company.

Comment Date: 5 p.m. eastern time on September 22, 2004.

11. California Independent System Operator Corporation

[Docket No. ER04–835–003]

Take notice that on September 2, 2004, the California Independent System Operator Corporation (ISO) submitted a supplemental filing to the compliance filing submitted by the ISO on August 10, 2004, in Docket No. ER04–835–002.

The ISO states that this filing has been served upon all parties on the official service list for the captioned docket. In addition, the ISO has posted this filing on the ISO home page.

Comment Date: 5 p.m. eastern time on September 23, 2004.

12. PPL University Park, LLC

[Docket No. ER04–911–002]

Take notice that, on September 2, 2004, PPL University Park, LLC submitted a compliance filing pursuant to the Commission's Order issued August 3, 2004, in Docket No. ER04–911–000, 108 FERC ¶ 61,122 (2004).

PPL University Park, LLC states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. eastern time on September 23, 2004.

13. PJM Interconnection, L.L.C.

[Docket No. ER04–1058–001]

Take notice that on September 3, 2004, PJM Interconnection, L.L.C. (PJM), submitted for filing an amendment to its July 28, 2004, filing of an executed interim interconnection service agreement among PJM, FPL Energy Marcus Hook, L.P., and PECO Energy Company (FPL Interim ISA) to specify how the provisions of the FPL Interim ISA correspond or differ with the form of interim interconnection service agreement in Attachment O–1 of the PJM Open Access Transmission Tariff accepted by the Commission on July 8, 2004, in PJM Interconnection, L.L.C., 108 FERC ¶ 61,025 (2004).

PJM states that copies of this filing were served upon the parties to the agreement and the state regulatory commissions within the PJM region, and all parties on the official service list compiled by the Secretary in this proceeding.

Comment Date: 5 p.m. eastern time on September 24, 2004.

14. Starlight Energy, L.P.

[Docket No. ER04–1131–001]

Take notice that on September 2, 2004, Starlight Energy, LP (Starlight) filed a supplement to its application filed on August 16, 2004, in Docket No. ER04–1131–000 for market-based rates as power marketer. Starlight states that the supplemental information provides further information about the owners of Starlight and provides additional information in the tariff sheets regarding Market Behavior Rules.

Comment Date: 5 p.m. eastern time on September 23, 2004.

15. Wisconsin Electric Power Company

[Docket No. ER04–1172–000]

Take notice that on September 1, 2004, Wisconsin Electric Power Company (Wisconsin Electric) submitted proposed amendments to Exhibit 1 of the Control Area Operations Coordination Agreement between Wisconsin Electric and Wisconsin

Public Service Corporation designated as Wisconsin Electric's Rate Schedule FERC No. 99. Wisconsin Electric states that purpose of the proposed amendment is to reflect the relocation of certain metering equipment set forth in Exhibit 1.

Wisconsin Electric states that copies of the filing were served upon Wisconsin Public Service Corporation and the Public Service Commission of Wisconsin.

Comment Date: 5 p.m. eastern time on September 22, 2004.

16. Westar Energy, Inc.

[Docket ER04–1173–000]

Take notice that on September 1, 2004, Westar Energy, Inc. (Westar) submitted for filing a Notice of Cancellation for Rate Schedule FERC No. 134, an Electric Interconnection Agreement between Westar and the City of Augusta, Kansas.

Westar states that copies of this filing were served on the City of Augusta, Kansas and the Kansas Corporation Commission.

Comment Date: 5 p.m. eastern time on September 22, 2004.

17. Xcel Energy Services Inc.

[Docket No. ER04–1174–000]

Take notice that on September 2, 2004, Xcel Energy Services Inc. (XES), on behalf of its affiliates, Public Service Company of Colorado (PSCo) and Southwestern Public Service Company (SPS) submitted changes in rates applicable to the use of the respective transmission systems of PSCo and SPS set forth in Schedules 1, 2, 3, 5, 6, 7 and 8 and Attachment H to the Xcel Energy Open Access Transmission Tariff (Xcel Energy OATT); a new Attachment O to the Xcel Energy OATT that sets forth a formula to be used annually to update rates for transmission service on the PSCo and SPS systems; changes in network transmission service charges recovered under PSCo's power sales contracts applicable to Grand Valley Rural Power Lines, Inc., Intermountain Rural Electric Association, Yampa Valley Electric Association, Inc., the Town of Julesburg, Colorado, the City of Burlington, Colorado, and the Town of Center, Colorado; and changes in rates for network and ancillary services charged to Municipal Energy Association of Nebraska, Tri-State Generation & Transmission Association, Inc. and Cheyenne Light, Fuel & Power Company for use of the PSCo system under the Xcel Energy OATT and Golden Spread Electric Cooperative, Inc. for use of the SPS system under the Xcel Energy OATT.

XES states that it is making this filing to update rates for transmission and ancillary services, to adopt a formula rate approach to determining and keeping current rates for the use of the PSCo and SPS transmission systems, and in compliance with the Commission's March 12, 1997, order in Docket No. ER96–2572–000.

XES states that it has served a copy of this transmittal letter, the revised tariff sheets and statements BG and BH on each of the affected customers. XES further states that it has served a complete copy of the filing on the Colorado Public Utilities Commission, the Public Utility Commission of Texas, the New Mexico Public Regulation Commission, the Oklahoma Corporation Commission and the Kansas Corporation Commission.

Comment Date: 5 p.m. eastern time on September 23, 2004.

18. PJM Interconnection, L.L.C.

[Docket No. ER04–1175–000]

Take notice that on September 1, 2004, PJM Interconnection, L.L.C. (PJM) submitted revisions to the PJM Open Access Transmission Tariff and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. to establish separate zones for the provision and pricing of regulation and spinning reserves, and to clarify the provisions on load-shedding, to reflect stipulations approved by the State utility regulatory commissions of Kentucky and Virginia in connection with the application of American Electric Power operating companies to transfer control of transmission facilities to PJM.

PJM proposes an effective date of October 1, 2004, for the proposed revisions, to the extent the Commission can issue its order on the tariff revisions before October 1, 2004, and if the Commission does not act before October 1, 2004, PJM proposes that these changes become effective on November 1, 2004.

PJM states that copies of the filing were served on all PJM members and the utility regulatory commissions in the PJM region.

Comment Date: 5 p.m. eastern time on September 22, 2004.

19. Southern California Edison Company

[Docket No. ER04–1176–000]

Take notice that on September 2, 2004, Southern California Edison Company (SCE) submitted proposed revisions to SCE's Transmission Owner Tariff, FERC Electric Tariff, Second Revised Volume No. 6, Appendix VI, to increase SCE's Reliability Services Revenue Requirement and Reliability Services rates.

SCE states that copies of the filing were served upon the SCE's jurisdictional customers, the California Public Utilities Commission, the California Electricity Oversight Board, the California Independent System Operator, Pacific Gas and Electric Company, and the San Diego Gas and Electric Company.

Comment Date: 5 p.m. eastern time on September 23, 2004.

20. PacifiCorp

[Docket No. ER04–1177–000]

Take notice that on September 1, 2004, PacifiCorp submitted a Notice of Cancellation of PacifiCorp's Rate Schedule FERC No. 318 with Brigham City Corporation. PacifiCorp has requested an effective date of October 31, 2004.

PacifiCorp states that copies of the filing were served upon Brigham City Corporation; the Utah Public Service Commission; the Washington Utilities and the Transportation Commission and the Public Utility Commission of Oregon.

Comment Date: 5 p.m. eastern time on September 22, 2004.

21. PJM Interconnection, L.L.C.

[Docket No. ER04–1178–000]

Take notice that on September 1, 2004, PJM Interconnection, L.L.C. (PJM) submitted amendments to the PJM Open Access Transmission Tariff to specify that: (1) PJM will post on its OASIS each hour available transfer capability for firm transmission service, (2) requests for reservations of monthly short-term firm transmission service may be made on an hourly basis; and (3) requests for Short-Term Firm Point-To-Point Transmission Service and requests for short-term designations of Network Resources (less than one year) that require the use of interface capacity (known in PJM as Network Designated service) will be processed under the same procedures. PJM requests an effective date of November 1, 2004, for the amendments.

PJM states that copies of the filing were served upon all PJM members and each state electric utility regulatory commission in the PJM region.

Comment Date: 5 p.m. eastern time on September 22, 2004.

22. PJM Interconnection, L.L.C.

[Docket No. ER04–1179–000]

Take notice that on September 1, 2004, PJM Interconnection, L.L.C. (PJM) submitted the interim allocation of

financial transmission rights (FTRs) for the zone of Dominion-Virginia Power (DVP), covering the period from its integration into PJM on November 1, 2004, until the end of PJM's current planning period on May 31, 2005.

PJM proposes an effective date of November 1, 2004, for the allocated FTRs in the DVP zone, corresponding to the DVP integration date.

PJM states that copies of the filing were served on all PJM members and the utility regulatory commissions in the PJM region.

Comment Date: 5 p.m. eastern time on September 22, 2004.

23. KGen Enterprise LLC, KGen Hinds LLC, KGen Hot Spring LLC, KGen Marshall LLC, KGen Murray I and II LLC, KGen New Albany LLC, KGen Sandersville LLC, and KGen Southaven LLC

[Docket Nos. ER04–1180–000, ER04–1181–000, ER04–1182–000, ER04–1183–000, ER04–1184–000, ER04–1185–000, ER04–1186–000, and ER04–1187–000]

Take notice that on September 1, 2004, KGen Enterprise LLC, KGen Hinds LLC, KGen Hot Spring LLC, KGen Marshall LLC, KGen Murray I and II LLC, KGen New Albany LLC, KGen Sandersville LLC and KGen Southaven LLC (collectively, the Project Companies) filed: (1) Notices of Succession to notify the Commission that, as a result of a name change, each Project Company has succeeded to the respective and corresponding FERC rate schedule of Duke Energy Enterprise, LLC, Duke Energy Hinds, LLC, Duke Energy Hot Spring, LLC, Duke Energy Marshall County, LLC, Duke Energy Murray, LLC, Duke Energy New Albany, LLC, Duke Energy Sandersville, LLC, and Duke Energy Southaven, LLC; and (2) amendments to the rate schedules to reflect the fact that the Project Companies are no longer affiliated with Duke Power (a division of Duke Energy Corporation), Duke Electric Transmission (a division of Duke Energy Corporation), or any other electric utility with a franchised service territory.

Comment Date: 5 p.m. eastern time on September 22, 2004.

24. New York Independent System Operator, Inc.

[Docket No. ER04–1188–000]

Take notice that on September 1, 2004, the New York Independent System Operator, Inc. (NYISO) submitted proposed amendments to its Market Administration and Control Area Services Tariff FERC Electric Tariff Original Volume No. 2, to remove a sunset provision for Demand Reduction Incentive Payments and to increase the minimum bid floor price for Demand Reduction Providers under the NYISO's Incentivized Day-Ahead Economic Load Curtailment Program.

NYISO states that copies of the filing were served upon each person that has executed a Service Agreement under the NYISO's Open Access Transmission Tariff or Market Administration and Control Area Services Tariff, and also upon the electric utility regulatory agencies in New York, New Jersey and Pennsylvania.

Comment Date: 5 p.m. eastern time on September 22, 2004.

25. Bay State GPE, Inc.

[Docket No. ER04–1189–000]

Take notice that on September 2, 2004, Bay State GPE, Inc. (Bay State GPE) tendered for filing a Notice of Cancellation of its FERC Rate Schedule No. 1 (market-based rate authority), originally filed in Docket No. ER99–4081–000. Bay State GPE seeks to cancel FERC Rate Schedule No. 1 effective November 1, 2004.

Bay State GPE states that, as it is not regulated by a State commission, has no long-term customers, and has no outstanding market-based rate transactions, it has not served copies of this filing upon any entity.

Comment Date: 5 p.m. eastern time on September 23, 2004.

26. Duke Energy Washington, LLC

[Docket No. ER04–1190–000]

Take notice that on September 3, 2004, Duke Energy Washington, LLC (Duke Washington) submitted revisions to its FERC Electric Tariff, Original Volume No. 1, specifically enumerating ancillary service products sold into the ancillary service markets operated by PJM Interconnection, L.L.C.; providing for the resale of firm transmission rights and other similar congestion-related contracts; and reflecting the Commission's current language preferences regarding use of an Internet site with respect to the provision of certain ancillary services and obtaining Commission approval for certain affiliate transactions.

Comment Date: 5 p.m. eastern time on September 24, 2004.

27. Duke Energy Hanging Rock, LLC

[Docket No. ER04–1191–000]

Take notice that on September 3, 2004, Duke Energy Hanging Rock, LLC (Duke Hanging Rock) submitted revisions to its FERC Electric Tariff, Original Volume No. 1, specifically enumerating ancillary service products sold into the ancillary service markets operated by PJM Interconnection, L.L.C.; providing for the resale of firm transmission rights and other similar congestion-related contracts; and reflecting the Commission's current language preferences with respect to obtaining Commission approval for certain affiliate transactions.

Comment Date: 5 p.m. eastern time on September 24, 2004.

28. Pacific Gas and Electric Company

[Docket No. ER04–1192–000]

Take notice that on September 3, 2004, Pacific Gas and Electric Company (PG&E) tendered for filing a partially executed Generator Special Facilities Agreement (GSFA) and a Generator Interconnection Agreement (GIA) between PG&E and Fresno Cogeneration Partners, LP (Fresno) for the Fresno Co-gen Expansion Project.

PG&E states that the GSFA permits it to recover its costs for installing, owning, operating and maintaining Special Facilities on PG&E's Kerman and Helms Substations necessary for the operation of generation from the new Fresno Co-gen Expansion Project. PG&E has requested certain waivers.

PG&E states that copies of this filing were served upon Fresno, the California Independent System Operator, and the California Public Utilities Commission.

Comment Date: 5 p.m. eastern time on September 24, 2004.

29. PJM Interconnection, L.L.C.

[Docket No. ER04–1193–000]

Take notice that on September 3, 2004, PJM Interconnection, L.L.C. (PJM) submitted amendments to the PJM Open Access Transmission Tariff and the Amended and Restated Operating Agreement to extend its Emergency Load Response Program and Economic Load Response Program until December 31, 2007. PJM requests an effective date of December 1, 2004, for the amendments.

PJM states that copies of the filing were served upon all PJM members and each State electric utility regulatory commission in the PJM region.

Comment Date: 5 p.m. eastern time on September 24, 2004.

30. SESCO Enterprises Canada Ltd.

[Docket No. ER04–1194–000]

Take notice that on September 3, 2004, SESCO Enterprises Canada Ltd. (SESCO) petitioned the Commission for acceptance of SESCO Rate Schedule No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

SESCO states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. SESCO further states that it is not in the business of generating or transmitting electric power and its only operating affiliate is also a marketer and is also not in the business of generating or transmitting electric power.

Comment Date: 5 p.m. eastern time on September 24, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2234 Filed 9–17–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–155–000, et al.]

Entergy-Koch, LP, et al.; Electric Rate and Corporate Filings

September 13, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Entergy-Koch, LP, Entergy-Koch Trading, LP

[Docket No. EC04–155–000]

Take notice that on September 10, 2004, Entergy-Koch, LP and Entergy-Koch Trading, LP (EKT) filed with the Federal Energy Regulatory Commission a joint application pursuant to section 203 of the Federal Power Act for Commission approval of the disposition of jurisdictional facilities. EKT states that the proposed transaction entails the disposition of certain jurisdictional facilities held by EKT, including power purchase and transmission agreements, energy management agreements and related FPA jurisdictional accounts, books and records.

Comment Date: 5 p.m. eastern time on October 1, 2004.

2. Hermiston Generating Company, L.P.

[Docket No. EC04–156–000]

Take notice that on September 10, 2004, Hermiston Generating Company, L.P. (Hermiston) submitted an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby through a series of transactions Hermiston will transfer and Perennial Power Company, LLC and it affiliate Perennial HGC, Inc. will acquire up to 50 percent ownership interests in Hermiston. Hermiston states that it owns an undivided 50 percent interest in a 475 MW multi-unit, natural gas-fired combined cycle generating plant with automatic generation control and related transmission and interconnection equipment, located near Hermiston, Oregon. Hermiston requests privileged treatment of Exhibit I of the Application.

Comment Date: 5 p.m. eastern time on October 1, 2004.

3. PJM Interconnection, L.L.C.

[Docket Nos. ER04–539–005 and EL04–121–001]

Take notice that on September 9, 2004, PJM Interconnection, L.L.C. (PJM), in compliance with the Commission's order issued August 10, 2004, *PJM Interconnection, L.L.C.*, 108 FERC ¶ 61, 187 (2004), submitted for filing amendments to the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. and the PJM Open Access Transmission Tariff to include an exception to PJM's offer-capping rules for the PJM–NICA 500 MW pathway, when such pathway is constrained from west to east. PJM requested an effective date of May 1, 2004, for the compliance amendments.

PJM states that copies of this filing have been served on all PJM members, the utility regulatory commissions in the PJM region, and all persons on the official service list compiled by the Secretary in this proceeding.

Comment Date: 5 p.m. eastern time on September 30, 2004.

4. Duke Energy Corporation

[Docket No. ER04–993–001]

Take notice that on September 8, 2004, Duke Energy Corporation, on behalf of Duke Electric Transmission, submitted a compliance filing pursuant to the Commission's letter order issued August 30, 2004 in Docket No. ER04–993–000.

Comment Date: 5 p.m. eastern time on September 29, 2004.

5. Choice Energy Services, L.P.

[Docket No. ER04–1022–001]

Take notice that on September 8, 2004, Choice Energy Services, L.P. (Choice) filed an amendment to its petition filed July 15, 2004 for acceptance of Choice's Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Choice states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. Choice further states it is not in the business of generating or transmitting electric power.

Comment Date: 5 p.m. eastern time on September 29, 2004.

6. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–1202–000]

Take notice that on September 8, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted an Interconnection and Operating Agreement among Hawkeye Power Partners, LLC, Interstate Power and Light Company, a wholly-owned subsidiary of Alliant Energy Corporation, and the Midwest ISO.

Comment Date: 5 p.m. eastern time on September 29, 2004.

7. Portland General Electric Company

[Docket No. ER04–1204–000]

Take notice that on September 8, 2004, Portland General Electric Company (PGE) tendered for filing new and revised tariff sheets to its Open Access Transmission Tariff incorporate the Large Generator Interconnection Procedures and Large Generator Interconnection Agreement in accordance with FERC Order No. 2003–A. PGE requests an effective date of November 8, 2004 for the requested changes.

PGE states that copies of this filing were supplied to the Public Utility Commission of Oregon, PGE's Network Customers and the Docket No. RM02–1–001 service list.

Comment Date: 5 p.m. eastern time on September 29, 2004.

8. Deseret Generation & Transmission Co-operative, Inc.

[Docket No. ER04–1205–000]

Take notice that on September 8, 2004, Deseret Generation & Transmission Co-operative, Inc. (Deseret) tendered for filing an amendment to First Revised Service Agreement No. 4 under Deseret's FERC Electric Tariff, Original Volume 1. Deseret states that the amendment includes an Acquired Retail Load Rider Between Deseret and Garkane Energy Cooperative, Inc. dated August 31, 2004, that provides for the provision of electric energy and capacity by Deseret to Garkane for retail loads of Kanab City, Utah. Deseret requests an effective date of September 1, 2004.

Deseret states that copies of this filing have been served upon Deseret's member cooperatives.

Comment Date: 5 p.m. eastern time on September 29, 2004.

9. Oregon Electric Utility Company; Portland General Electric Company; Portland General Term Power Procurement Company

[Docket ER04–1206–000]

Take notice that on September 8, 2004, Oregon Electric Utility Company (OEUC), Portland General Electric Company (PGE) and Portland General Term Power Procurement Company (PPC) petitioned the Commission for approvals necessary to enable OEUC to restructure PGE's wholesale energy procurement activity, specifically: (1) Acceptance of PPC's Rate Schedules FERC No. 1 and FERC No. 2; (2) acceptance of PGE's Rate Schedule FERC No. 14; (3) the granting of certain blanket approvals, including the authority for PPC to sell electricity at market-based rates; and (4) the waiver of certain Commission regulations.

Comment Date: 5 p.m. eastern time on September 29, 2004.

10. Black Hills Power, Inc.

[Docket No. ER04–1208–000]

Take notice that on September 9, 2004, Black Hills Power, Inc. submitted to the Commission a Notice of Succession adopting all applicable rate schedules, service agreements, tariffs and supplements thereto previously filed with the Commission by Black Hills Power and Light Company and Black Hills Corporation.

Comment Date: 5 p.m. eastern time on September 30, 2004.

11. Southern California Edison Company

[Docket No. ER04–1209–000]

Take notice that on September 9, 2004, Southern California Edison Company (SCE) submitted proposed revisions to SCE's Transmission Owner Tariff, FERC Electric Tariff, Second Revised Volume No. 6, to implement new reliability procedure.

SCE states that copies of the filing were served upon the SCE's jurisdictional customers, the California Public Utilities Commission, the California Electricity Oversight Board, the California Independent System Operator, Pacific Gas and Electric Company, and the San Diego Gas and Electric Company.

Comment Date: 5 p.m. eastern time on September 30, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2248 Filed 9–17–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission

September 14, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New License.

b. *Project No.:* 11841–002.

c. *Date filed:* September 10, 2004.

d. *Applicant:* Ketchikan Public Utilities.

e. *Name of Project:* Whitman Lake Hydroelectric Project.

f. *Location:* The Whitman Lake Hydroelectric Project would be located on Whitman Lake in Ketchikan Gateway Borough, Ketchikan, Alaska. The proposed project would affect approximately 158 acres of Federal lands, managed by the U.S. Forest Service and the U.S. Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r). [For 5–MW exemptions, use the following language instead: Public Utility Regulatory Policies Act of 1978, 16 U.S.C. §§ 2705, 2708.]

h. *Applicant Contact:* Mr. Don Thompson, WESCORP, 3035 Island Crest Way, Suite 200, Mercer Island, WA 98040; Telephone: (206) 275–1000.

i. *FERC Contact:* Kenneth Hogan at (202) 502–8434; *e-mail: kenneth.hogan@ferc.gov.*

j. *Cooperating agencies:* We are asking Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental

issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below.

k. *All documents (original and eight copies) should be filed with:* Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

l. The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

m. The application is not ready for environmental analysis at this time.

n. The proposed Whitman Lake Hydroelectric Project will have an installed generating capacity of 4.6 Megawatts with a maximum hydraulic capacity of 180 cubic feet per second (cfs). The proposed project would consist of the following features: (1) The existing 39-foot-high, 220-foot-long concrete gravity arch dam; (2) 40-foot-wide Ogee spillway within the dam; (3) a 148 surface acre reservoir (Whitman Lake); (4) a 2,450-foot-long, 45-inch-diameter steel penstock; (5) a 2,000-foot-long, 21-inch-diameter pipeline; (6) a turbine and 3,900 kW generator, with a hydraulic capacity of 150 cfs; (7) a turbine and 700 kW generator, with a hydraulic capacity of 30 cfs and (8) other appurtenant facilities.

Ketchikan Public Utilities (KPU) estimates that the average annual generation will be 16,225 megawatthours (MWh). KPU proposes to use the project to supplement, as well as displace, other generation resources owned and operated by KPU. With the construction and operation of the project, KPU hopes to minimize its use and dependency on fossil fuel generation.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Alaska State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36, CFR, at § 800.4.

q. *Procedural schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Project Site Visit—October 2004.
Issue Deficiency Letter or Acceptance Letter—November 2004.
Request Additional Information—November 2004.
Issue Acceptance Letter—February 2005.
Notice of application ready for environmental analysis—March 2005.
Notice of the availability of the EA—August 2005.
Ready for Commission's decision on the application—September 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2252 Filed 9–17–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

September 14, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12493–000.

c. *Date Filed:* March 25, 2004.

d. *Applicant:* Greenfields Irrigation District.

e. *Name of Project:* Sun River Diversion Hydroelectric Project.

f. *Location:* The proposed project would be located on an existing dam owned by the U.S. Bureau of Reclamation, on the North Fork of the Sun River in Teton County and Lewis and Clark County, Montana. Part of the project would be on lands administered by the U.S. Bureau of Reclamation.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. Ed Everaert, Manager, Greenfields Irrigation District, P.O. Box 157, Fairfield, MT 59436, Phone: (406) 467–2533, Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, Phone: (208) 745–0834, (fax) (208) 745–0835, or e-mail address: *bsmith@nwpwrservices.com.*

i. *FERC Contact:* Mr. Lynn R. Miles, Sr. (202) 502–8763.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–12493–000) on any comments, protest, or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consists of: (1) The Bureau of Reclamation's existing 132-foot-high and 261-foot-long diversion dam, (2) the existing Diversion Lake Reservoir with a surface area of 202 acres and a storage capacity of 6,395 acre-feet at a normal elevation of 4,474 feet msl, (3) a 72-inch-diameter 800-foot-long steel penstock, (4) a powerhouse containing one 2.7 megawatt generating unit with an installed capacity of 2.7 megawatts, (5) a 15 kv transmission line approximately 5 miles long, and (6) appurtenant facilities. The project would have an annual generation of 20.8 GWh.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free

1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with18 CFR 4.30(b) and 4.36.

p. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. Comments, Protests, or Motions To Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *See* 18 CFR. 385.2001 (a)(1)(iii) and the instructions on the Commission's web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–2253 Filed 9–17–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Soliciting Comments, and Final Recommendations, Terms and Conditions, and Prescriptions

September 14, 2004.

Take notice that the following hydroelectric application and applicant-prepared environmental assessment has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent minor license.

b. *Project No.:* 632–009.

c. *Date filed:* February 13, 2004.

d. *Applicant:* Monroe City.

e. *Name of Project:* Lower Monroe Hydroelectric Project.

f. *Location:* On Monroe Creek, 2 miles east of Monroe City, Sevier County, Utah. The project affects about 1.36 acres of Federal lands within the Fishlake National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* R. Craig Mathie, Mayor, Monroe City, 10 North Main, Monroe, Utah 84754, (435) 527–4621; John Spendlove, Jones & DeMille Engineering, 1535 South 100 West, Richfield, Utah 84701, (435) 896–8266.

i. *FERC Contact:* Gaylord W. Hoisington, (202) 502–6032, or e-mail at: *gaylord.hoisington@ferc.gov*.

j. Deadline for filing comments, and final recommendations, terms and conditions, and prescriptions is 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments and final recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web

site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted for filing.

l. *The proposed run-of-river project consists of:* (1) A 10-foot-high, 13-foot-long concrete overflow-type diversion structure with an adjustable slide gate; (2) a concrete intake structure with a trash rack and a 21-inch-diameter, 100-foot-long cast iron pipeline; (3) a 8,400-foot-long, 16-inch-diameter to 20-inch diameter welded steel and ductile iron pipe penstock; (4) a 15-foot-wide, 26-foot-long reinforced concrete and concrete block power house containing a Pelton Wheel turbine with a 250-kilowatt generator and controls; (5) a 250-foot-long transmission line; and (6) appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. All filings must (1) bear in all capital letters the title ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–2254 Filed 9–17–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PL04–15–000, RM02–12–000, RM02–1–001, RM02–1–005]

Interconnection for Wind Energy and Other Alternative Technologies, Standardization of Small Generator Interconnection Agreements and Procedures, Standardizing Generator Interconnection Agreements and Procedures; Supplemental Notice of Technical Conference

September 14, 2004.

In the Notices of Technical Conference issued August 27, 2004 and September 8, 2004, the Federal Energy Regulatory Commission announced that it would host a technical conference on Friday, September 24, 2004 to discuss a petition for rulemaking submitted by the American Wind Energy Association (AWEA) related to the adoption of certain requirements for the interconnection of large wind generators.

In those notices parties interested in speaking at the conference were asked to file their requests through an on-line form on the FERC Web site. However, technical difficulties resulted in the loss of information from several speaker requests.

Parties who filed speaker requests are therefore asked to resubmit their requests by contacting Sarah McKinley at (202) 502–8368 or at *sarah.mckinley@ferc.gov*.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–2255 Filed 9–17–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Notice of Interim Approval

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: The Deputy Secretary of the Department of Energy, confirmed and approved, on an interim basis, Rate Schedules JW–1–H and JW–2–E. The rates were approved on an interim basis through September 19, 2009, and are subject to confirmation and approval by the Federal Energy Regulatory Commission (Commission) on a final basis.

DATES: Approval of rate on an interim basis is effective through September 19, 2009.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Assistant Administrator, Finance & Marketing, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia 30635–6711, (706) 213–3800.

SUPPLEMENTARY INFORMATION: The Commission, by Order issued April 2, 2003, in Docket No. EF02–3031–000, confirmed and approved Wholesale Power Rate Schedules JW–1–G and JW–2–D. Rate schedules JW–1–H and JW–2–E replace these schedules.

Dated: September 9,2004.

Kyle E. McSlarrow,

Deputy Secretary.

Order Confirming and Approving Power Rates on an Interim Basis

Rate Order No. SEPA–45

In the Matter of: Southeastern Power Administration; Jim Woodruff Project Power Rates;

Pursuant to sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (Southeastern) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 00–037.00 (December 6, 2001), the Secretary of Energy delegated to the Administrator of Southeastern the authority to develop power and transmission rates, and delegated to the Deputy Secretary of the Department of Energy the authority to confirm, approve, and place in effect such rates on an interim basis and delegated to the Federal Energy Regulatory Commission (Commission) the authority to confirm and approve on a final basis or to disapprove rates developed by the Administrator under the delegation. This rate order is issued by the Deputy Secretary pursuant to said delegation.

Background

Power from the Jim Woodruff Project is presently sold under Wholesale Power Rate Schedules JW–1–G and JW–

2–D. These rate schedules were approved by the Commission on April 2, 2003, for a period ending September 19, 2005 (103 FERC 62003).

Public Notice and Comment

Southeastern prepared a Power Repayment Study, dated March 2004, that showed that revenues at current rates were not adequate to meet repayment criteria. A revised study with a revenue increase of $2,182,000 produced rates that are adequate to meet repayment criteria in Fiscal Years 2005, 2006, and 2007. On March 31, 2004, by **Federal Register** notice (69 FR 16916), Southeastern proposed a rate adjustment of about 35.5 percent for Fiscal Years 2005, 2006, and 2007 and 3.1 percent for Fiscal Year 2008 and thereafter to recover this revenue. The notice also announced a Public Information and Comment Forum to be held May 6, 2004, in Tallahassee, Florida. Six preference customers and one customer representative made comments at the forum. Written comments were accepted on or before June 29, 2004. Written comments were received from two sources.

Staff Review of Comments

The following comments were received during the public comment period. Southeastern's response follows each comment.

Comment 1: In reviewing RA 6120.2, we determined that recovery of the annual interest expense may be deferred in unusual circumstances for short periods of time. This guidance is set forth in section 12 of RA 6120 under cost recovery criteria.

Response 1: Southeastern believes the intent of this section was to cover unplanned events such as drought. However, Southeastern agrees that the need for a drastic rate increase followed by a rate reduction is an unusual circumstance. Southeastern also believes that this section gives Southeastern some discretion to defer interest payments. Southeastern is proposing to defer payment of capitalized unpaid interest deficits incurred in 1999, 2000, and 2001 until 2007, 2008, and 2009. Southeastern will use all available funds to meet the required payment of the initial investment in the Jim Woodruff Project that is due in 2007.

Comment 2: The SeFPC and the [Jim Woodruff preference] customers encourage Southeastern to use the provision of RA 6120.2 to capitalize the interest on the new plant until 2008. Following this approach, the proposed rate increase for the Jim Woodruff Project, as we understand it, may only need to be in the 10 percent range, plus or minus, as opposed to the 35.5 percent that is currently proposed.

Response 2: A 10 percent rate increase would meet the required repayment of the initial investment in the Jim Woodruff Project in 2007, provided repayment of interest on investment is deferred. Southeastern projects that repayment of this interest would be accomplished in 2020 which is more that 13 years after the interest on the Federal investment was incurred. Southeastern believes that this repayment period does not qualify as a short period of time as described in section 12 of RA 6120.2.

Comment 3: The customers are also concerned with the amounts that have been included in the repayment study for purchase capacity and energy costs. We understand that Southeastern has estimated the previous 25 years of daily peak plant output in determining what should be included in the repayment study for purchase capacity and energy. The fact that Southeastern has looked at the previous 25 years, discounting all the years when the project was being rehabilitated, gives us concern that Southeastern has inflated the amount that it needs to be included for purchased capacity and energy.

Response 3: Southeastern has estimated purchase capacity and energy using historic streamflow conditions. This is an established industry practice. Southeastern discounted the years when the project was undergoing rehabilitation because these years were not representative of the operation of the project. Southeastern does not believe that the estimate of purchase capacity and energy is inflated. Southeastern will monitor purchase capacity and energy expense and may propose a pass-through of these expenses if Southeastern and the customers determine that a pass-through is appropriate. A pass-through of these costs would eliminate the need for an estimate in the repayment study.

Comment 4: It may be appropriate for Southeastern to consider making purchased capacity and energy costs a pass-through cost component as Southeastern has done in other marketing areas.

Response 4: Southeastern has not proposed to establish a pass-through charge for support capacity and purchased power costs in the Jim Woodruff System. Southeastern will monitor support capacity and purchase power costs and may propose a pass-through if Southeastern and the customers determine that such a pass-through is appropriate. The implications of such a change to the cost-recovery from Florida Power Corporation need to be carefully examined before proposing such a change.

Comment 5: Appropriate review is merited of the Operations and Maintenance (O&M) costs that are recovered for the U.S. Army Corps of Engineers (Corps). In reviewing the projections for the Corps O&M expenses, the members of the SeFPC are alarmed by a considerable increase in joint maintenance costs. In 2002, the joint maintenance costs allocated to hydropower were $271,000. In 2003, these same costs rose to $871,000, despite the fact that the Corps had projected the joint maintenance cost allocable to hydropower would be only $88,000. At some point a significant error occurred, either with the original projection, or the inclusion of these additional maintenance costs.

The stated reason for this increase is the cost associated with the purchase of supplies and materials increased in Fiscal Year 2003 by $455,000. Southeastern has failed to justify this calculation. Therefore, recovery of these amounts is arbitrary and capricious in the absence of an explanation.

Response 5: Estimates of Corps O&M costs are provided to Southeastern by the Corps. Southeastern, the Corps, and the Customers, through the O&M committee of the SeFPC, review these estimates. Estimates incorporated into the power repayment study were provided to the O&M Committee of the SeFPC in 2003. The customers reviewed the Corps O&M costs at that time. The variance of Corps O&M estimates to the actual costs incurred has not been significant.

Comment 6: The proposed rate has legal infirmities that cannot be cured unless the proposed rate is revised. In the absence of such revision, implementation of the rate will be an arbitrary and capricious decision by the Administrator of Southeastern in light of the following factors:

(1) The proposed rate does not explain why Southeastern has declined to invoke the provision of DOE Regulation RA 6120.2 to ensure the lowest possible rate consistent with sound business principles;

(2) The calculation of estimated purchased energy and capacity costs is based on historical data the Customers do not believe is indicative of expected performance by the project;

(3) The Corps O&M costs have not been justified in the case of future recoveries for inflated joint costs allocable to maintenance.

Response 6: Because of this comment, Southeastern is proposing to revise the proposed rate increase deferring the

recovery of capitalized deficits incurred in 1999, 2000, and 2001 until recovery of the initial investment in the Jim Woodruff Project that is due in 2007 is repaid.

Southeastern believes its estimate of purchased energy and capacity costs is appropriate considering the operations of the project and the contract with Florida Power Corporation. If conditions warrant, Southeastern will consider implementation of a pass-through charge for purchased energy and support capacity as discussed in Response 4.

Southeastern relies on the Corps to provide estimates of Corps O&M. The variance of O&M estimates provided by the Corps to actual costs incurred has not been significant as discussed in Response 5.

Comment 7: The City of Quincy realizes that some of the increase in our rates that Southeastern Power has made must come so that this Project may continue producing the needed power that we all receive benefits from. [We] would like to see Southeastern strive, if possible, to re-evaluate its proposed rate increase and give serious consideration to extending the period for recouping its generated revenue from the project to say ten years instead of three.

Response 7: Southeastern has extended the repayment period for the capitalized deficits that were incurred in 1999, 2000, and 2001 from three years to five years. Section 12 of RA 6120.2 allows that recovery of annual interest expense may be deferred in unusual circumstances for short periods of time. Southeastern believes it is within Southeastern's discretion to defer repayment of these capitalized deficits until 2009.

Discussion

System Repayment

An examination of Southeastern's revised system power repayment study, prepared in March 2004, for the Jim Woodruff Project, shows that with the proposed rates, all system power costs are paid within the 50-year repayment period required by existing law and DOE Procedure RA 6120.2. The Administrator of Southeastern has certified that the rates are consistent with applicable law and that they are the lowest possible rates to customers consistent with sound business principles.

Environmental Impact

Southeastern has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded the adjusted rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. The proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Availability of Information

Information regarding these rates, including studies, and other supporting materials is available for public review in the offices of Southeastern Power Administration, 1166 Athens Tech Road, Elberton, Georgia 30635–6711.

Submission to the Federal Energy Regulatory Commission

The rates hereinafter confirmed and approved on an interim basis, together with supporting documents, will be submitted promptly to the Commission for confirmation and approval on a final basis for a period beginning September 20, 2004, and ending no later than September 19, 2009.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective September 20, 2004, attached Wholesale Power Rate Schedules JW–1–H and JW–2–E. The rate schedules shall remain in effect on an interim basis through September 19, 2009, unless such period is extended or until the Federal Energy Regulatory Commission confirms and approves them or substitute rate schedules on a final basis.

Dated: September 9, 2004.

Kyle E. McSlarrow,

Deputy Secretary.

Wholesale Power Rate Schedule JW–1–H

Availability

This rate schedule shall be available to public bodies and cooperatives (the Customers) served by the Florida Power Corporation and having points of delivery within 150 miles of the Jim Woodruff Project (Project).

Applicability

This rate schedule shall be applicable to firm power and accompanying energy made available by the Government from the Project and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be 3-phase alternating current at a nominal frequency of 60 cycles per second delivered at the delivery points of the customer.

Monthly Rate

The monthly rate for capacity and energy made available or delivered under this rate schedule shall be:

Demand Charge

$6.95 per kilowatt of monthly contract demand.

Energy Charge

19.95 mills per kilowatt-hour.

Billing Demand

The monthly billing demand for any billing month shall be the lower of (a) The Customer's contract demand or (b) the sum of the maximum 30-minute integrated demands for the month at each of the Customer's points of delivery; provided, that, if an allocation of contract demand to delivery points has become effective, the 30-minute maximum integrated demand for any point of delivery shall not be considered to be greater than the portion of the Customer's contract demand allocated to that point of delivery.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy Made Available

During any billing month in which the Government supplies all the Customer's capacity requirements for a particular delivery point, the Government will make available the total energy requirement of said point. When both the Government and the Florida Power Corporation are supplying capacity to a delivery point, each kilowatt of capacity supplied to such point during such month will be considered to be accompanied by an equal quantity of energy.

Billing Month

The billing month for power sold under this schedule shall end at 12 (midnight) on the 20th day of each calendar month.

Conditions of Service

The customer shall, at its own expense, provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that

which is installed by and at the expense of the Florida Power Corporation on its side of the delivery point.

Service Interruption

When energy delivered to the Customer's system for the account of the Government is reduced or interrupted for one hour or longer, and such reduction or interruption is not due to conditions on the Customer's system or has not been planned and agreed to in advance, the demand charge for the month shall be appropriately reduced.

Proposed Wholesale Power Rate Schedule JW–2–E

Availability

This rate schedule shall be available to the Florida Power Corporation (hereinafter called the Company).

Applicability

This rate schedule shall be applicable to electric energy generated at the Project and sold to the Company in wholesale quantities.

Points of Delivery

Power sold to the Company by the Government will be delivered at the connection of the Company's transmission system with the Project bus.

Character of Service

Electric power delivered to the Company will be 3-phase alternating current at a nominal frequency of 60 cycles per second.

Monthly Rate

The monthly rate for energy sold under this schedule shall be equal to 90 percent of the calculated saving in the cost of fuel per kilowatt-hour (KWh) to the Company determined as follows:

$$\text{Energy Rate} = 90 \text{ percent} \times \frac{\text{Fm}}{\text{Sm}} \left[\text{Computed to the nearest \$0.00001 (1/100mill) per KWh}\right]$$

Where:

Fm = Company fuel cost in the current period as defined in Federal Power Commission Order 517 issued November 13, 1974, Docket No. R–479.

Sm = Company sales in the current period reflecting only losses associated with wholesale sales for resale. Sale shall be equated to the sum of (a) generation, (b) purchases, (c) interchange-in, less (d) inter-system sales, less estimated wholesale losses (based on average transmission loss percentage for preceding calendar year).

Determination of Energy Sold

Energy will be furnished by the Company to supply any excess of Project use over Project generation. Energy so supplied by the Company will be deducted from the actual deliveries to the Company's system to determine the net deliveries for energy accounting and billing purposes. Energy for Project use shall consist of energy used for station service, lock operation, Project yard, village lighting, and similar uses.

The on-peak hours shall be the hours between 7 a.m. and 11 p.m., Monday through Sunday, inclusive. Off-peak hours shall be all other hours.

All energy made available to the Company shall, to the extent required, be classified as energy transmitted to the Government's preference customers served from the Company's system. All energy made available to the Company from the Project shall be separated on the basis of the metered deliveries to it at the Project during on-peak and off-peak hours, respectively. Deliveries to preference customers of the Government shall be divided on the basis (with allowance for losses) of 77 percent being considered as on-peak energy and 23 percent being off-peak energy. Such percentages may by mutual consent be changed from time to time as further studies show to be appropriate. In the event that in classifying energy there is more than enough on-peak energy available to supply on-peak requirements of the Government's preference customers but less than enough off-peak energy available to supply such customers off-peak requirements, such excess on-peak energy may be applied to the extent necessary to meet off-peak requirements of such customers in lieu of purchasing deficiency energy to meet such off-peak requirements.

Billing Month

The billing month under this schedule shall end at 12 (midnight) on the 20th day of each calendar month.

Power Factor

The purchaser and seller under this rate schedule agree that they will both so operate their respective systems that neither party will impose an undue reactive burden on the other.

[FR Doc. 04–21058 Filed 9–17–04; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7815–6]

Environmental Laboratory Advisory Board (ELAB) Meeting Dates, and Agenda

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of teleconference meetings.

SUMMARY: The Environmental Protection Agency's Environmental Laboratory Advisory Board (ELAB), as previously announced, will have teleconference meetings on October 20, 2004 at 1 p.m. e.s.t.; November 17, 2004 at 1 p.m. e.s.t.; December 15, 2004 at 1 p.m. e.s.t.; and January 19, 2005 at 1 p.m. e.s.t. to discuss the ideas and views presented at the previous ELAB meetings, as well as new business. Items to be discussed by ELAB over these coming meetings include: Expanding the number of laboratories seeking NELAC accreditation; homeland security issues affecting the laboratory community; ELAB support to Agency's Forum on Environmental Measurements (FEM); implementing the performance approach; increasing state participation in NELAC; and follow-up on some of ELAB's past recommendations and issues. In addition to these teleconferences, ELAB will be hosting their next face-to-face meeting on February 2, 2005 at the Sheraton Society Hill in Philadelphia, Pennsylvania.

Written comments on laboratory accreditation issues and/or environmental monitoring issues are encouraged and should be sent to Ms. Lara P. Autry, DFO, U.S. EPA (E243–05), 109 T. W. Alexandar Drive, Research Triangle Park, NC 27709, faxed to (919) 541–4261, or e-mailed to *autry.lara@epa.gov.* Members of the public are invited to listen to the teleconference calls, and time permitting, will be allowed to comment on issues discussed during this and previous ELAB meetings. Those persons interested in attending should call Lara P. Autry at (919) 541–5544 to obtain

teleconference information. The number of lines for the teleconferences, however, are limited and will be distributed on a first come, first serve basis. Preference will be given to a group wishing to attend over a request from an individual.

Paul Gilman,

Assistant Administrator, Office of Research and Development.

[FR Doc. 04–21067 Filed 9–17–04; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Sunshine Act; Meeting

ACTION: Notice of a partially open meeting of the Board of Directors of the Export-Import Bank of the United States.

TIME AND PLACE: Thursday, September 23, 2004 at 9:30 a.m. The meeting will be held at Ex-Im Bank in Room 1141, 811 Vermont Avenue, NW., Washington, DC 20571.

OPEN AGENDA ITEM: PEFCO Secured Note Issues Resolutions.

PUBLIC PARTICIPATION: The meeting will be open to public participation for Item No. 1 only.

FOR FURTHER INFORMATION CONTACT: For further information, contact: Office of the Secretary, 811 Vermont Avenue, NW., Washington, DC 20571 (Telephone No. (202) 565–3957).

Peter B. Saba,

General Counsel.

[FR Doc. 04–21236 Filed 9–16–04; 3:46 pm]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Requirement Submitted to OMB for Emergency Review and Approval

September 14, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 20, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Kristy L. LaLonde, Office of Management and Budget, Room 10234 NEOB, Washington, DC 20503, (202) 395–3087, or via fax at 202–395–5167 or via internet at *Kristy_L._LaLonde@omb.eop.gov,* and Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judith B. Herman at 202–418–0214 or via Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Commission has requested emergency OMB processing review of this new information collection with an OMB approval by September 30, 2004.

OMB Control Number: 3060–1042.

Title: Request for Technical Support—Help Request Form.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, and state, local and tribal government.

Number of Respondents: 36,300.

Estimated Time Per Response: 8 minutes.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Total Annual Burden: 4,840 hours.

Total Annual Cost: $387,200.

Privacy Act Impact Assessment: Yes.

Needs and Uses: The FCC's Wireless Telecommunications Bureau (WTB) maintains Internet software used by the public to apply for licenses, participate in auctions for spectrum, and maintain license information. In this mission, theWTB has a ''help desk'' that answers questions related to these systems as well as resetting and/or issuing user passwords for access to these systems. Currently, people call the WTB Support Center, submit requests for help via free-form emails, or submit requests via a form on the FCC Web site *(http://esupport.fcc.gov/request.htm).* This submission is a revision of this form to replace all free-form emails by collecting the information required by the WT B to answer and process these requests for support. Specifically, this collection is revised to increase the target audience to include inquiries received through the Bureau's call center and Web site email address. The form will collect contact information to follow up on the request if more information is needed and will facilitate processing requests. This form will also electronically categorize requests to allow for more efficient skill routing internally and continuing streamlining processes within the Commission. This will increase the speed of disposal of these requests.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–21085 Filed 9–17–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in

writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 14, 2004.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Maries County Bancorp., Inc., Vienna, Missouri; to acquire 10.90 percent of the voting shares of Lone Summit Bancorp, Inc., Lake Lotawana, Missouri, and thereby indirectly acquire Lone Summit Bank, Lake Lotawana, Missouri.

Board of Governors of the Federal Reserve System, September 14, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–21069 Filed 9–17–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Secretary's Advisory Committee on Human Research Protections

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given that the Secretary's Advisory Committee on Human Research Protections (SACHRP) will hold its fourth meeting. The meeting will be open to the public.

DATES: The meeting will be held on Monday, October 4, 2004, from 8:30 a.m. to 5 p.m., and on Tuesday, October 5, 2004, from 8:30 a.m. to 5 p.m.

ADDRESSES: The Raddison Hotel Old Town Alexandria, 900 North Fairfax Street; Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Bernard Schwetz, D.V.M., Ph.D., Director, Office for Human Research Protections (OHRP), or Catherine Slatinshek, Executive Director, Secretary's Advisory Committee on Human Research Protections; Department of Health and Human Services, 1101 Wootton Parkway, Suite 200; Rockville, MD 20852; (301) 496–7005; fax: (301) 496–0527; email address: *sachrp@osophs.dhhs.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, SACHRP was established to provide expert advice and recommendations to the Secretary of Health and Human Services and the Assistant Secretary for Health on issues and topics pertaining to or associated with the protection of human research subjects.

On October 4, 2004, SACHRP will receive and discuss preliminary reports from its two subcommittees, the Subpart C Working Group (HHS regulations and policies for research involving prisoners) and the Subpart D Working Group (HHS regulations and policies for research involving children). The subcommittees were established by SACHRP at its meeting held on July 22, 2003, to provide assistance in addressing issues related to the specified topics. The Committee also will receive an update from OHRP staff on Subpart B issues.

On October 5, 2004, SACHRP will assemble three panels of experts to discuss the following issues: (1) The application of Subpart A in the current research environment; (2) the relationship between public health surveillance activities and research, the relationship between quality assurance/quality improvement activities, and research as defined in the HHS regulations for the protection of human subjects at 45 CFR 46.102(d); (3) and issues related to central IRBs.

Public attendance at the meeting is limited to space available. Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact persons. Members of the public will have opportunity to provide comments on both days of the meeting. Public comment will be limited to five minutes per speaker. Any members of the public who wish to have printed material distributed to SACHRP members for this scheduled meeting should submit materials to the Executive Director, SACHRP, prior to the close of business on September 29, 2004.

Information about SACHRP and the draft meeting agenda will be posted on the SACHRP Web site at *http://ohrp.osophs.dhhs.gov/sachrp/sachrp.htm.*

Dated: September 14, 2004.

Bernard A. Schwetz,

Director, Office for Human Research Protections, Executive Secretary, Secretary's Advisory Committee on Human Research Protections.

[FR Doc. 04–21072 Filed 9–17–04; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Program Peer Review Subcommittee of the Board of Scientific Counselors (BSC), National Center for Environmental Health (NCEH)/Agency for Toxic Substances and Disease Registry (ATSDR); Teleconference

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), NCEH/ATSDR announces the following subcommittee meeting:

Name: Program Peer Review Subcommittee (PPRS).

Time and Date: 12:30 p.m.–3 p.m., October 5, 2004.

Place: The teleconference will originate at the National Center for Environmental Health/Agency for Toxic Substances and Disease Registry in Atlanta, Georgia. Please see **SUPPLEMENTARY INFORMATION** for details on accessing the teleconference.

Status: Open to the public, teleconference access limited only by availability of telephone ports.

Purpose: Under the charge of the Board of Scientific counselors (BSC), NCEH/ATSDR the Program Peer Review Subcommittee establishes and monitors working groups of technical experts that perform program peer reviews of National Center for Environmental Health and the Agency for Toxic Substances and Disease Registry. The Subcommittee, working with the NCEH/ATSDR, Office of Sciences (OS), will establish schedule and process for program peer reviews, nominate working group members, reviews summary reports and recommendations, and report back to the BSC. The OS will establish agency policy for program peer review and directly support each working group by collating program documents, and organizing the working groups review and site visit. Each NCEH/ATSDR program eligible for review will be reviewed every 5 years according to CDC/ATSDR policy.

Matters To Be Discussed: The teleconference agenda will include discussions to develop screening methodology to prioritize program reviews using background information; to establish methodology to perform the NCEH/ATSDR program reviews; to establish workgroups to perform the program reviews; and to establish a schedule for program review.

SUPPLEMENTARY INFORMATION: This conference call is scheduled to begin at 12:30 p.m. eastern standard time. To participate in the teleconference, please dial (877) 315–6535 and enter conference code 383520.

FOR FURTHER INFORMATION CONTACT: Sandra Malcom, Committee Management Specialist, Office of Science, NCEH/ATSDR, M/S E–28, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 404/498–0003.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: September 15, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention .

[FR Doc. 04–21168 Filed 9–16–04; 1:42 pm]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: State Plan for Child Support Under Title IV–D of the Social Security Act (OCSE–100 and OCSE–21–U4).

OMB No.: 0970–0017.

Description: The state plan serves as a contract between the Office of Child Support Enforcement (OCSE) and State IV–D agencies in outlining the activities the state will perform as required by law in order for states to receive Federal funds for child support enforcement. The information collected on the state plan pages is necessary to enable OCSE to determine whether each state has a IV–D state plan that meets the requirements in title IV–D of the Social Security Act (the Act) and implementing regulations. The state plan preprint gives each state a convenient method for developing a statement to be submitted to OCSE for approval describing the nature and scope of its program and giving assurances that the program will be administered in conformity with the requirements in title IV–D of the Act and the implementing regulations at 45 CFR Chapter III. Once received, the Federal office will review the state plan to ensure its compliance with regulations.

Respondents: State IV–D Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State Plan (OCSE–100)	54	6	.5	162
State Plan Transmittal (OCSE–21–U4)	54	6	.25	81

Estimated Total Annual Burden Hours: 243

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *grjohnson@acf.hhs.gov*.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: *Katherine_T._Astrich@omb.eop.gov.*

Dated: September 13, 2004.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 04–21024 Filed 9–17–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: TANF High Performance Bonus Report, Assessment of Medicaid and SCHIP Enrollment (ACF–210).

OMB No.: 0992–0007.

Description: Public Law 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), established the Temporary Assistance for Needy Families (TANF) Program. It also included provisions for rewarding States that attain the highest levels of success in achieving the legislative goals of that program. The purpose of this collection, which is a proposed extension of a collection currently in use, is to obtain data upon which to base the computation for measuring State performance in meeting those goals by providing Medicaid and State Children's Health Insurance Program (SCHIP) work supports. HHS will use the information to allocate the Medicaid/SCHIP portion of the bonus grant funds appropriated under the law and implemented by 45 CFR Part 270 published on August 30, 2000. States will not be required to submit this information unless they elect to compete on a Medicaid/SCHIP measure for the TANF High Performance Bonus awards in any Federal fiscal year for which Congress authorizes and appropriates bonus funds.

Respondents: Respondents may include any of the 50 States, the District of Columbia, and the U.S. Territories of Guam, Puerto Rico, and the Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
TANF High Performance Bonus Report, Assessment of Medicaid and SCHIP Enrollment Among Individuals After Leaving TANF Assistance	54	2	40	4,320

Estimated Total Annual Burden Hours: 4,320.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *grjohnson@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: September 15, 2004.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 04–21087 Filed 9–17–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Project 1099.

OMB No. 0970–0183.

Description: A voluntary program that provides state child support enforcement agencies, upon their request, access to the earned and unearned income information reported to the Internal Revenue Service (IRS) by employers and financial institutions. IRS Form 1099 information is used to locate noncustodial parents and to verify income and employment.

Respondents: State child support enforcement agencies.

Instrument	Number of respondents	Number of responses per respondent per year	Average burden hours per response	Total burden hours
Project 1099	54	12	2	1,296

Estimated Total Annual Burden Hours: 1,296.

In compliance with the requirements of Section 3506(c)(2)(A) of the paperwork Reduction Act of 1995, the Administration for Children and families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail: *grjohnson@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: September 15, 2004.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 04–21088 Filed 9–17–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Request for State Data Needed to Determine the Amount of a Tribal Family Assistance Grant.

OMB No.: 0970–0173.

Description: 42 U.S.C. 612 (Section 412 of the Social Security Act (the Act) gives Federally recognized Indian Tribes the opportunity to apply to operate a Tribal Temporary Assistance for Needy Families (TANF) program. The act specifies that the Secretary shall use State-submitted data to make each determination of the amount of the grant to the Tribe. This form (letter) is used to request those data from the States.

Respondents: States that have Indian Tribes applying to operate a TANF program.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Request for State Data Needed to Determine the Amount of a Tribal Family Assistance Grant	15	1	42	630

Estimated Total Annual Burden Hours: 630.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *grjohnson@acf.hss.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, 725 17th Street, NW., Washington, DC 20503, E-mail address: *Katherine_T._Astrich@omb.eop.gov.*

Dated: September 15, 2004.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 04–21089 Filed 9–17–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS), Administration for Children and Families (ACF) as follows: Chapter KC.00, Chapter KC.10, Chapter KC.20 Paragraph B, and Chapter KC.20 Paragraph C, the Administration on Developmental Disabilities (ADD) (69 FR 35378–79), as last amended June 24, 2004. Chapters KC.00 and KC.20 Paragraph C are amended to replace outdated references to University Affiliated Programs with references to the current grant program, University Centers for Excellence in Developmental Disabilities. Chapters KC.00 and KC.20 Paragraph B are amended to more fully describe the grant programs that ADD will administer under the Help America Vote Act. Chapter KC.20 Paragraph B is also amended to delete outdated references to the Basic State Grants program. Chapters KC.10 and KC.20 Paragraph C are amended to reflect the new name of the Office of Operations and Discretionary Grants. This notice reflects ADD's responsibilities in implementing election assistance for individuals with disabilities under the Help America Vote Act of 2002 (HAVA), Pub. L. 107–252, 116 Stat. 1666 (2002). The authority to administer HAVA was delegated to the Assistant Secretary, ACF, by the Secretary on February 9, 2004, and subsequently redelegated to the Commissioner, Administration on Developmental Disabilities by the Assistant Secretary, ACF, on April 2, 2004. In addition, it establishes the Office of Programs and the Office of Operations and Discretionary Grants, eliminates the Deputy Commissioner position, and moves the Administration and Planning Staff and their functions to the newly established Office of Operations and Discretionary Grants. This notice is being republished in its entirety for the convenience of the reader.

These Chapters are amended as follows:

1. Chapter KC, Administration on Developmental Disabilities

A. Delete KC.00 Mission in its entirety and replace with the following:

KC.00 Mission. The Administration on Developmental Disabilities advises the Secretary, through the Assistant Secretary for Children and Families, on matters relating to individuals with developmental disabilities and their families. ADD serves as the focal point in the Department to support and encourage the provision of quality services to individuals with developmental disabilities and their families. ADD assists states, through the design and implementation of comprehensive and continuing state plans, to increase the independence, productivity and community inclusion of individuals with developmental disabilities. These state plans make optimal use of existing federal and state resources for the provision of services and supports to these individuals and their families to achieve these outcomes. ADD works with the states to ensure that the rights of all individuals with developmental disabilities are protected.

ADD administers two formula grant programs under the Developmental Disabilities Assistance and Bill of Rights Act (the DD Act), the State Councils on Developmental Disabilities and the Protection and Advocacy Systems, and two discretionary grant programs, University Centers for Excellence in Developmental Disabilities and Projects of National Significance grant programs, including family support grants. These programs support the provision of services to individuals with developmental disabilities and their families. In concert with other components of ACF as well as other public, private, and voluntary sector partners, ADD supports research, demonstration and evaluation activities designed to improve and enrich the lives of individuals with developmental disabilities. In addition, ADD serves as a resource in the development of policies and programs to reduce or eliminate barriers experienced by individuals with developmental disabilities through the identification of promising practices and dissemination of information. ADD manages initiatives involving the private and voluntary sectors that benefit individuals with developmental and other disabilities and their families.

ADD also manages and administers three grant programs authorized by HAVA. Two are formula grant programs: State and Local Grants for Election Assistance for Individuals with Disabilities (EAID) to improve access to polling places for individuals with disabilities, and Grants to Protection and Advocacy Systems to ensure full participation in the voting process for voters with disabilities. The third is a discretionary grant program for training and technical assistance for Protection

and Advocacy Systems under the HAVA election assistance provisions.

B. Delete KC.10 Organization in its entirety and replace with the following:

KC.10 Organization. The Administration on Developmental Disabilities is headed by a Commissioner who reports directly to the Assistant Secretary for Children and Families. The Administration on Developmental Disabilities consists of:

- The Office of the Commissioner (KCA).
- The Office of Programs (KCB).
- The Office of Operations and Discretionary Grants (KCC).

C. Delete KC.20 Functions, paragraph A in its entirety and replace with the following:

KC.20 Functions. A. The Office of the Commissioner serves as the principal advisor to the Assistant Secretary for Children and Families, the Secretary, and other elements of the Department for individuals with developmental disabilities. The Office provides executive direction and management strategy to ADD's components and establishes goals and objectives for ADD programs.

In coordination with the ACF Office of Public Affairs, the Office of the Commissioner develops a strategy for increasing public awareness of the needs of individuals with developmental disabilities and programs designed to address them.

D. Delete KC.20 Functions, paragraph B in its entirety and replace with the following:

B. The Office of Programs is responsible for the coordination, management and evaluation of the State Councils on Developmental Disabilities grant program and the Protection and Advocacy grant program, including the development of procedures and performance standards that ensure compliance with the Developmental Disabilities Assistance and Bill of Rights Act (DD Act) and improve the outcomes of State Councils on Developmental Disabilities and Protection and Advocacy Systems in increasing the independence, productivity and community inclusion of persons with developmental disabilities.

The Office of Programs also administers two formula grants under the Help America Vote Act (State and Local Grants for Election Assistance for Individuals with Disabilities and Grants to Protection and Advocacy Systems) that improve accessibility for individuals with the full range of disabilities, including the blind and visually impaired, to polling places, including the path of travel, entrances, exits and voting facilities. The Office also administers a training and technical assistance grant program under the Help America Vote Act that provides technical assistance to Protection and Advocacy Systems in their mission to promote the full participation in the electoral process for individuals with the full range of disabilities, including registering to vote, casting vote, and accessing polling places.

The Office of Programs conducts routine and special analyses of state plans of State Councils on Developmental Disabilities and statements on the goals and objectives of State Protection and Advocacy Systems, including an examination of priority area activities, to assure consistent application of ADD program goals and objectives. The Office conducts reviews of programs to ensure compliance with the DD Act to improve program outcomes, and identifies and disseminates information regarding promising practices to advance the independence, productivity and community inclusion of people with developmental disabilities.

The Office of Programs initiates, executes and supports the development of interagency, intergovernmental and public-private sector agreements, committees, task forces, commissions or joint-funding efforts as appropriate.

The Office of Programs provides program and administrative guidance to regional offices on matters related to the implementation of the State Councils on Developmental Disabilities and Protection and Advocacy Systems grant programs and ensures timely and effective communication with the regional offices regarding program compliance, policy clarification and the approval of required state plans and reports.

E. Delete KC.20 Functions, paragraph C in its entirety and replace with the following:

C. The Office of Operations and Discretionary Grants plans, coordinates and controls ADD policy, planning and management activities which include the development of legislative proposals, regulations and policy issuances for ADD. The Office manages the formulation and execution of the program and operating budgets; provides administrative, personnel and information systems support services; serves as the ADD Executive Secretariat controlling the flow of correspondence; and coordinates with appropriate ACF components in implementing administrative requirements and procedures. The Office also coordinates interagency collaboration and program outreach activities.

The Office of Operations and Discretionary Grants also manages the discretionary grants and contracts mandated by the DD Act, and provides program development services. The Office originates and manages cross-cutting research, demonstration and evaluation initiatives with other components of ADD, ACF, HHS and other government agencies; and monitors and evaluates discretionary grants under the Projects of National Significance discretionary grant program and the University Centers for Excellence in Developmental Disabilities grant program.

The Office of Operations and Discretionary Grants provides program and administrative guidance to regional offices on matters related to the implementation of the Projects of National Significance discretionary grant program and the University Centers for Excellence in Developmental Disabilities grant program.

The Office of Operations and Discretionary Grants develops and initiates guidelines, policy issuances and actions with team participation by other components of ADD, ACF, HHS and other government agencies to fulfill the mission and goals of the DD Act, as amended. The Office ensures the dissemination of project results and information produced by ADD grantees.

Through the Projects of National Significance discretionary grant program, the Office of Operations and Discretionary Grants coordinates information sharing and other activities related to national program trends with other ACF programs and HHS agencies and studies, reviews and analyzes other federal programs providing services applicable to persons with developmental disabilities for the purpose of integrating and coordinating program efforts.

Dated: September 13, 2004.

Wade F. Horn,

Assistant Secretary for Children and Families.

[FR Doc. 04–21045 Filed 9–17–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0275]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Application for Participation in the Medical Device Fellowship Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Application for Participation in the Medical Device Fellowship Program'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 9, 2004 (69 FR 41508), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0551. The approval expires on February 28, 2005. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: September 9, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–21074 Filed 9–17–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0395]

Agency Information Collection Activities; Proposed Collection; Comment Request; Application for Participation in the Medical Device Fellowship Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on an application for participation in the Medical Device Fellowship Program (MDFP). Elsewhere in this issue of the **Federal Register** FDA published a notice announcing the Office of Management and Budget's (OMB's) approval of this collection of information (OMB control number 0910–0551). Since this was an emergency approval that expires on February 28, 2005, FDA is following the normal PRA clearance procedures by issuing this notice.

DATES: Submit written or electronic comments on the collection of information by November 19, 2004.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Application for Participation in the Medical Device Fellowship Program (OMB Control Number 0910–0551)—Extension

Collecting applications for the MDFP will allow FDA's Center for Devices and Radiological Health (CDRH) to easily and efficiently elicit and review information from students and health care professionals who are interested in becoming involved in CDRH activities. The process will reduce the time and cost of submitting written documentation to the agency and lessen the likelihood of applications being misrouted within the agency mail system. It will assist the agency in promoting and protecting the public health by encouraging outside persons to share their expertise with CDRH.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

FDA Form No.	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
FDA Form 3608	100	1	100	1	100

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA based these estimates on the number of inquiries that have been received about the program and requests for application forms over the past year. We anticipate the number of interested individuals and universities, and subsequent number of applications, to increase as we continue to develop an outreach program and an alumni base.

In addition, we would expect applicants who are not selected for their preferred term of employment to reapply at a later date. For these reasons we would expect that the number of applications submitted in the second and third years would increase substantially. During the first year, we expect to receive 100 applications. We believe that we will receive approximately 100 applications the second year and 100 applications the third year. FDA believes it will take individuals 1 hour to complete the application. This is based on similar applications submitted to FDA.

Dated: September 9, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–21075 Filed 9–17–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent listed below may be obtained by contacting Marlene Shinn-Astor, J.D., Technology Licensing Specialist, at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/435–4426; fax: 301/402–0220; e-mail: *shinnm@mail.nih.gov*.

Evaluative Means for Detecting Inflammatory Reactivity

Esther M. Sternberg et al. (NIMH)

U.S. Patent 5,209,920 issued 11 May 1993 (DHHS Reference No. E–289–1988/2–US–01)

Dysregulations of neuroendocrine stress responses have profound effects on the immune system that are associated with various autoimmune/inflammatory disorders such as rheumatoid arthritis (RA) and psychiatric conditions such as depression and post traumatic stress disorder (PTSD). Inventors from NIMH had previously found that the hypothalamic pituitary adrenal (HPA) hormonal axis, which acts as a regulatory checkpoint between the neuroendocrine and the immune system, is dysregulated in such disorders. Further research now shows that in particular, dysregulation in the secretion of corticotropin releasing hormone (CRH) from the hypothalamus contributes to these conditions. Therefore, the HPA axis, CRH and CRH receptors can serve as major targets for drug development and diagnosis of these diseases.

This patent covers the development of therapeutics and diagnostics for autoimmune/inflammatory diseases that affect millions of people. The patent proposes the use of a wide variety of classes of HPA axis active agents to treat inflammatory illnesses. The patent claims specifically predict that an HPA agonist can be used to treat arthritis. The usefulness and applicability of the patent also extends to the CRH receptor antagonists (*e.g.*, CRH R1 antagonist, Antalarmin) that are now being developed for the treatment of depression and PTSD. Diagnostically, this invention can be used to identify individual susceptibility to autoimmune/inflammatory diseases. Testing of the HPA axis to predict and select responders and non-responders to HPA agonists and CRH receptor antagonists could provide an approach for safe application of such therapeutic agents to a larger proportion of the target population. For example a subject found to have a low HPA axis responsiveness based upon the methods as described in the patent, would be predicted to have a greater risk of developing adrenal insufficiency while being treated with this new class of drugs. Such individuals could then be treated accordingly to prevent adverse events while on CRH antagonist therapy.

Currently, such predictive approaches are not used routinely in clinical settings. The potential of this invention to diagnose and treat certain diseases in a predictive fashion makes it an excellent candidate for simultaneously developing therapeutics and the associated diagnostics. Antalarmin—which is being developed through an NIH initiative—has passed preliminary assessment at the FDA and will soon be in phase I human trials. The inventors found Antalarmin to be effective in reducing clinical arthritis score in rats by 50%, possibly through its blockade of CRH's peripheral pro-inflammatory effects.

Given that an estimated 43 million people in the United States alone have arthritis or other rheumatic conditions, and that this number is expected to reach 60 million by 2020, this patent holds great potential in further development of therapeutics and diagnostics for autoimmune/inflammatory diseases.

Dated: September 14, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–21120 Filed 9–17–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer

Institute Special Emphasis Panel, September 29, 2004, 8:30 a.m. to September 29, 2004, 3 p.m., Morrison House, 116 S. Alfred Street, Alexandria, VA 22314 which was published in the **Federal Register** on September 9, 2004, 69 FR 54689.

This meeting is amended to change the start time on September 29, 2004 to 9 a.m. and the location to Sheraton Suites Alexandria, 801 North Asaph Street, Alexandria, VA 22314. The meeting is closed to the public.

Dated: September 14, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–21111 Filed 9–17–04; 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 Sciences Special Emphasis Panel Effects of Inhaled Florida Red Tide Brecetoxins.

Date: October 14–15, 2004.

Time: 7 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Guest Suites, 2515 Meridian Parkway, Research Triangle Park, NC 27713.

Contact Person: Linda K. Bass, 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, Research Triangle Park, NC 27709, (919) 541–1307.

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. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: September 14, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–21098 Filed 9–17–04; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Carcinogenic Potential of Cell Phone Radio Freq. Rad.

Date: October 14, 2004.

Time: 10:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, 34446, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: RoseAnne M McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–0752.

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. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114. Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: September 14, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–21099 Filed 9–17–04; 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 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 meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, SBIR Topic 92 Phase II.

Date: November 17, 2004.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, 3162, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 92.142, NIEHS Hazardous Waste Worker Health and Safety

Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: September 14, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–21100 Filed 9–17–04; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), a notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in 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 Initial Review Group, Digestive Diseases and Nutrition C Subcommittee.

Date: October 21–22, 2004.

Open: October 21, 2004, 8 a.m. to 8:30 a.m.

Agenda: To review procedures and discuss policies.

Place: Crystal City Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Closed: October 21, 2004, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Closed: October 22, 2004, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Paul A. Rushing, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452 (301) 594–8895 *rushingp@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 14, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–21101 Filed 9–17–04; 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, Clinical and Environmental Characterization of Ciguatera.

Date: October 18–19, 2004.

Time: 7:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Guest Suites, 2515 Meridian Parkway, Research Triangle Park, NC 27713.

Contact Person: Linda K. Bass, PhD., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training, 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education, 93.894, Resources and Manpower Development in the Environmental Health Sciences, 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: September 14, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–21102 Filed 9–17–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 on Aging Initial Review Group, Biological Aging Review Committee.

Date: October 4, 2004.

Time: 12 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Ave, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Alessandra M. Bini, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Bethesda, MD 20892 (301) 402–7708.

Name of Committee: National Institute on Aging Special Emphasis Panel. Alzheimer's Disease #2.

Date: October 6–8, 2004.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20851.

Contact Person: Ramesh Vemuri, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892 (301) 402–7700, *rv23r@nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel, T32NIA Training Grants.

Date: October 6–8, 2004.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20851.

Contact Person: Jon Rolf, PhD, Health Scientist Administrator, Scientific Review Office, National Institutes of Health, National Institute on Aging, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20814 (301) 402–7703, *rolfj@nia.nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel, Alzheimer's Disease #1.

Date: October 6–8, 2004.

Time: 8 p.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20851.

Contact Person: Alicja L. Markowska, PhD, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814 (301) 402–7706, *markowsa@nia.nih.gov.*

Name of Committee: National Institute on Aging Initial Review Group, Behavior and Social Science of Aging Review Committee.

Date: October 8, 2004.

Time: 7:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814

Contact Person: Alfonso R. Latoni, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892 (301) 496–9666, *latonia@mail.nih.gov*.

Name of Committee: National Institute on Aging Initial Review Group, Neuroscience of Aging Review Committee.

Date: October 12–13, 2004.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Louise L. Hsu, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue/ Suite 2C212, Bethesda, MD 20892 (301) 496–7705, *hsul@exmur.nia.nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel, Aging Mitochondria.

Date: October 13, 2004.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building 7201 Wisconsin Avenue, 2C212 Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Alicja L. Markowska, PhD, DSC, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301)–402–7706, *markowsa@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Alzheimer's Trial.

Date: October 14, 2004.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Ave., Room 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ramesh Vemuri, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (301)–402–7700, *rv23r@nih.gov*.

Name of Committee: National Institute on Aging Initial Review Group, Clinical Aging Review Committee.

Date: October 14–15, 2004.

Time: 7 p.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: Alicja L. Markowska, PhD, DSC, National Institute on Aging, National Institutes of Health, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–496–9666, *markowssa@nia.nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel, Organelle Dysfunction I.

Date: November 1–2, 2004.

Time: 5 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Bita Nakhai, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 402–7701, *nakhaib@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 14, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–21103 Filed 9–17–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel Hybrid Rats Proposal Evaluation.

Date: September 24, 2004.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Aging, Gateway Bldg., 7201 Wisconsin Ave., Room 2C212, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Alfonso R. Latoni, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20892, (301) 496–9666, *latonia@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. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 14, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–21105 Filed 9–17–04; 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 Pediatrics Training Grant Subcommittee Meeting.

Date: October 14, 2004.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact: Rita Anand, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd. Room 5B01, Bethesda, MD 20892, (301) 496–1487, *anandr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 14, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–21106 Filed 9–17–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Allergy, Immunology, and Transplantation Research Committee. Allergy, Immunology, and Transplantation Research Review Committee.

Date: October 12–13, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Georgetown Inn, 1310 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Quirijn Vos, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 451–2666, *qvos@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 14, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–21107 Filed 9–17–04; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Concept Clearance—The Efficacy of a Low Glycemic Index in Diabetes Management.

Date: October 6, 2004.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate contact proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Hameed Khan, 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) 435–6902, *khanh@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 14, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–21108 Filed 9–17–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of 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, NIDCD.

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 Institute on Deafness and Other Communication Disorders, 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, NIDCD.

Date: October 15, 2004.

Open: 8:45 a.m. to 9:15 a.m.

Agenda: Reports from Institute Staff.

Place: National Institutes of Health, 5 Research Court, Rockville, MD 20850.

Closed: 9:15 a.m. to 4 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, 5 Research Court, Rockville, MD 20850.

Contact Person: Robert J. Wenthold, PhD, Director, Division of Intramural Research, National Institute on Deafness and Other Communication Disorders, 5 Research Court, Room 2B28, Rockville, MD 20852, (301) 402–2829.

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. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: September 14, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–21110 Filed 9–17–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group, Microbiology and Infectious Diseases Research Committee.

Date: October 7–8, 2004.

Time: October 7, 2004, 9 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.

Time: October 8, 2004, 9 a.m. to 12 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: Gary S. Madonna, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 3135, 6700-B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 496–3528, *gm12w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 14, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–21112 Filed 9–17–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable meterial, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, NIMH Minority RISP Review.

Date: October 8, 2004.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, (301) 443–1606, *mcarey@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Review of Exploratory Research Applications.

Date: October 12, 2004.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, (301) 443–1606, *mcarey@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Minority Training Grants.

Date: October 15, 2004.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Bettina D. Acuna, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9608, Bethesda, MD 20892–9608, (301) 443–1340, *acunab@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: September 14, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–21113 Filed 9–17–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on 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 on Child Health and Human Development Initial Review Group, Reproduction, Andrology, and Gynecology Subcommittee.

Date: October 12–13, 2004.

Time: 3 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Jon M. Ranhand, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435–6884, *ranhandj@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 14, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–21119 Filed 9–17–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine, 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: Biomedical Library and Informatics Review Committee.

Date: November 9–10, 2004.

Time: November 9, 2004, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Time: November 10, 2004, 8 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Hua-Chuan Sim, MD., Health Science Administrator, National Library of Medicine, Extramural Programs, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: September 14, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–21114 Filed 9–17–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; 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 Library of Medicine Special Emphasis Panel, IADL & Information Systems.

Date: October 22, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Hua-Chuan Sim, MD, Scientific Review Administrator, National Library of Medicine, Extramural Programs, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: September 14, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–21115 Filed 9–17–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; 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 Library of Medicine Special Emphasis Panel IAIMS.

Date: November 10, 2004.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Hua-Chuan Sim, MDR, Scientific Review Administrator, National Library of Medicine, Extramural Programs, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: September 14, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–21116 Filed 9–17–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; 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 Library of Medicine Special Emphasis Panel, Publications.
Date: November 3, 2004.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20817 (Telephone Conference Call).
Contact Person: Hua-Chuan Sim, MD., Scientific Review Administrator, National Library of Medicine, Extramural Programs, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: September 14, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–21117 Filed 9–17–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Inner Ear: Physiology and Genetics ZRG1 IFCN–A (93) M.
Date: October 4, 2004.
Time: 1 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)
Contact Person: Christine L. Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892. (301) 435–1713. *melchioc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Emphasis Panel, Signaling Pathway in Prostate Cancer.
Date: October 5, 2004.
Time: 3 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)
Contact Person: Angela Y. Ng, PhD, MBA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, (for courier delivery, use MD 20817), Bethesda, MD 20892. (301) 435–1715. *nga@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Neutrotransporters, Receptors, and Calcium Signaling Study Section.
Date: October 7–8, 2004.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Peter B. Guthrie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7850, Bethesda, MD 20892. (301) 435–1239. *guthriep@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Mitrochondria and Neurodegeneration.
Date: October 13, 2004.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Radisson Barcello, 2121 P Street, NW., Washington, DC 20037.
Contact Person: Carole L. Jeisema, PhD, Chief and Scientific Review Administrator, MDCN Scientific Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7850, Bethesda, MD 20892. (301) 435–1248. *jeisemac@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group, Adult Psychopathology and Disorders of Aging Study Section.
Date: October 18–19, 2004.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.
Contact Person: Mariela Shirley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892. (301) 435–1913. *shirleym@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group, Child Psychopathology and Developmental Disabilities Study Section.
Date: October 19–20, 2004.
Time: 8:30 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Karen Sirocco, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892. (301) 435–0676. *siroccok@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Neurotoxicology and Alcohol Study Section.
Date: October 20–22, 2004.
Time: 6 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Wyndham Washington, DC, 1400 M Street, NW., Washington, DC 20005.
Contact Person: Joseph G. Rudolph, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892. (301) 435–2212. *josephru@csr.nih.gov.*

Name of Committee: Hematology Integrated Review Group, Hematopoiesis Study Section.
Date: October 21–22, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Robert T. Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892. (301) 435–1195. *sur@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Virology—A Study Section.
Date: October 21–22, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Rouge, 1315 16th St., NW., Washington, DC 20036.
Contact Person: Joanna M. Pyper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892. (301) 435–1151. *pyperj@csr.nih.gov.*

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Molecular and Cellular Biophysics Study Section.
Date: October 21–22, 2004.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.
Contact Person: Nancy Lamontagne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892. (301) 435–1726. *lamontan@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 DEV–1 01Q: Development-1: Quorum.
Date: October 21–22, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The River Inn, 924 25th Street, Washington, DC 20037.
Contact Person: Sherry L. Dupere, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7843, Bethesda, MD 20892. (301) 435–1021. *duperes@csr.nih.gov.*

Name of Committee: Cell Development and Function Integrated Review Group, Biology and Diseases of the Posterior Eye Study Section.
Date: October 21–22, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Michael H. Chaitin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892. (301) 435–0910. *chaitinm@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Molecular Genetics A Study Section.
Date: October 21–22, 2004.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Michael M. Sveda, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892. (301) 435–3565. *svedam@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Drug Discovery and Mechanisms of Anticrobial Resistance.
Date: October 21–22, 2004.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Tera Bounds, PhD, Scientific Review Administrator, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 3015–D, MSC 7808, Bethesda, MD 20892. (301) 435–2306. *boundst@csr.nih.gov.*

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Biophysical Chemistry Study Section.
Date: October 21–22, 2004.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.
Contact Person: Arnold Revzin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7824, Bethesda, MD 20892. (301) 435–1153. *revzina@csr.nih.gov.*

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Physical Biochemistry Study Section.
Date: October 21–22, 2004.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Gopa Rakhit, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892. (301) 435–1721. *rakhitg@csr.nih.gov.*

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Bio-Organic and Natural Products Chemistry Study Section.
Date: October 21–22, 2004.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Mike Radtke, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892. (301) 435–1728. *radtkem@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Nursing Science: Children and Families Study Section.
Date: October 21–22, 2004.
Time: 8:30 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.
Contact Person: Karin F. Helmers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892. (301) 435–1017. *helmersk@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group, Cognition and Perception Study Section.
Date: October 21–22, 2004.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Radisson Barcello, 2121 P Street, NW., Washington, DC 20037.
Contact Person: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180 MSC 7848, Bethesda, MD 20892. *wiggsc@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Neurogenesis and Cell Fate Study Section.
Date: October 21–22, 2004.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Courtyard San Diego Central, 8651 Spectrum Center Blvd., San Diego, CA 92123.
Contact Person: Lawrence Baizer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7850, Bethesda, MD 20892. (301) 435–1257. *baizerl@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Epidemiology of Clinical Disorders and Aging Study Section.
Date: October 21–22, 2004.
Time: 8:30 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Mary Ann Guadagno, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7770, Bethesda, MD 20892. (301) 435–8011. *guadagma@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group, Cellular and Molecular Immunology—B.
Date: October 21–22, 2004.
Time: 8:30 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Betty Hayden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892. (301) 435–1223. *haydenb@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Psychosocial Development, Risk and Prevention Study Section.
Date: October 21–22, 2004.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892. (301) 435–0912. *levinv@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Psychosocial Risk and Disease Prevention Study Section.
Date: October 21–22, 2004.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.
Contact Person: Deborah L. Young-Hyman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7808, Bethesda, MD 20892. (301) 451–8008. *younghyd@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Bacterial Pathogenesis Study Section.
Date: October 21–22, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Melody Mills, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3204, MSC 7808, Bethesda, MD 20892. (301) 435–0903. *millsm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Community Influences on Health Behavior.

Date: October 21–22, 2004.

Time: 9 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Terrace Hotel, 1515 Rhode Island Ave., NW., Washington, DC 20005.

Contact Person: Ellen K. Schwartz, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892. (301) 435–0681. *schwarte@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Gene Therapy and Inborn Errors Study Section.

Date: October 21–22, 2004.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Barbara Whitmarsh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892. (301) 435–4511. *whitmarshb@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Biophysics of Synapses, Channels, and Transporters Study Section.

Date: October 22–23, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson La Jolla, 3299 Holiday Court, La Jolla, CA 97037.

Contact Person: Michael A. Lang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892. (301) 435–1265. *langm@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.946–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 14, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–21104 Filed 9–17–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cardiovascular Differentiation and Development.

Date: October 5–6, 2004.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Larry Pinkus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214, *pinkusl@csr.nih.gov*.

Name of Committee: Renal and Urological Studies Integrated Review Group, Urologic and Kidney Development and Genitourinary Diseases Study Section.

Date: October 11, 2004.

Time: 8:30 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: M. Chris Langub, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7814, Bethesda, MD 20892, (301) 496–8551, *langubm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Urologic and Kidney Development Small Business.

Date: October 12, 2004.

Time: 9 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: M. Chris Langub, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7814, Bethesda, MD 20892, (301) 496–8551, *langubm@csr.nih.gov*.

Name of Committee: Biology of Development and Aging Integrated Review Group, International and Cooperative Projects 1 Study Section.

Date: October 14–15, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Sandy Warren, DMD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5134, MSC 7843, Bethesda, MD 20892, (301) 435–1019, *warrens@csr.nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Molecular Genetics B Study Section.

Date: October 14–15, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Richard A. Currie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, (301) 435–1219, *currieri@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Virus-Host Interactions.

Date: October 15, 2004.

Time: 9:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Joanna M. Pyper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, (301) 435–1151, *pyperj@csr.nih.gov*.

Name of Committee: Cardiovascular Sciences Integrated Review Group, Myocardial Ischemia and Metabolism Study Section.

Date: October 18–19, 2004.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Joyce C. Gibson, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, (301) 435–4522, *gibsonj@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Cancer Etiology Study Section.

Date: October 18–20, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Victor A. Fung, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6178,

MSC 7804, Bethesda, MD 20892, (301) 435–3504, *fungv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SBIB Q 02M: Member Conflict: Small Business Bioengineering and Physiology.
Date: October 18, 2004.
Time: 1 p.m. to 2 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: Guo Feng Xu, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7854, Bethesda, MD 20892, (301) 435–1032, *xuguofen@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Digestive Diseases SBIRs.
Date: October 21, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Gopal C. Sharma, DVM, MS, PhD, Diplomate Aemrican Board of Toxicology, Center for Scientific Review, National Institutes of Health, 6701 Rocklege Drive, Room 2184, MSC 7818, Bethesda, MD 20892, (301) 435–1783, *sharmag@scr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, RIBT Member Conflict.
Date: October 21, 2004.
Time: 12 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: George M. Barnas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0696, *barnasg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowship Applications: Gastrointestinal, Renal, and Bone Pathophysiology.
Date: October 25, 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: Gopal C. Sharma, DVM, MS, PhD, Diplomate American Board of Toxicology, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2184, MSC 7818, Bethesda, MD 20892, (301) 435–1783, *sharmag@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Computational Biophysics.
Date: October 25, 2004.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: St. Gregory Luxury Hotels and Suites, 2033 M Street, NW., Washington, DC 20036.
Contact Person: George W. Chacko, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7849, Bethesda, MD 20892, (301) 435–1220, *chackoge@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Radiation Therapeutics and Biology Study Section.
Date: October 25–26, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Bo Hong, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, (301) 435–5879, *hongb@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group, Motor Function, Speech and Rehabilitation Study Section.
Date: October 25, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Watergate Hotel, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Weijia Ni, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848 (for overnight mail use room # and 20817 zip), Bethesda, MD 20892, (301) 435–1507, *niw@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Cellular, Molecular and Integrative Reproduction Study Section.
Date: October 25–26, 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: Dennis Leszczynski, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, (301) 435–1044, *leszczyd@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Tumor Microenvironment Study Section.
Date: October 25–26, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.
Contact Person: Enu Ah Cho, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 435–4467, *choe@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, SBTS 10: Small Business Cardiovascular Devices.
Date: October 25–26, 2004.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Roberto J. Matus, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892, (301) 435–2204, *matusr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biodata Management and Analysis.
Date: October 25–26, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select, 480 King Street, Alexandria, VA 22314.
Contact Person: Marc Rigas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7826, Bethesda, MD 20892, (301) 402–1074, *rigasm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business Grant Applications: Immunology.
Date: October 25–26, 2004.
Time: 8:30 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.
Contact Person: Stephen M. Nigida, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, 301–432–1222, *nigidas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflicts: CIGP, GCMB, GMPB.
Date: October 25, 2004.
Time: 8:30 a.m. to 1 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: Patricia Greenwel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2174, MSC 7818, Bethesda, MD 20892, 301–435–1169, *greenwep@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, SBIB 12: Small Business Medical Imaging: Ultrasound.
Date: October 25, 2004.
Time: 1 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Hector Lopez, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, 301–435–2395, *lopezh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SBIB F 02M: Member Conflict: Biomedical Imaging and Imaging Technology.

Date: October 25, 2004.

Time: 1 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Robert J. Nordstrom, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, 301–435–1175, *nordstrr@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 14, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–21109 Filed 9–17–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice if hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, September 28, 2004, 1 p.m. to September 28, 2004, 2 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on September 9, 2004, 69 FR 54694–54696.

The meeting will be held September 30, 2004. The meeting time and location remain the same. The meeting is closed to the public.

Dated: September 14, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–21118 Filed 9–17–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Public Health Service; Notice of Listing of Members of the National Institutes of Health's Senior Executive Service Performance Review Board (PRB)

The National Institutes of Health (NIH) announces the persons who will serve on the NIH's Senior Executive Service Performance Review Board. This action is being taken in accordance with Title 5, U.S.C., Section 4314(c)(4), which requires that members of performance review boards be appointed in a manner to ensure consistency, stability, and objectivity in performance appraisals, and requires that notice of the appointment of an individual to serve as a member be published in the **Federal Register**.

The following persons will serve on the NIH Performance Review Board, which oversees the evaluation of performance appraisals of NIH Senior Executive Service (SES) members:

Ms. Colleen Barros (Chair)
Dr. Norka Ruiz Bravo
Dr. Thomas Gallagher
Dr. Michael Gottesman
Dr. Barry Hoffer
Dr. Sharon Hrynkow
Dr. Raynard Kington
Dr. Marcelle Morrison-Bogorad
Dr. Audrey Penn
Ms. Martha Pine
Mr. Marc Smolonsky
Dr. Brent Stanfield
Mr. Frederick Walker

For further information about the NIH Performance Review Board, contact the Office of Human Resources, Workforce Relations Division, National Institutes of Health, Building 31, Room B3C07, Bethesda, Maryland 20892, telephone (301) 496–1443 (not a toll-free number).

Dated: September 14, 2004.

Elias A. Zerhouni,

Director, National Institutes of Health.

[FR Doc. 04–21121 Filed 9–17–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Florida; Amendment No. 7 to Notice of a Major Disaster Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA–1539–DR), dated August 13, 2004, and related determinations.

EFFECTIVE DATE: August 30, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective August 30, 2004.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program-Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–21033 Filed 9–17–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1545–DR]

Florida; Amendment No. 2 to Notice of a Major Disaster Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1545–DR), dated September 4, 2004, and related determinations.

EFFECTIVE DATE: September 7, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 4, 2004:

Alachua, Clay, Duval, Flagler, Hendry, Putnam, Seminole, St. Johns, and Volusia Counties for Individual Assistance (already designated for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program and direct Federal assistance at 100 percent Federal funding of the total eligible costs for the first 72 hours.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–21036 Filed 9–17–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1545–DR]

Florida; Amendment No. 3 to Notice of a Major Disaster Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1545–DR), dated September 4, 2004, and related determinations.

EFFECTIVE DATE: September 9, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 4, 2004:

Charlotte, Columbia, DeSoto, Dixie, Gilchrist, Hardee, Hillsborough, Levy, and Marion for Individual Assistance (already designated for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program and direct Federal assistance at 100 percent Federal funding of the total eligible costs for the first 72 hours.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program-Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–21037 Filed 9–17–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1545–DR]

Florida; Amendment No. 4 to Notice of a Major Disaster Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1545–DR), dated September 4, 2004, and related determinations.

EFFECTIVE DATE: September 10, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 4, 2004:

Baker, Bradford, Lee, Nassau, Pinellas, and Union Counties for Individual Assistance (already designated for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program and direct Federal assistance at 100 percent Federal funding of the total eligible costs for the first 72 hours.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program-Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–21038 Filed 9–17–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1546–DR]

North Carolina; Major Disaster and Related Determinations

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

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–1546–DR), dated September 10, 2004, and related determinations.

EFFECTIVE DATE: September 10, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 10, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of North Carolina, resulting from Tropical Storm Frances beginning on September 7, 2004, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of North Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program in the designated areas, and Hazard Mitigation statewide, and any

other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments. Direct Federal assistance is authorized.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. For the first 72 hours, you are authorized to fund assistance for debris removal and emergency protective measures at 100 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Justin DeMello, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of North Carolina to have been affected adversely by this declared major disaster:

The counties of Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Jackson, Madison, McDowell, Mitchell, Polk, Rutherford, Transylvania, Watauga, and Yancey for Individual Assistance.

The counties of Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Jackson, Madison, McDowell, Mitchell, Polk, Rutherford, Transylvania, Watauga, and Yancey for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program at 100 percent Federal funding of the total eligible costs for the first 72 hours. Direct Federal assistance is authorized.

All counties within the State of North Carolina are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program-Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–21039 Filed 9–17–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1541–DR]

Northern Mariana Islands; Amendment No. 3 to Notice of a Major Disaster Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of the Northern Mariana Islands (FEMA–1541–DR), dated August 26, 2004, and related determinations.

EFFECTIVE DATE: September 7, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Michael Karl, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of William Lokey as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program-Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–21034 Filed 9–17–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1544–DR]

Virginia; Amendment No. 2 to Notice of a Major Disaster Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Virginia (FEMA–1544–DR), dated September 3, 2004, and related determinations.

EFFECTIVE DATE: September 8, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective September 8, 2004.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program-Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–21035 Filed 9–17–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–060–1320–EL; WYW151134]

Notice of Availability of the Record of Decision for the South Powder River Basin Coal Final Environmental Impact Statement, West Roundup Lease by Application Tract, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the South Powder River Basin Coal Final Environmental Impact Statement (FEIS); West Roundup Lease by Application (LBA) Tract.

ADDRESSES: The document will be available electronically on the following Web site: *http://www.wy.blm.gov/.* Copies of the ROD are available for public inspection at the following BLM office locations:

- Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming.
- Bureau of Land Management, Casper Field Office, 2987 Prospector Drive, Casper, Wyoming.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Janssen, Wyoming Coal Coordinator, (307) 775–6206 or Ms. Mavis Love, Land Law Examiner, (307) 775–6258. Both Mr. Janssen's and Ms. Love's offices are located at the BLM Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009.

SUPPLEMENTARY INFORMATION: As stated in the FEIS, a ROD will be issued for each of the five Federal coal tracts considered for leasing in the South Powder River Coal FEIS. The ROD covered by this NOA is for coal tract West Roundup (WYW151134) and addresses leasing an estimated 319.4 million tons of in-place Federal coal administered by the BLM Casper Field Office underlying approximately 1,789.66 acres of private surface and 1,022.85 acres of Federal surface land in Campbell County, Wyoming. The ROD approves Alternative 3 as the selected alternative. A competitive lease sale will be announced in the **Federal Register** at a later date.

Because the Assistant Secretary of the Interior, Lands and Minerals Management, has concurred in this decision, it is not subject to appeal to the Interior Board of Land Appeals as provided in 43 CFR Part 4. This decision is the final action of the Department of the Interior.

Robert A. Bennett,

State Director.

[FR Doc. 04–21177 Filed 9–17–04; 11:11 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1420–BJ–TRST] ES–052435, Group No. 160, Minnesota

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plat of survey; Minnesota.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States, Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Indian Affairs.

The lands we surveyed are:

Fifth Principal Meridian, Minnesota

T. 142 N., R. 40 W.

The plat of survey represents the dependent resurvey of a portion of the north and south boundaries, a portion of the subdivisional lines, a corrective dependent resurvey of a portion of a subdivision line, and the dependent resurvey and survey of the subdivision of sections 1—3, 11—14, 19—21, 23—25, 33, and 36, Township 142 North, Range 40 West, Fifth Principal Meridian, in the state of Minnesota, and was accepted September 7, 2004. We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information. If BLM receives a protest against this survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: September 7, 2004.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 04–21048 Filed 9–17–04; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1420–BJ–TRST; ES–052436, Group No. 187, Minnesota]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior

ACTION: Notice of Filing of Plat of Survey; Minnesota.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States, Springfield, Virginia, 30 calender days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Indian Affairs.

The lands we surveyed are:

Fifth Principal Meridian, Minnesota

T. 142 N., R. 38 W.

The plat of survey represents the dependent resurvey of a portion of the north boundary, and a portion of the subdivisional lines; and the survey of the subdivision of section 6, Township 142 North, Range 38 West, of the 5th Principal Meridian, in the state of Minnesota, and was accepted September 9, 2004. We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: September 9, 2004.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 04–21049 Filed 9–17–04; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0106).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 253, ''Oil Spill Financial Responsibility for Offshore Facilities.'' This notice also provides the public a second opportunity to comment on the paperwork burden on these regulatory requirements.

DATES: Submit written comments by October 20, 2004.

ADDRESSES: You may submit comments either by fax (202) 395–6566 or email (*OIRA_DOCKET@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0106). Mail or hand carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to email your comments to MMS, the address is: *rules.comments@mms.gov*. Reference Information Collection 1010–0106 in your subject line and mark your message for return receipt. Include your name and return address in your message text.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Rules Processing Team, (703) 787–1600. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulations and the forms that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 253, Oil Spill Financial Responsibility for Offshore Facilities.

OMB Control Number: 1010–0106.

Abstract: Title I of the Oil Pollution Act of 1990 (OPA) (33 U.S.C. 2701 *et seq.*), as amended by the Coast Guard Authorization Act of 1996 (P.L. 104–324), provides at section 1016 that oil spill financial responsibility (OSFR) for offshore facilities be established and maintained according to methods determined acceptable to the President. Section 1016 of OPA supersedes the offshore facility OSFR provisions of the Outer Continental Shelf Lands Act Amendments of 1978. These authorities and responsibilities are among those delegated to MMS under which we issue regulations governing oil and gas and sulphur operations in the OCS. The information collection discussed in this notice that we are submitting to OMB addresses the regulations at 30 CFR Part 253, Oil Spill Financial Responsibility for Offshore Facilities, forms MMS–1016 through MMS–1022, and any associated supplementary notices to lessees and operators intended to provide clarification, description, or explanation of these regulations.

The MMS uses the information collected under 30 CFR part 253 to verify compliance with section 1016 of OPA. The information is necessary to confirm that applicants can pay for cleanup and damages from oil-spill discharges from covered offshore facilities (COFs). Routinely, the information will be used: (a) To establish eligibility of applicants for an OSFR Certification; and (b) as a reference source for clean-up and damage claims associated with oil-spill discharges from COFs; the names, addresses, and telephone numbers of owners, operators, and guarantors; designated U.S. agents for service of process; and persons to contact. To collect most of the information, MMS developed standard forms. The forms and their purposes are:

Form MMS–1016, Designated Applicant Information Certification: The designated applicant uses this form to provide identifying information (company legal name, address, contact name and title, telephone numbers) and to summarize the OSFR evidence. This form is required for each new OSFR Certification application.

Form MMS–1017, Designation of Applicant: When there is more than one responsible party for a COF, they must select a designated applicant. Each responsible party, as defined in the regulations, must use this form to notify MMS of the designated applicant. This form is also used to designate the U.S. agent for service of process for the responsible party(ies) should claims from an oil-spill discharge exceed the amount evidenced by the designated applicant; identifies and provides pertinent information about the responsible party(ies); and lists the covered offshore facilities for which the designated applicant is responsible for OSFR certification. The form identifies each COF by State or OCS region; lease, permit, right of use and easement, or pipeline number; aliquot section; area name; and block number. This form must be submitted with each new OSFRC application in which there is at least one responsible party who is not the designated applicant for a COF.

Form MMS–1018, Self-insurance or Indemnity Information: This form is used if the designated applicant is self-insuring or using an indemnity as OSFR evidence. As appropriate, either the designated applicant or the designated applicant's indemnitor completes the form to indicate the amount of OSFR coverage and effective and expiration dates. The form also provides pertinent information about the self-insurer or indemnitor and is used to designate a U.S. agent for service of process for claims up to the evidenced amount. This form must be submitted each time new evidence of OSFR is submitted using either self-insurance or an indemnity.

Form MMS–1019, Insurance Certificate: The designated applicant (representing himself as a direct purchaser of insurance) or his insurance agent or broker and the named insurers complete this form to provide OSFR evidence using insurance. The number of forms to be submitted will depend upon the amount of OSFR required and the number of layers of insurance to evidence the total amount of OSFR required. One form is required for each layer of insurance. The form provides pertinent information about the insurer(s) and designates a U.S. agent for service of process. This form must be submitted at the beginning of the term of the insurance coverage for the designated applicant's COFs or at the time COFs are added, with the scheduled option selected, to OSFR coverage.

Form MMS–1020, Surety Bond: Each bonding company that issues a surety bond for the designated applicant must complete this form indicating the amount of surety and effective dates. The form provides pertinent information about the bonding company and designates a U.S. agent for service of process for the amount evidenced by the surety bond. This form must be submitted at the beginning of the term of the surety bond for the named designated applicant.

Form MMS–1021, Covered Offshore Facilities: The designated applicant submits this form to identify the COFs to which the OSFR evidence applies. The form identifies each COF by State or OCS region; lease, permit, right of use and easement, or pipeline number; aliquot section; area name; block number; and potential worst case oil-

spill discharge. This form is required to be submitted with each new OSFR Certification application that includes COFs.

Form MMS–1022, Covered Offshore Facility Changes: During the term of the issued OSFR Certification, the designated applicant submits changes to the current COF listings on this form, including changes to the worst case oil-spill discharge for a COF. This form must be submitted when identified changes occur during the term of an OSFR Certification.

Responses are mandatory. No questions of a ''sensitive'' nature are asked. Respondents are not required to submit confidential or proprietary information. All public requests for information about an applicant's OSFR Certification will be processed according to the Freedom of Information Act (5 U.S.C. 552) procedures.

Frequency: The frequency of submission will vary, but most will respond at least once per year.

Estimated Number and Description of Respondents: We estimate there are approximately 600 respondents. Some will be holders of leases, permits, and rights of use and easement in the OCS and in State coastal waters who will appoint approximately 200 designated applicants. Other respondents will be the designated applicants' insurance agents and brokers, bonding companies, and indemnitors. There are no recordkeeping requirements associated with this collection.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: The following chart details the components of the hour burden for the information collection requirements in Part 253—an estimated annual total of 19,299 burden hours. In estimating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 253	Reporting requirement	Hour burden	Average number annual responses	Annual burden hours
Various sections	The burdens for all general references to submitting evidence of OSFR are covered under the forms below.			0
Subpart B: 11(a)(1), Subpart D: 40; 41.	Form MMS–1016—Designated Applicant Information Certification	1	200	200
Subpart B: 11(a)(1), Subpart D: 40; 41.	Form MMS–1017—Designation of Applicant	9	600	5,400
Subpart C: 21; 22; 23; 24; 26; 27; 30, Subpart D: 40; 41; 43.	Form MMS–1018—Self-Insurance or Indemnity Information	1	100	100
Subpart C: 29, Subpart D: 40; 41; 43.	Form MMS–1019—Insurance Certificate	120	100	12,000
Subpart C: 31, Subpart D: 40; 41; 43.	Form MMS–1020—Surety Bond	24	2	48
Subpart D: 40; 41	Form MMS–1021—Covered Offshore Facilities	3	300	900
Subpart D: 40; 41; 42	Form MMS–1022—Covered Offshore Facility Changes	1	500	500
Subpart B: 12	Request for determination of OSFR applicability	2	5	10
Subpart B: 15	Notify MMS of change in ability to comply	1	1	1
Subpart B: 15(f)	Provide claimant written explanation of denial	1	15	15
Subpart C: 32	Proposal for alternative method to evidence OSFR (anticipate no proposals, but the regs provide the opportunity).	120	1	120
Subpart F	Claims: MMS will not be involved in the claims process. Assessment of burden for claims against the Oil Spill Liability Trust Fund (30 CFR parts 135, 136, 137) should be the responsibility of the U.S. Coast Guard			0
Subpart F: 60	Claimant request to determine whether a guarantor may be liable for a claim.	2	1	2
253.1–62	General departure and alternative compliance requests not specifically covered elsewhere in 30 CFR 253.	3	1	3
Total Burden			1,826	19,299

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no paperwork ''non-hour cost'' burdens associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency '' * * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on March 8, 2004, we published a **Federal Register** notice (69 FR 10744) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 253.5 provides the OMB control number for the information collection requirements imposed by the 30 CFR 253 regulations and forms. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by October 20, 2004.

Public Comment Policy: MMS's practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. MMS will honor the request to the extent allowable by the law; however, anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz, (202) 208–7744.

Dated: June 4, 2004.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 04–21070 Filed 9–17–04; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of revision and extension of an information collection (1010–0114).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR 250, Subpart A, General, and associated forms and Notices to Lessees and Operators (NTLs). This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by October 20, 2004.

ADDRESSES: You may submit comments either by fax (202) 395–6566 or e-mail (*OIRA_DOCKET@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0114). Mail or hand carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to e-mail your comments to MMS, the address is: *rules.comments@mms.gov.* Reference Information Collection 1010–0114 in your subject line and mark your message for return receipt. Include your name and return address in your message text.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Rules Processing Team, (703) 787–1600. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulations and the forms that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart A, General.

OMB Control Number: 1010–0114.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner which is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. Section 1332(6) requires that ''operations in the [O]uter Continental Shelf should be conducted in a safe manner by well trained personnel using technology, precautions, and other techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstructions to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property or endanger life or health.''

Federal policy and statutes require us to recover the cost of services that confer special benefits to identifiable non-Federal recipients. Section 250.165 requires a State lessee to pay a fee when applying for a right-of-use and easement on the OCS. The Independent Offices Appropriation Act (31 U.S.C. 9701), OMB Circular A–25, and the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996) authorize agencies to collect these fees to reimburse us for the cost to process applications or assessments. This fee is the same as that required for filing pipeline right-of-way applications as specified in § 250.1010(a).

This notice concerns the reporting and recordkeeping elements of the 30 CFR 250, Subpart A, General regulations and related forms and NTLs that clarify and provide additional guidance on some aspects of the regulations. Responses are mandatory. No questions of a ''sensitive'' nature are asked. MMS will protect proprietary information according to 30 CFR 250.196 (Data and information to be made available to the public), 30 CFR part 252 (OCS Oil and Gas Information Program), and the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2). MMS OCS Regions use the information collected under Subpart A to ensure that operations on the OCS are carried out in a safe and pollution-free manner, do not interfere with the rights of other users on the OCS, and balance the development of OCS resources with the protection of the environment.

Frequency: The frequency is ''on occasion'' for most of the requirements in Subpart A. The Form MMS–132 is submitted daily during the period of emergency.

Estimated Number and Description of Respondents: Approximately 1 State and 190 Federal OCS oil and gas or sulphur lessees.

Estimated Reporting and Recordkeeping ''Hour'' Burden: The estimated annual ''hour'' burden for this information collection is a total of 22,288 burden hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burdens.

Citation 30 CFR 250 Subpart A and related forms/NTLs	Reporting or recordkeeping requirement	Hour burden	Average number annual responses	Annual burden hours
104; Form MMS–1832.	Appeal orders or decisions; appeal INCs	Burden included with 30 CFR 290 (1010–0221)		0
109(a); 110	Submit welding, burning, and hot tapping plans	2	164 plans	328
115; 116	Request determination of well producibility; submit data and information; notify MMS of test.	3	125 responses	375
118; 119; 121; 124	Apply for injection or subsurface storage of gas	10	10 applications	100
130–133; Form MMS–1832.	Submit "green" response copy of Form MMS–1832 indicating date violations (INCs) corrected.	2	1,245 forms (3230 actual INCs).	2,490
	Request reconsideration from issuance of an INC	1	179 requests	179
	Request waiver of 14-day response time	½	350 waivers	175
	Notify MMS before returning to operations if shut-in	¼	1,754 notices	438
133	Request reimbursement for food, quarters, and transportation provided to MMS representatives (OCS Lands Act specifies reimbursement; no requests received in many years; minimal burden).	2	12 requests	24
135 MMS internal process.	Submit PIP under MMS implementing procedures for enforcement actions.	40	4 plans	160
140	Request various oral approvals not specifically covered elsewhere in regulatory requirements.	½	260 requests	130
141	Request approval to use new or alternative procedures, including BAST not specifically covered elsewhere in regulatory requirements.	20	30 requests	600
142	Request approval of departure from operating requirements not specifically covered elsewhere in regulatory requirements.	2	66 requests	132
143; 144; 145; Form MMS–1123.	Submit designation of operator and report change of address or notice of termination; submit designation of local agent.	¼	1,420 forms	355
150; 151; 152; 154(a)	Name and identify facilities, etc., with signs	2	123 new/replacement signs.	246
150; 154(b)	Name and identify wells with signs	1	1,008 new wells	1,008
160; 161	OCS lessees: Apply for new or modified right-of-use and easement to construct and maintain off-lease platforms, artificial islands, and installations and other devices; including notifications.	5	50 applications	250
165	State lessees: Apply for new or modified right-of-use easement to construct and maintain off-lease platforms, artificial islands, and installations and other devices.	5	1 application	5
166	State lessees: Furnish surety bond	Burden included with 30 CFR 256 (1010–0006)		0
168; 170; 171; 172; 174; 175; 177; 180(b), (d).	Request suspension of operations or production; submit schedule of work leading to commencement*.	10	250 requests	2,500
	Submit progress reports on SOO or SOP as condition of approval*.	2	1,070 reports	2,140
177(a)	Conduct site-specific study; submit results. No instances requiring this study in several years—could be necessary if a situation occurred such as severe damage to a platform or structure caused by a hurricane or a vessel collision.	100	1 study/report	100
177(b), (c), (d); 182; 183; 185; 194.	Various references to submitting new, revised, or modified exploration plan, development/production plan, or development operations coordination document, and related surveys/reports.	Burden included with 30 CFR 250, Subpart B (1010–0049)		0
180(a), (f), (g), (h), (i), (j).	Notify and submit report on various leaseholding operations and lease production activities.	1	1,500 reports or notices.	1,500
180(a), (b), (c)	When requested, submit production data to demonstrate production in paying quantities to maintain lease beyond primary term.	6	60 submissions	360
180(e)	Request more than 180 days to resume operations	3	5 requests	15
181(d); 182(b), 183(b)(2).	Request termination of suspension and cancellation of lease (no requests in recent years for termination/cancellation of a lease; minimal burden).	20	2 requests	40
184	Request compensation for lease cancellation mandated by the OCS Lands Act (no qualified lease cancellations in many years; minimal burden compared to benefit).	50	1 request	50
191	Report accidents, deaths, serious injuries, fires, explosions and blowouts.	7	182 reports	1,274
191(a)	Reports spills of oil	Burden included with 30 CFR 254 (1010–0091)		0
192; Form MMS–132	Daily report of evacuation statistics for natural occurrence/hurricane (Form MMS–132 in the GOMR) when circumstances warrant.	1	620 reports or forms	620
193	Report apparent violations or noncompliance	1½	2 reports	3

Citation 30 CFR 250 Subpart A and related forms/NTLs	Reporting or recordkeeping requirement	Hour burden	Average number annual responses	Annual burden hours
194 NTL exception requests.	Request departures from conducting archaeological resources surveys and/or submitting reports in GOMR.	1	95 requests	95
194(c)	Report archaeological discoveries (only one instance in many years; minimal burden).	10	2 reports	20
195	Submit data/information for post-lease G&G activity and request reimbursement.	Burden included with 30 CFR 251 (1010–0048)		0
101–199	General departure or alternative compliance requests not specifically covered elsewhere in Subpart A.	2	22 requests	44
Subtotal—Reporting.			10,613	15,756
108(e)	Retain records of design and construction for life of crane, including installation records for any anti-two block safety devices; all inspection, testing, and maintenance for at least 4 years; crane operator and all rigger personnel qualifications for at least 4 years.	2	2,678 recordkeepers	5,356
109(b)	Retain welding, burning, and hot tapping plan and approval for the life of the facility.	½	2,022 operations	1,011
132(b)(3)	Make available all records related to inspections not specifically covered elsewhere in regulatory requirements.	1	165 lessees/operators.	165
Subtotal—Recordkeeping.			4,865	6,532
Total hour burden.			15,478	22,288

* Due to the California v. Norton litigation involving 36 suspended leases, operators in the Pacific Region did not respond to our inquiry because of the sensitivity of the matter.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: The application filing fee required in § 250.165 is the only paperwork cost burden identified for the Subpart A regulations. This filing fee is currently set at $2,350.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on May 21, 2004, we published a **Federal Register** notice (69 FR 29324) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB control number for the information collection requirements imposed by the 30 CFR 250 regulations and forms. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by October 20, 2004.

Public Comment Policy: MMS's practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. MMS will honor the request to the extent allowable by the law; however, anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz, (202) 208–7744.

Dated: July 21, 2004.

William Hauser,

Acting Chief, Engineering and Operations Division.

[FR Doc. 04–21071 Filed 9–17–04; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Colorado River Basin Salinity Control Advisory Council

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Colorado River Basin Salinity Control Advisory Council (Council) was established by the Colorado River Basin Salinity Control Act of 1974 (Pub. L. 93–320) (Act) to receive reports and advise Federal agencies on implementing the Act. In

accordance with the Federal Advisory Committee Act, the Bureau of Reclamation announces that the Council will meet as detailed below.

Dates and Location: The Council will conduct its annual meeting at the following time and location:

Wednesday, October 20, 2004—Yuma, Arizona—The meeting will be held in the Clarion Suites located at 2600 South 4th Avenue. The meeting will begin at 9 a.m., recess at approximately 3 p.m., and reconvene briefly the following day at about 12 noon.

ADDRESSES: The meeting of the Council is open to the public. Any member of the public may file written statements with the Council before, during, or up to 30 days after the meeting, in person or by mail. To the extent that time permits, the Council chairman may allow public presentation of oral comments at the meeting. To allow full consideration of information by Council members, written notice must be provided to Kib Jacobson, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1147; telephone (801) 524–3753; faxogram (801) 524–5499; e-mail at: *kjacobson@uc.usbr.gov* at least FIVE (5) days prior to the meeting. Any written comments received prior to the meeting will be provided to Council members at the meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting will be to discuss the accomplishments of Federal agencies and make recommendations on future activities to control salinity. Council members will be briefed on the status of salinity control activities and receive input for drafting the Council's annual report. The Bureau of Reclamation, Bureau of Land Management, U.S. Fish and Wildlife Service, and United States Geological Survey of the Department of the Interior; the Natural Resources Conservation Service of the Department of Agriculture; and the Environmental Protection Agency will each present a progress report and a schedule of activities on salinity control in the Colorado River Basin. The Council will discuss salinity control activities and the contents of the reports.

It is the Bureau of Reclamation's practice to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that their home address be withheld from public disclosure, which will be honored to the full extent allowable by law. To have your name and/or address withheld, please state this prominently at the beginning of your comment. Submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

FOR FURTHER INFORMATION CONTACT: Kib Jacobson, telephone (801) 524–3753; faxogram (801) 524–5499; e-mail at: *kjacobson@uc.usbr.gov.*

Dated: August 23, 2004.

Richard Lasson,

Acting Regional Director—UC Region, Bureau of Reclamation.

[FR Doc. 04–20879 Filed 9–17–04; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: The United States International Trade Commission (USITC) has submitted a request for emergency processing to the Office of Management and Budget for review and clearance of a questionnaire, in accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The USITC has requested OMB approval of this submission by COB September 28, 2004.

PURPOSE OF INFORMATION COLLECTION: The form is for use by the Commission in connection with investigation No. 332–460, Foundry Products: Competitive Conditions in the U.S. Market, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). This investigation was requested by the House Committee on Ways and Means. The Commission expects to deliver the results of its investigation to the Committee by May 4, 2005.

SUMMARY OF PROPOSAL:

(1) *Number of forms submitted:* One.

(2) *Title of form:* Purchaser Questionnaire, Foundry Products.

(3) *Type of request:* New.

(4) *Frequency of use:* Single data gathering, scheduled for 2004.

(5) *Description of respondents:* U.S. firms which purchase foundry products.

(6) *Estimated number of respondents:* 500.

(7) *Estimated total number of hours to complete the forms:* 7,500.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

ADDITIONAL INFORMATION OR COMMENT: Copies of the forms and supporting documents may be obtained from Deborah McNay (Deputy Project Leader) (USITC, telephone no. (202) 205–3425), or Heather Sykes (USITC, telephone no. (202) 205–3436). Comments about the proposal should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102 (Docket Library), Washington, DC 20503, ATTENTION: Docket Librarian. All comments should be specific, indicating which part of the questionnaire is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TTD terminal (telephone no. (202) 205–1810). General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

By order of the Commission.

Issued: September 15, 2004.

Marilyn R. Abbott,

Secretary.

[FR Doc. 04–21142 Filed 9–17–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–04–024]

Government in the Sunshine Act Meeting; Cancellation of Commission Meeting

AGENCY: United States International Trade Commission.

ORIGINAL DATE: September 21, 2004.

ORIGINAL TIME: 2 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

In accordance with 19 CFR 201.35(d)(1), the Commission has determined to cancel the meeting which was scheduled for September 21, 2004 at 2 p.m. The meeting will be rescheduled at a later date. Earlier notification of this action was not possible.

Issued: September 16, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–21237 Filed 9–16–04; 4:06 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day emergency notice of information collection under review: Surveys for the Evaluation of the Child Development-Community Policing (CD–CP) Project.

The Department of Justice, Office of Justice Programs, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. Emergency OMB approval has been requested by September 28, 2004. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information and Regulation Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Comments are encouraged and will be accepted for 60 days until November 19, 2004.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Katherine Darke, (202) 616–7373, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW., Washington, DC 20531.

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:* New collection.

(2) *Title of the Form Collection:* Surveys for the Evaluation of the Child Development-Community Policing (CD–CP) Project.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Numbers: S1 (Police Officer Survey), S2 (Parent/Caregivers Survey), S3 (Child Survey). Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: State, Local, or Tribal Government. This project consists of three surveys. One survey will be administered to police officers, the second survey will be administered to parents/caregivers, and the third survey will be administered to children who participated in the CD–CP program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The response burden is estimated at 15 minutes per response for the Police Officer Survey, and 1 hour each for the Parents/Caregiver Survey and Child Survey. The police officers will be administered the survey one time. The parent/caregiver and child surveys will be administered two times; once when they are identified and enter into the program and then approximately 3–4 months after the initial survey.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are 913 estimated public burden hours associated with the CD–CP Information collection.

If additional information is required contact: Brenda E. Dyer, Department 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: September 14, 2004.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 04–21029 Filed 9–17–04; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

September 8, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or email: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Type of Review: Extension of a currently approved collection.

Title: American Time Use Survey.

OMB Number: 1220–0175.

Frequency: Monthly.

Type of Response: Reporting.

Affected Public: Individuals or households.

Number of Respondents: 13,920.

Number of Annual Responses: 13,920.

Estimated Time Per Response: 20 minutes.

Total Burden Hours: 4,640.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The data collected in the American Time Use Survey (ATUS) helps researchers determine how the population in the United States uses its time participating in such activities as paid work, child care, housework, volunteering, socializing, and traveling. ATUS has received wide interest from a variety of users including economist, sociologist, journalist, reporters, and businesspersons. The ATUS information is also expected to be of interest to government policy makers, educators, and lawyers as the survey information has numerous applications. To ensure the widest distribution, BLS will release annual and quarterly data to the public in the form of data tables. Microdata sets containing greater detail than the published tables will also be available, as will special analysis by BLS and outside analysis in the *Monthly Labor Review* (published by BLS) and other publications.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–21054 Filed 9–17–04; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

September 8, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Ira Mills on 202–693–4122 (this is not a toll-free number) or E-Mail: *mills.ira@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Extension of a currently approved collection.

Title: Application For Alien Employment Certification.

OMB Number: 1205–0015.

Frequency: On occasion.

Affected Public: Business or other for-profit; Individuals or households; Not-for-profit institutions: Farms; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 112,000.

Number of Annual Responses: 112,000.

Activity	Respondents	Hours per	Total hours
Permanent	100,000	2.8	280,000
H–2A	4,000	1	4,000
H–2B	8,000	1.4	11,200

Total Burden Hours: 295,200.

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The Form ETA 750, Part A, is utilized to collect information that permits the Department to meet federal responsibilities for administering two nonimmigrant programs: the H–2A and H–2B Temporary Labor Certification Programs. The H–2A temporary agricultural program establishes a means for agricultural employers who anticipate a shortage of domestic workers to bring nonimmigrant aliens to the U.S. to perform agricultural labor or services of a temporary or seasonal nature. The H–2B program establishes a means for employers to bring nonimmigrant aliens to the U.S. to perform temporary nonagricultural services or labor.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–21055 Filed 9–17–04; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under the Antarctic Conservation Act.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for operation of remote field camps during a skiing/climbing expedition in the Antarctic interior. The

application is submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 20, 2004. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene Kennedy at the above address or (703) 292–8030.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed Antarctic Waste Regulations, 45 CFR Part 671, that requires all U.S. citizens and entities to obtain a permit for the use of release of a designated pollutant in Antarctica, and for the release of waste in Antarctica.

The waste permit applications received are as follows:

Applicant	
Ralph Fedor, 2337 Granite View Road, Waite Park, MN 56387	Permit Application No. 2005 WM–003.

Activity for Which Permit Is Requested: The applicant is a member of the Peter 1st Ham Radio Expedition and makes this application for a Waste Management Permit for the use and release of designated pollutants. The applicant along with approximately 15 others will establish a temporary camp on Peter 1st Island using several Weather Haven shelters for sleeping, cooking and eating, and two small lab or work areas. The camp will be established for approximately 2.5 weeks, after which it will be removed. Propane tanks for cooking and 55 gallon drums of unleaded gas will be used to operate electric generators. These items will be secured and have tarps underneath to contain any possible spills. Daily inspections will be conducted to ensure items are secure. All human, paper, kitchen wastes will be removed from Antarctica. All items brought ashore will be returned to the ship for proper disposition.

Location: Peter I Island.

Dates: January 1, 2005 to February 28, 2005.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 04–21059 Filed 9–17–04; 8:45 am]

BILLING CODE 7555–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50355; File No. SR–Amex–2004–23]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2 and 3 to the Proposed Rule Change by the American Stock Exchange LLC Relating to Generic Listing Standards for Trust Certificate Securities Linked to a Portfolio of Investment Grade Securities

September 13, 2004.

I. Introduction

On April 19, 2004, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide generic listing standards for qualified trust certificate securities (''Trust Securities'') pursuant to Rule 19b–4(e) under the Act. On May 12, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.[3] Notice of the proposed rule change, as amended, was published for comment in the **Federal Register** on June 17, 2004.[4] The Commission received no comments regarding the proposal. On August 31, 2004, the Exchange filed Amendment No. 2 to the proposed rule change.[5] On September 9, 2004, the Exchange filed Amendment No. 3 to the proposed rule change.[6] This order approves the proposed rule change, as amended.

II. Description

Under Section 107A of the Company Guide, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[7] The Amex is now proposing to amend Section 107 to add Section 107E to provide additional criteria for certain trust certificate securities that serve as pass-through vehicles for a portfolio of investment-grade fixed income and/or floating rate securities.[8]

Below is the text of the proposed rule change. Proposed new language is italicized.

* * * * *

Section 107. Other Securities

The Exchange will consider listing any security not otherwise covered by the criteria of Sections 101 through 106, provided the issue is otherwise suited for auction market trading. Such issues

[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 Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 12, 2004. In Amendment No. 1, Amex made technical changes to its proposed rule change.

[4] *See* Securities Exchange Act Release No. 49840 (June 9, 2004), 69 FR 33958.

[5] *See* letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated August 30, 2004. In Amendment No. 2, Amex removed the words ''at the end of the term'' from Section 107E(a)(vii).

[6] *See* letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 9, 2004. In Amendment No. 3, Amex added the words ''including pursuant to unlisted trading privileges'' to Section 107E(a).

[7] *See* Securities Exchange Act Release No. 27753 (March 1, 1990); 55 FR 8626 (March 8, 1990) (order approving File No. SR–Amex–89–29).

[8] ''Investment grade'' is a current rating that is no lower than an S&P Corporation ''B'' rating or equivalent rating by another nationally recognized securities rating organization (''NRSRO'').

will be evaluated for listing against the following criteria:

A–C. No Change

D. Reserved

E. Trust Certificate Securities

(a) *Initial Listing. Trust certificate securities representing an ownership interest in a special purpose trust created pursuant to a trust agreement, the assets of which consists primarily of a basket or portfolio of up to thirty (30) investment-grade fixed income or floating rate securities will be considered for listing and trading, including pursuant to unlisted trading privileges, on the Exchange pursuant to Rule 19b–4(e) under the Securities Exchange Act of 1934, provided:*

i. *The trust certificates meet the requirements under the Securities Act of 1933 in connection with asset-backed securities.*

ii. The underlying portfolio securities consist solely of investment-grade corporate debt or debentures (the ''Underlying Bonds''), U.S. Department of the Treasury securities (''Treasury Securities'') and government-sponsored entity securities (the ''GSE Securities'').

iii. Each issuer of an Underlying Bond and GSE Security meets the criteria set forth above in Section 107A(a) under ''General Criteria.''

iv. The trust meets the criteria set forth above in Section 107A under ''General Criteria,'' except for the asset/equity tests of Section 107A(a).

v. Each Underlying Security will meet the Exchange's Bond and Debenture Listing Standards set forth in Section 104 of the Company Guide and be rated by a nationally recognized securities rating organization (an ''NRSRO'') that is no lower than an S&P Corporation ''B'' rating or equivalent rating by another NRSRO.

vi. Up to 15% of the underlying component securities at issuance may consist of Treasury Securities and GSE Securities.

vii. The trust certificates will provide for the repayment of the original principal investment amount.

viii. The trust certificates will provide for the pass-through of periodic payments of interest and principal of the underlying securities.

ix. The trust certificates have a minimum term of five years.

x. At least 75% of the component securities of the underlying portfolio must be from issuances of $100 million or more.

Prior to commencement of the trading of trust certificate securities admitted to listing under this section, the Exchange will evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to the membership providing guidance regarding member firm compliance responsibilities when handling transactions in such securities.

(b) Continued Listing. Trust certificate securities listed and traded under this section will be subject to the continued listing guidelines for bonds set forth in Section 1003(b)(iv). Under Section 1003(b)(iv), the Exchange will normally consider suspending or delisting a security if the aggregate market value or the principal amount of bonds publicly held is less than $400,000 or the issuer is not able to meet its obligations on the listed securities.

(c) Trust certificate securities traded in thousand dollar denominations or multiples thereof will be treated as a debt instrument and will be subject to the debt trading rules of the Exchange. Trust certificate securities traded in other than thousand dollar denominations or multiples thereof will be treated as an equity instrument and subject to the equity trading rules of the Exchange.

* * * * *

The Exchange's proposal to add new Section 107E to the Amex Company Guide is to provide generic listing standards to permit the listing and trading of qualified Trust Securities pursuant to Rule 19b–4(e) under the Act.[9]

A. Generic Listing Standards

Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to Section 19(b) of the Act, the self-regulatory organization's trading rules, procedures and listing standards for the product class that would include the new derivative securities product, and the self-regulatory organization has a surveillance program for the product class.[10] Hence, Amex is proposing generic listing standards in Section 107E of the Amex Guide, for this product class, under which it will be able to list and trade (including pursuant to unlisted trading privileges) Trust Securities without individual Commission approval of each product as a proposed rule change. Instead, Amex is proposing that within five (5) business days after commencement of trading the new derivative products that satisfy the requirements of Section 107E of the Amex Guide, Amex will file a Form 19b–4(e).[11] Amex represents that any securities it lists and/or trades pursuant to Section 107E will satisfy the standards set forth in Section 107E of the Amex Company Guide. In addition, the Exchange also represents that its surveillance procedures are adequate to properly monitor the trading of the Trust Securities.

In its filing the Exchange represented that adopting generic listing standards for Trust Securities should fulfill the objective of Rule 19b–4(e) by allowing those Trust Securities that satisfy the proposed generic listing standards to start trading, without the need for public notice and comment and Commission approval, thus potentially reducing the time frame for bringing Trust Securities to market and thereby reducing the burdens on issuers, other market participants and the Commission staff.

B. Trust Securities

Trust Securities represent an ownership interest in a special purpose trust created pursuant to a Trust.[12] The assets of such Trust may consist of a basket or portfolio of up to thirty (30) investment-grade corporate securities (''Underlying Bonds''), securities issued by the United States Department of the Treasury (''Treasury Securities''), and/or government-sponsored entity securities (''GSE Securities''). The issuance of Trust Securities will generally consist of a repackaging of the Underlying Corporate Bonds. Other qualifying securities of the underlying portfolio may also consist of Treasury Securities and/or GSE Securities;[13] however, such securities will be limited to up to 15% of the underlying portfolio at the time of issuance. The Trust is required to make distributions to holders of Trust Securities depending on the amount of distributions received by such Trust on the Underlying Securities. The principal amount invested is protected as the

[9] 17 CFR 19b–4(e). *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (''New Product Release'').

[10] *See* New Product Release.

[11] 17 CFR 249.820.

[12] A qualified Trust Security is required to meet the requirements for asset-backed securities as set forth in the Securities Act of 1933 (''Securities Act'').

[13] A GSE Security is a security that is issued by a government-sponsored entity such as Federal National Mortgage Association (''Fannie Mae''), Federal Home Loan Mortgage Corporation (''Freddie Mac''), Student Loan Marketing Association (''Sallie Mae''), the Federal Home Loan Banks and the Federal Farm Credit Banks. All GSE debt is sponsored but not guaranteed by the federal government, whereas government agencies such as Government National Mortgage Association (''Ginnie Mae'') are divisions of the U.S. government whose securities are backed by the full faith and credit of the U.S. government.

investor will receive back the initial amount he invested.

Due to the pass-through and passive nature of the Trust Securities, the Exchange will rely on the assets and stockholder equity of the issuers of the Underlying Bonds and GSE Securities to meet the requirement in Section 107A(a) of the Company Guide. For purposes of including Treasury Securities, the Exchange will rely on the fact that the issuer is the U.S. Government rather than the asset and stockholder tests found in Section 107A(a). The distribution and aggregate principal amount/aggregate market value standards found in Sections 107A(b) and (c), respectively, will otherwise be met by the Trust as issuer of the Trust Securities.

Therefore, the listing guidelines provide that the issuer of the Underlying Bonds and GSE Securities have assets in excess of $100 million, stockholders' equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer of the Underlying Bonds and GSE Securities which is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

These initial listing standards for the Trust Securities require: (1) A minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least $4 million; and (4) a term of at least one year. However, if traded in thousand dollar denominations, then the minimum public distribution requirement of 400 holders does not apply.

The basket of Underlying Securities will not be managed and will generally remain static over the term of the Trust Securities. Each of the Underlying Securities will generally provide for the payment of interest which may be on a different schedule than the distributions of interest by the Trust Securities. To alleviate potential cash flow timing issues that may exist, the Trust may enter into an interest distribution agreement.[14] Principal distributions on the Trust Securities are expected to be made on dates that correspond to the maturity dates of the Underlying Securities. However, some of the Underlying Securities may have redemption provisions and in the event of an early redemption or other liquidation (*e.g.,*, upon an event of default) of the Underlying Securities, the proceeds from such redemption (including any make-whole premium associated with such redemption) or liquidation will be distributed pro rata to the holders of the Trust Securities. Each Underlying Bond is expected to be issued by a corporate issuer and either purchased at the time of the initial issuance or in the secondary market. However, with respect to Treasury Securities and/or GSE Securities, the Trust will either purchase the securities directly from primary dealers or in the secondary market which consists of primary dealers, non-primary dealers, customers, financial institutions, non-financial institutions and individuals.

Holders of Trust Securities generally will receive interest on the face value in an amount to be determined at the time of issuance of the Trust Securities and disclosed to investors. The rate of interest payments will be based upon prevailing interest rates at the time of issuance and made to the extent received from the Underlying Securities. Distributions of interest may be made monthly, quarterly or semi-annually. Investors will also be entitled to be repaid the principal of their Trust Securities from the proceeds of the principal payments on the Underlying Securities.[15] The payout or return to investors on the Trust Securities will not be leveraged.

The Trust Securities will mature on the latest maturity date of the Underlying Securities. Holders of the Trust Securities will have no direct ability to exercise any of the rights of a holder of an Underlying Bond; however, holders of the Trust Securities as a group will have the right to direct the Trust in its exercise of its rights as holder of the Underlying Securities. The Exchange currently lists and trades several Trust Securities under the names of ''Select Notes'' and ''TRACERS.''[16]

In addition, the Underlying Securities must meet the Exchange's Bond and Debenture Listing Standards set forth in Section 104 of the Company Guide. The Exchange's Bond and Debenture Listing Standards in Section 104 of the Company Guide provide for the listing of individual bond or debenture issuances provided the issue has an aggregate market value or principal amount of at least $5 million and any of: (1) The issuer of the debt security has equity securities listed on the Exchange (or on the New York Stock Exchange, Inc. (''NYSE'') or on the Nasdaq National Market); (2) an issuer of equity securities listed on the Exchange (or on the NYSE or on the Nasdaq National Market) directly or indirectly owns a majority interest in, or is under common control with, the issuer of the debt security; (3) an issuer of equity securities listed on the Exchange (or on the NYSE or on the Nasdaq National Market) has guaranteed the debt security; (4) an NRSRO has assigned a current rating to the debt security that is no lower than an Standard & Poor's Corporation (''S&P'') ''B'' rating or equivalent rating by another NRSRO; or (5) or if no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned (i) an investment grade rating to an immediately senior issue or (ii) a rating that is no lower than a S&P ''B'' rating or an equivalent rating by another NRSRO to a pari passu or junior issue.[17]

In addition to the Exchange's Bond and Debenture Listing Standards, the Amex proposes that each Underlying Security must also be of investment grade quality as rated by a NRSRO and at least 75% of the underlying basket or portfolio contain Underlying Securities from issuances of $100 million or more. The maturity of each Underlying Security is expected to match the payment of principal of the Trust Securities with the maturity date of the Trust Securities being the latest maturity date of the Underlying Securities. Amortization of the Trust

[14] In this manner, any shortfall in the amounts available to pay interest to holders of the Trust Securities due to varying interest payment schedules will be made to such Trust by a third party (typically a bank) and will be repaid out of future cash flow received by the Trust from the Underlying Securities.

[15] The Underlying Securities may drop out of the basket upon maturity or upon payment default or acceleration of the maturity date for any default other than payment default. The Prospectus for each Trust Security transaction will provide a schedule of the distribution of interest and of the principal upon maturity for each Underlying Security. In addition, such Prospectus will also disclose a description of payment default and acceleration of the maturity date.

[16] *See* Securities Exchange Act Release Nos. 49315 (February 24, 2004) 69 FR 9882 (March 2, 2004) (File No. SR–Amex–2004–08); 49136 (January 28, 2004) 69 FR 6345 (February 10, 2004) (File No. SR–Amex–2003–99); 48791 (November 17, 2003) 68 FR 65750 (November 21, 2003) (File No. SR–Amex–2003–92); 47730 (April 24, 2003) 68 FR 23340 (May 1, 2003) (File No. SR–Amex–2003–25); 47884 (May 16, 2003) 68 FR 28305 (May 23, 2003) (File No. SR–Amex–2003–37); 48312 (August 8, 2003) 68 FR 48970 (August 15, 2003) (File No. SR–Amex–2003–69); 46835 (November 14, 2002) 67 FR 70271 (November 21, 2002) (File No. SR–Amex–2002–70); and 46923 (November 27, 2002), 67 FR 72247 (December 4, 2002) (File No. SR–Amex–2002–92). In some cases, the Trust Securities are also generically known as ''ABS Securities.''

[17] This final provision of Section 104 would not apply because the Underlying Bonds and GSE Securities must have an investment grade rating. Telephone conference between Jeffrey Burns, Associate General Counsel, and Florence Harmon, Senior Special Counsel, on September 10, 2004.

Securities will be based on (1) the respective maturities of the Underlying Securities; (2) principal payout amounts reflecting the pro-rata principal amount of maturing Underlying Securities; and (3) any early redemption or liquidation of the Underlying Securities. Investors will be able to obtain the prices for the Underlying Securities through Bloomberg L.P. or other market vendors, including the broker-dealer through whom the investor purchased the Trust Securities. In addition, the Bond Market Association provides links to price and other bond information sources on its investor Web site at *http://www.investingbonds.com.* Transaction prices and volume data for the most actively-traded bonds on the exchanges are also published daily in newspapers and on a variety of financial websites. The National Association of Securities Dealers, Inc. (''NASD'') Trade Reporting and Compliance Engine (''TRACE'') will also aid investors in obtaining transaction information for most corporate debt securities, such as investment grade corporate bonds.[18] For a fee, investors can have access to intra-day bellwether quotes.[19]

Price and transaction information for Treasury Securities and GSE Securities may also be obtained at *http://www.publicdebt.treas.gov* and *http://www.govpx.com,* respectively. Price quotes are also available to investors via proprietary systems such as Bloomberg, Reuters and Dow Jones Telerate. Valuation prices [20] and analytical data may be obtained through vendors such as Bridge Information Systems, Muller Data, Capital Management Sciences, Interactive Data Corporation and Barra.

The Trust Securities will conform to the Exchange's continued listing guidelines, which are set forth in Sections 1001 through 1003 of Part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Trust Securities, the Exchange will rely on the guidelines for bonds in Section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than $400,000 or the issuer is not able to meet its obligations on the listed debt securities, including repayment of the original principal investment.

The Trust Securities generally will be listed in $1,000 denominations (or multiples thereof) with the Exchange's existing debt floor trading rules applying to trading. However, Trust Securities may be listed in face amounts in other than $1,000 denominations (or multiples thereof) whereby the Exchange's existing equity floor trading rules would apply. The Trust Securities will also be subject to the debt margin rules of the Exchange.[21] In all cases, pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Trust Securities.[22] With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Trust Securities: (1) To determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Trust Securities. In addition, the Exchange also has a general policy that prohibits the distribution of material, non-public information by its employees. Prior to commencement of the trading, the generic listing standards also require the Exchange to evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to the membership providing guidance regarding member firm compliance responsibilities (including suitability recommendations) when handling transactions in such securities and highlighting the special risks and characteristics of the Trust Securities.

III. Discussion

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) of the Act.[23] The Commission finds that this proposal is similar to several approved Trust Securities products currently listed and traded on the Amex.[24] Accordingly, the Commission finds that the listing and trading of the Trust Securities under the generic listing standards set forth in Section 107E of the Amex Company Guide is consistent with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.[25]

As described more fully above, the Trust Securities are asset-backed securities and represent a repackaging of the Underlying Corporate Bonds together with the addition of Treasury Securities and/or GSE Securities, subject to certain distribution of interest obligations of the Trust. The Treasury Securities and/or GSE Securities are limited to up to 15% of the underlying portfolio at the time of issuance. The Trust Securities are not leveraged instruments. The Trust Securities are debt instruments whose price will still be derived and based upon the value of the Underlying Securities. Investors are guaranteed at least the principal amount that they paid for the Underlying Securities. Each of the Underlying Securities will generally provide for the payment of interest which may be on a different schedule than the distributions of interest by the Trust Securities. To alleviate potential cash flow timing issues that may exist, the Trust may enter into an interest distribution agreement described in Part II of this Order. In addition, the Trust Securities will mature on the latest maturity date of the Underlying Securities. However, due to the pass-through nature of the Trust Securities, the level of risk involved in the purchase or sale of the Trust Securities is similar to the risk

[18] *See* Securities Exchange Act Release No. 43873 (January 23, 2001) 66 FR 8131 (January 29, 2001). Investors are able to access TRACE information at *http://www.nasdbondinfo.com/.*

[19] Corporate prices are available at 20-minute intervals from Capital Management Services at *http://www.bondvu.com.*

[20] ''Valuation Prices'' refer to an estimated price that has been determined based on an analytical evaluation of a bond in relation to similar bonds that have traded. Valuation prices are based on bond characteristics, market performance, changes in the level of interest rates, market expectations and other factors that influence a bond's value.

[21] *See* Amex Rule 462.

[22] Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts relative to every customer and to every order or account accepted.

[23] *Id.*

[24] *See supra* note 16.

[25] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

involved in the purchase or sale of traditional common stock.

The Commission notes that the Trust Securities are dependent upon the individual credit of the issuers of the Underlying Securities. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the Company Guide which provide that only issuers satisfying asset and equity requirements may issue securities such as the Trust Securities. In addition, the Exchange's listing standards further provide that there is no minimum holder requirement if the securities are traded in thousand dollar denominations.[26] The Commission notes that the Exchange has represented that Trust Securities traded in thousand dollar denominations or multiples thereof will be treated as a debt instrument and will be subject to the debt trading rules of the Exchange; trust certificate securities traded in other than thousand dollar denominations or multiples thereof will be treated as an equity instrument and subject to the equity trading rules of the Exchange. In any event, financial information regarding the issuers of the Underlying Securities will be publicly available.[27]

Due to the pass-through and passive nature of the Trust Securities, the Commission does not object to the Exchange's reliance on the assets and stockholder equity of the Underlying Securities rather than the Trust to meet the requirement in Section 107A of the Company Guide. The Commission notes that the distribution and principal amount/aggregate market value requirements found in Sections 107A(b) and (c), respectively, will otherwise be met by the Trust as issuer of the Trust Securities. Thus, the generic listing standards in Section 107E for Trust Securities will conform to the initial listing guidelines under Section 107A and continued listing guidelines under Sections 1001–1003 of the Company Guide, except for the assets and stockholder equity characteristics of the Trust. At the time of issuance, the Commission also notes that the Underlying Securities of the Trust Securities will receive an investment grade rating from an NRSRO.

The Commission also believes that the listing and trading of the Trust Securities should not unduly impact the market for the Underlying Securities or raise manipulative concerns. As discussed more fully above, the Exchange represents that, in addition to requiring that issuers of the Underlying Securities meet the Exchange's Section 107A listing requirements (in the case of Treasury securities, the Exchange will rely on the fact that the issuer is the United States Government rather than the asset and stockholder tests found in Section 107A), the Underlying Securities will be required to meet or exceed the Exchange's Bond and Debenture Listing Standards pursuant to Section 104 of the Amex's Company Guide, which among other things, requires that underlying debt instrument receive at least an investment grade rating of ''B'' or equivalent from an NRSRO. Furthermore, at least 75% of the basket is required to contain Underlying Securities from issuances of $100 million or more. The Amex also represents that the basket of Underlying Securities will not be managed and will remain static over the term of the ABS securities. In addition, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

The Commission notes that the investors may obtain price information on the Underlying Securities through market venders such as Bloomberg, or though Web sites such as *http://www.investinginbonds.com* (for Underlying Corporate Bonds) and *http://publicdebt.treas.gov* and *http://www.govpx.com* (for Treasury Securities and GSE Securities, respectively). The National Association of Securities Dealers, Inc. (''NASD'') Trade Reporting and Compliance Engine (''TRACE'') will also aid investors in obtaining transaction information for most corporate debt securities, such as investment grade corporate bonds.[28]

Finally, the Commission believes that, by adopting generic listing standards for Trust Securities, this proposal should fulfill the intended objective of Rule 19b–4(e) by allowing Trust Securities that satisfy the proposed generic listing standards to start trading, without the need for public notice and comment and Commission approval, because the Exchange's generic listing standards address the listing, trading, surveillance issues for this product class. The Commission believes that these generic listing standards have the potential to reduce the time frame for bringing Trust Securities to market, thus reducing the burdens of issuers, other market participants, and the Commission.

The Commission finds good cause for approving Amendment Nos. 2 and 3 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 2 deletes the words ''at the end of the term'' from Section 107E(a)(vii), thus clarifying that Trust Securities may return to the investor the original principal amount of his/her investment at any time during the life of the Trust Security, not merely at the end of the term. Amendment No. 3 adds the words ''including pursuant to unlisted trading privileges'' to Section 107E(a). This Amendment is designed to protect investors and the Amex by highlighting the need for other self-regulatory organizations to have Commission-approved generic listing standards in place before trading the Trust Securities pursuant to unlisted trading privileges.[29] The Commission believes that the Trust Securities will provide investors with an additional investment choice and that accelerated approval of these amendments will allow investors to begin trading the Trust Securities promptly. Additionally, the Trust Securities will be listed pursuant to Amex's existing hybrid security listing standards as described above. Based on the above, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act[30] to approve Amendment Nos. 2 and 3.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 2 and 3, including whether the proposed amendments are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2004–23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Amex–2004–23. This file number should be included on the

[26] *See* Company Guide Section 107A.

[27] A qualified Trust Security is required to meet the requirements for asset-backed securities as set forth in the Securities Act.

[28] *See* Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001). Investors are able to access TRACE information at *http://www.nasdbondinfo.com/*.

[29] *See* New Product Release.

[30] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2004–23 and should be submitted on or before October 11, 2004.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[31] that the proposed rule change (SR–Amex–2004–23) and Amendment No. 1 thereto, are hereby approved, and Amendment Nos. 2 and 3 thereto are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[32]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2245 Filed 9–17–04; 8:45 am]

BILLING CODE 8010–01–P

[31] 15 U.S.C. 78*o*–3(b)(6) and 78s(b)(2).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50357; File No. SR–NYSE–2004–45]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Rescind Advice Previously Provided Regarding the Calculation of Transaction Fees

September 13, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 16, 2004, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the NYSE. 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 NYSE hereby proposes to amend Exchange Rule 440H to include an interpretation that would rescind advice the Exchange had previously provided to members and member organizations regarding the calculation of transaction fees.

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

Summary

On June 28, 2004, the Commission adopted new Rule 31 under the Act,[3] regarding the calculation, payment, and collection of fees prescribed by Section 31 of the Act.[4] New Rule 31, and the SEC's commentary in the Rule 31 Adopting Release, have rendered the instructions in the ''Calculation of Fees—Rounding Up'' section of NYSE Information Memo No. 01–51, dated December 28, 2001, inapplicable, because Exchange members and member organizations will no longer be making such calculations for purposes of determining the amounts that they owe the Exchange pursuant to NYSE Rule 440H. The Exchange is proposing to add Interpretation /01 to NYSE Rule 440H that would instruct Exchange members and member organizations to disregard the ''Calculation of Fees—Rounding Up'' section of NYSE Information Memo No. 01–51.

Background

Exchange Rule 440H requires each Exchange member or member organization engaged in clearing or settling transactions effected upon the Exchange to pay to the Exchange as a ''Transaction Fee'' a sum equal to the dollar amount as prescribed in Section 31 of the Act based on the total aggregate dollar sales volume the member or member organization has reported monthly on its Form 120–A. Historically, the funds collected by the Exchange from members and member organizations pursuant to Rule 440H were remitted in their entirety to the Commission. NYSE Information Memo No. 01–51 instructs each member or member organization to use a specific ''rounding up'' formula to calculate the fee relative to each transaction.[5]

In the Rule 31 Adopting Release, the Commission established new procedures governing the calculation, payment, and collection of fees and assessments on securities transactions owed by national securities exchanges and national securities associations (collectively, ''self-regulatory organizations'' or ''SROs'') to the Commission pursuant to Section 31 of the Act.[6] New Rule 31, Form R31, and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.31.

[4] 15 U.S.C. 78ee. *See* Securities Exchange Act Release No. 49928 (June 28, 2004), 69 FR 41059 (July 7, 2004) (File No. S7–05–04) (''Rule 31 Adopting Release'').

[5] NYSE Information Memo No. 01–51 states that ''[i]n calculating the new fee for a transaction, one should multiply the sale or principal amount of the transaction by the fee rate, which will be truncated at the seventh place after the decimal point. The resulting figure should then be truncated at the fifth place after the decimal point and rounded up to the next cent (if there is any remainder you should round up).''

[6] Section 31 of the Act provides that the Exchange and other national securities exchanges' fees will be based on the aggregate dollar amount of sales of securities transacted on the exchange (Section

Continued

temporary Rule 31T establish procedures for the calculation and collection of Section 31 fees and assessments. Under the new procedures, each SRO must provide the Commission with data on its securities transactions. The Commission will then calculate the amount of fees and assessments due based on the volume of these transactions, and bill the SROs that amount.

In the Rule 31 Adopting Release, the Commission noted that, in practice, SROs obtain the funds to pay Section 31 fees and assessments by assessing charges on their members, and the members in turn pass these charges to their customers.[7] The Commission stressed that Section 31 ''does not address the manner or extent to which covered SROs may seek to recover the costs of their Section 31 obligations from their members. Nor does Section 31 address the manner or extent to which members of covered SROs may seek to pass any such charges on to their customers.'' [8]

Need for Proposed Interpretation

The Exchange believes that the new Section 31 procedures have rendered the instructions in the ''Calculation of Fees—Rounding Up'' section of NYSE Information Memo No. 01–51 inapplicable. NYSE Rule 440H does not dictate whether or how members or member organizations should charge customers to recover amounts paid to the Exchange. Therefore, members and member organizations should be relieved of any obligation to follow the rounding up and other calculation procedures described in the ''Calculation of Fees—Rounding Up'' section of NYSE Information Memo No. 01–51. Proposed Interpretation /01 to NYSE Rule 440H achieves this purpose.

2. Statutory Basis

The Exchange believes that the statutory basis for this proposed rule change is Section 6(b)(4) of the Act [9] which permits the rules of an Exchange to provide for the equitable allocation of reasonable dues, fees, and other charges among its members, and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange asserts that the foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder [11] because it 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 of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.

The NYSE has requested that the Commission waive the five business-day pre-filing notice requirement and the 30-day pre-operative period, which would make the rule change operative immediately. The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day pre-operative period in this case.[12] Allowing the rule change to become operative immediately should provide Exchange members and member organizations with appropriate instructions regarding the calculation of transaction fees. The Commission also has determined to waive the five business-day pre-filing notice requirement in this case.

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 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2004–45 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NYSE–2004–45. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *http://www.sec.gov/rules/sro.shtml*. Copies of the submission, all subsequent amendments, all written statements with respect to the 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2004–45 and should be submitted on or before October 12, 2004.

31(b)), that national securities associations' fees will be based on the aggregate dollar amount of sales of securities transacted by or through any member of the association otherwise than on a national securities exchange (Section 31(c)), and that national securities exchanges are assessed for each ''round turn transaction'' in a security future (Section 31(d)). *See* 15 U.S.C. 78ee(b)–(d).

[7] *See* Rule 31 Adopting Release, Section IV.

[8] *Id.*

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For the 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. *See* 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2235 Filed 9–17–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50356; File No. SR–PCX–2004–29]

Self-Regulatory Organizations; The Pacific Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1 and 2 Thereto To Amend the PCXE Minor Rule Plan and Recommended Fine Schedule To Add a Provision for Failure To Maintain Continuous, Two-Sided Q Orders in Those Securities in Which a PCXE Market Maker Is Registered To Trade

September 13, 2004.

On April 14, 2004, the Pacific Exchange, Inc. (''PCX'' or ''Exchange''), through its wholly owned subsidiary, PCX Equities, Inc. (''PCXE''), filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend PCXE Rule 10.12 to add new provisions (g)(3) and (i)(3). These provisions amend the PCXE Minor Rule Plan (''MRP'') and Recommended Fine Schedule (''RFS'') to add to the MRP and RFS the failure to maintain continuous, two-sided Q orders in those securities in which a PCXE market maker is registered to trade.

On July 2, 2004, the PCX amended the proposed rule change.[3] The Exchange again amended the proposed rule change on July 26, 2004.[4] The proposed rule change, as modified by Amendment Nos. 1 and 2, was published for comment in the **Federal Register** on August 9, 2004.[5] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act,[7] in that it is designed to promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also finds that the proposal is consistent with section 6(b)(6) of the Act,[8] which requires that members and persons associated with members be appropriately disciplined for violations of Exchange rules. Finally, the Commission finds the proposal is consistent with Rule 19d–1(c)(2) under the Act,[9] which governs minor rule violation plans.

In approving this proposal, 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 MRP. 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 MRP 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 Exchange 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 MRP 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,[10] that the proposed rule change (SR–PCX–2004–29) be, and it hereby is, approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E4–2246 Filed 9–17–04; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Tania J.C. Blanford, Staff Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated July 1, 2004 (''Amendment No. 1''). Amendment No. 1 completely replaced and superseded the original filing.

[4] *See* letter from Tania J.C. Blanford, Staff Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated July 23, 2004 (''Amendment No. 2''). Amendment No. 2 replaced footnote 2 (on page 3 of Amendment No. 1) and footnote 4 (on page 8 of Amendment No. 1).

[5] Securities Exchange Act Release No. 50131 (July 30, 2004), 69 FR 48266.

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(6).

[9] 17 CFR 240.19d–1(c)(2).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SELECTIVE SERVICE SYSTEM

Form Submitted to the Office of Management and Budget for Extension of Clearance

AGENCY: Selective Service System.

ACTION: Notice.

The following form has been submitted to the Office of Management and Budget (OMB) for extension of clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35):

SSS FORM—404

Title: Potential Board Member Information.

Need and/or Use: Is used to identify individuals willing to serve as members of local, appeal or review boards in the Selective Service System.

Respondents: Potential board members.

Burden: A burden of 15 minutes or less on the individual respondent.

Copies of the above identified form can be obtained upon written request to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

Written comments and recommendations for the proposed extension of clearance of the form should be sent within 30 days of publication of this notice to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

A copy of the comments should be sent to Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, DC 20503.

Dated: September 9, 2004.

Jack Martin,

Acting Director.

[FR Doc. 04–21076 Filed 9–17–04; 8:45 am]

BILLING CODE 8015–01–M

DEPARTMENT OF STATE

Bureau of Nonproliferation

[Public Notice 4834]

Determination Under the Arms Export Control Act

AGENCY: Department of State.

ACTION: Notice.

Pursuant to section 654(c) of the Foreign Assistance Act of 1961, as amended, notice is hereby given that the Under Secretary of State for Arms Control and International Security has made a determination pursuant to section 73 of the Arms Export Control Act and has concluded that publication of the determination would be harmful to the national security of the United States.

Dated: September 13, 2004.

Susan F. Burk,

Acting Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 04–21080 Filed 9–17–04; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF STATE

[Public Notice 4832]

Culturally Significant Objects Imported for Exhibition Determinations: Eternal Presence: ''Handprints and Footprints in Buddhist Art''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition External Presence: Handprints and Footprints in Buddhist Art'' import from abroad for temporary exhibition within the United States, are of cultural significance. I also determine that the exhibition or display of the exhibit objects at the Katonah Museum of Art, Katonah, NY from on or about October 17, 2004 to on or about January 9, 2005, and part at the Honolulu Academy of Arts, Honolulu, HI from on or about January 26, 2005 to on or about May 29, 2005, and part at the Rubin Museum of Art, New York, NY from on or about June 14, 2005 to on or about September 4, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: 202/619–6981). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: September 14, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–21078 Filed 9–17–04; 8:45 am]

BILLING CODE 4710–08–M

DEPARTMENT OF STATE

[Public Notice 4831]

Culturally Significant Objects Imported for Exhibition Determinations: ''Paul Cezanne''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 (68 FR 19875), I hereby determine that the objects to be included in the exhibition ''Paul Cezanne,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the J. Paul Getty Trust, Los Angeles, CA from on or about October 1, 2004, to on or about January 2, 2005, and at possible additional venues yet to be determined, is in the national interest. Public notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: 202/619–6981). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: September 14, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–21077 Filed 9–17–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

Bureau of Nonproliferation

[Public Notice 4833]

Imposition of Nonproliferation Measures on an Entity in China, Including a Ban on U.S. Government Procurement

AGENCY: Bureau of Nonproliferation, Department of State.

ACTION: Notice.

SUMMARY: The U.S Government has determined that a foreign entity has engaged in missile technology proliferation activities that require the imposition of measures pursuant to Executive Order 12938 of November 14, 1994, as amended by Executive Order 13094 of July 28, 1998.

EFFECTIVE DATE: September 20, 2004.

FOR FURTHER INFORMATION CONTACT: On general issues: Vann H. Van Diepen, Office of Chemical, Biological and Missile Nonproliferation, Bureau of Nonproliferation, Department of State (202–647–1142). On U.S. Government procurement ban issues: Gladys Gines, Office of the Procurement Executive, Department of State (703–516–1691).

SUPPLEMENTARY INFORMATION: Pursuant to the authorities vested in the President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), the Arms Export Control Act (22 U.S.C. 2751 *et seq.*), and section 301 of title 3, United States Code, and Executive Order 12938 of November 14, 1994, as amended, the U.S. Government determined on September 9, 2004 that the following Chinese person has engaged in proliferation activities that require the imposition of measures pursuant to sections 4(b), 4(c), and 4(d) of Executive Order 12938:

Xinshidai (also known as China Xinshidai Company, XSD, China New Era Group, or China New Era Group)

Accordingly, pursuant to the provisions of Executive Order 12938,

the following measures are imposed on this entity, its subunits, and successors for two years:

(1) All departments and agencies of the United States Government shall not procure or enter into any contract for the procurement of any goods, technology, or services from these entities including the termination of existing contracts;

(2) All departments and agencies of the United States government shall not provide any assistance to these entities, and shall not obligate further funds for such purposes;

(3) The Secretary of the Treasury shall prohibit the importation into the United States of any goods, technology, or services produced or provided by these entities, other than information or informational materials within the meaning of section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)).

These measures shall be implemented by the responsible departments and agencies as provided in Executive Order 12938.

In addition, pursuant to section 126.7(a)(1) of the International Traffic in Arms Regulations, it is deemed that suspending the above-named entity from participating in any activities subject to Section 38 of the Arms Export Control Act would be in furtherance of the national security and foreign policy of the United States. Therefore, until further notice, the Department of State is hereby suspending all licenses and other approvals for: (a) Exports and other transfers of defense articles and defense services from the United States; (b) transfers of U.S.-origin defense articles and defense services from foreign destinations; and (c) temporary import of defense articles to or from the above-named entity.

Moreover, it is the policy of the United States to deny licenses and other approvals for exports and temporary imports of defense articles and defense services destined for this entity.

Dated: September 13, 2004.

Susan F. Burk,

Acting Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 04–21079 Filed 9–17–04; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF STATE

Bureau of Nonproliferation

[Public Notice 4835]

Extension of Waiver of Missile Proliferation Sanctions Against Chinese Government Activities

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: A determination has been made to extend the waiver of import sanctions against certain activities of the Chinese Government that was announced on September 19, 2003, pursuant to the Arms Export Control Act, as amended.

EFFECTIVE DATE: September 18, 2004.

FOR FURTHER INFORMATION CONTACT: Vann H. Van Diepen, Office of Chemical, Biological and Missile Nonproliferation, Bureau of Nonproliferation, Department of State (202–647–1142).

SUPPLEMENTARY INFORMATION: A determination was made on August 29, 2003, pursuant to section 73(e) of the Arms Export Control Act (22 U.S.C. 2797b(e)) that it was essential to the national security of the United States to waive for a period of one year the import sanction described in section 73(a)(2)(C) of the Arms Export Control Act (22 U.S.C. 2797b(a)(2)(C)) against the activities of the Chinese Government described in section 74(a)(8)(B) of the Arms Export Control Act (22 U.S.C. 2797c(a)(8)(B))—*i.e.*, activities of the Chinese government relating to the development or production of any missile equipment or technology and activities of the Chinese government affecting the development or production of electronics, space systems or equipment, and military aircraft (*see* **Federal Register** vol 68, no. 182, Friday, September 19, 2003). This action was effective on the date of its publication in the **Federal Register**, September 19, 2003.

On September 8, 2004, a determination was made pursuant to section 73(e) of the Arms Export Control Act (22 U.S.C. 2797b(e)) that it is essential to the national security of the United States to extend the waiver period for an additional six months, effective from the date of expiration of the previous waiver (September 18, 2004).

These measures shall be implemented by the responsible agencies as provided in Executive Order 12851 of June 11, 1993.

Dated: September 13, 2004.

Susan F. Burk,

Acting Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 04–21081 Filed 9–17–04; 8:45 am]

BILLING CODE 4710–27–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1554).

TIME AND DATE: 9 a.m. (EDT), September 22, 2004, TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on August 18, 2004.

New Business

A—Budget and Financing

A1. Approval of Fiscal Year 2005 TVA Budget.

C—Energy

C1. Delegation of authority to the Executive Vice President, Fossil Power Group, to enter into a contract with Webster County Coal LLC for coal supply to Widows Creek Fossil Plant Units 7 and 8.

E—Real Property Transactions

E1. Grant of a permanent easement to Hallsdale-Powell Utility District for the construction of a raw water intake structure and line, including water transmission and discharge lines, without charge, except for TVA's administrative costs, affecting approximately 1.5 acres of land on Norris Reservoir in Union County, Tennessee, Tract No. XTNR–116W.

E—Real Property Transactions (con't.)

E2. Modification of certain deed restrictions affecting approximately 27 acres of former TVA land, Tract No. XCR–642, S.3X, and sale of a permanent easement affecting approximately 0.5 acre of land, Tract No. XCR–705E, on Chickamauga Reservoir in Hamilton County, Tennessee.

F—Other

F1. Approval to file a condemnation case to acquire an easement and right-of-way affecting 3.17 acres of land in Wilson County, Tennessee, for the North Lebanon Transmission Line.

Information Items

1. Approval of new Risk Management Structure which includes strengthening and formalizing the role of TVA's Management Committee in managing overall enterprise risk, establishment of a new Portfolio Risk Management Committee, and the appointment of Chris S. Mitchell as Chief Risk Officer.

2. Approval to reclassify certain Bellefonte Nuclear Plant assets from the deferred nuclear generating units category to the completed plant category.

FOR FURTHER INFORMATION CONTACT: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: September 15, 2004.

Maureen H. Dunn,

General Counsel and Secretary.

[FR Doc. 04–21163 Filed 9–16–04; 10:34 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub-No. 607X)]

CSX Transportation, Inc.—Abandonment Exemption—In Logan County, WV

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 10.02-mile line of railroad in its Southern Region, Huntington Division, Buffalo Subdivision, extending from milepost CLU 6.3 at Franco to the end of the line at milepost CLU 16.32 near Saunders, in Logan County, WV. The line traverses United States Postal Service Zip Codes 25607, 25606 and 25630.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) all overhead traffic on the line can be rerouted over other lines; (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 October 20, 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 September 30, 2004. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 12, 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 CSXT's representative: Louis E. Gitomer, Ball Janik LLP, 1455 F St., NW., Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CSXT 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 September 24, 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), CSXT 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 CSXT's filing of a notice of consummation by September 20, 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: September 10, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–20962 Filed 9–17–04; 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 TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 654X)]

CSX Transportation, Inc.—Discontinuance of Service Exemption—In Washington, DC

CSX Transportation, Inc. (CSXT) has filed a verified notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over an approximately 6.0-mile rail line of the Northern Region, Baltimore Division, Capital Subdivision, between Shepherd Junction, milepost BAZ 0.02, and the end of track, milepost BAZ 6.0, in Washington, DC. The line traverses United States Postal Service Zip Codes 20019, 20020, 20032, 20332, and 20375.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (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 Surface Transportation 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 report), 49 CFR 1105.8

(historic report), 49 CFR 1105.11 (transmittal letter), 49 CR 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 discontinuance 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 October 20, 2004,[1] unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] must be filed by September 30, 2004. Petitions to reopen must be filed by October 12, 2004, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicant's representative: Louis E. Gitomer, 1455 F Street, NW., Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: September 10, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–20963 Filed 9–17–04; 8:45 am]

BILLING CODE 4915–01–P

[1] Because this is a discontinuance of service proceeding and not an abandonment, there is no need to provide an opportunity for trail use/rail banking or public use condition requests. Likewise, no environmental or historic documentation is required under 49 CFR 1105.6(c)(6) and 1105.8.

[2] Each offer of financial assistance 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

Community Development Financial Institutions Fund: Open Meeting of the Community Development Advisory Board

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of open meeting.

SUMMARY: This notice announces the next meeting of the Community Development Advisory Board (the Advisory Board), which provides advice to the Director of the Community Development Financial Institutions Fund (the Fund).

DATES: The next meeting of the Advisory Board will be held from 1 p.m. to 4 p.m. on October 18, 2004, and from 8:30 a.m. to 4 p.m. on October 19, 2004.

ADDRESSES: The Advisory Board meeting will be held at the Capital View Conference Center, located at 101 Constitution Avenue, NW., Ninth Floor, Washington, DC.

FOR FURTHER INFORMATION CONTACT: The Office of Public and Legislative Affairs of the Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, (202) 622–9046 (this is not a toll free number). Other information regarding the Fund and its programs may be obtained through the Fund's Web site at *http://www.cdfifund.gov.*

SUPPLEMENTARY INFORMATION: Section 104(d) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4703(d)) established the Advisory Board. The charter for the Advisory Board has been filed in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and with the approval of the Secretary of the Treasury.

The function of the Advisory Board is to advise the Director of the Fund (who has been delegated the authority to administer the Fund) on the policies regarding the activities of the Fund. The Fund is a wholly owned corporation within the Department of the Treasury. The Advisory Board shall not advise the Fund on the granting or denial of any particular application for monetary or non-monetary awards. The Advisory Board shall meet at least annually.

It has been determined that this document is not a major rule as defined in Executive Order 12291 and therefore regulatory impact analysis is not required. In addition, this document does not constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

The next meeting of the Advisory Board, all of which will be open to the public, will be held at the Capital View Conference Center, located at 101 Constitution Avenue, NW., Ninth Floor, Washington, DC, from 1 p.m. to 4 p.m. on October 18, 2004, and from 8:30 a.m. to 4 p.m. on October 19, 2004. The room will accommodate 20 members of the public. Seats are available to members of the public on a first-come, first-served basis. Participation in the discussions at the meeting will be limited to Advisory Board members, Department of the Treasury staff, and certain invited guests. Anyone who would like to have the Advisory Board consider a written statement must submit it to the Fund at the address of the Fund specified above in the **FOR FURTHER INFORMATION CONTACT** section, by 5 p.m., Friday, October 1, 2004.

On October 18, 2004, the meeting will include a report from the Director on the activities of the Fund since the last Advisory Board meeting, as well as policy, programmatic, fiscal and legislative initiatives for the years 2005 and 2006. On October 19, 2004, the meeting will include a discussion of the Fund's policy and strategic directions for the future.

Authority: 12 U.S.C. 4703; Chapter X, Pub. L. 104–19, 109 Stat. 237.

Dated: September 10, 2004.

Arthur A. Garcia,

Director, Community Development Financial Institutions Fund.

[FR Doc. 04–21030 Filed 9–17–04; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 10574

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 10574, Community Based Outlet Program.

DATES: Written comments should be received on or before November 19, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Paul H. Finger, Internal Revenue Service, Room 6512, 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 Carol Savage at Internal Revenue Service, Room 6516, 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: Community Based Outlet Program.

OMB Number: 1545–1753.

Form Number: Form 10574.

Abstract: Form 10574 will be used by both internal and external customers to provide contact information for follow up by Community Based Outlet Program (CBOP) representatives. The form may be utilized as an order blank or as a request for additional information. The form will indicate to the customer service representatives what products the customer wants to receive or the subject matter of additional information. The form would be returned to the CBOP analyst by fax or mail for appropriate action.

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 organizations, and state, local, or tribal governments.

Estimated Number of Responses: 25.

Estimated Time Per Response: 5 minutes.

Estimated Total Annual Burden Hours: 2.

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: September 13, 2004.

Paul H. Finger,

IRS Reports Clearance Officer.

[FR Doc. 04–21095 Filed 9–17–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Joint Committee of the 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 Tuesday, October 19, 2004, at 1:30 p.m., Eastern Daylight Time.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227, or 414–297–1611.

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 Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Tuesday, October 19, 2004, from 1:30 to 3 p.m. Eastern daylight time via a telephone conference call. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or 414–297–1611, or write Barbara Toy, TAP Office, MS–1006–MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or FAX to 414–297–1623, or you can contact us at *www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Barbara Toy.

Ms. Toy can be reached at 1–888–912–1227 or 414–297–1611, or FAX 414–297–1623.

The agenda will include the following: monthly committee summary report, discussion of issues brought to the joint committee, office report, and discussion of next meeting.

Dated: September 14, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–21096 Filed 9–17–04; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Monday,
September 20, 2004

Part II

Department of Labor

Veterans' Employment and Training Service

20 CFR Part 1002

Regulations Under the Uniformed Services Employment and Reemployment Rights Act of 1994, as Amended; Proposed Rule

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

20 CFR Part 1002

[Docket No. VETS–U–04]

RIN 1293–AA09

Regulations Under the Uniformed Services Employment and Reemployment Rights Act of 1994, as Amended

AGENCY: Veterans' Employment and Training Service, Department of Labor.

ACTION: Proposed rules.

SUMMARY: The Veterans' Employment and Training Service (''VETS'' or ''the Agency'') is issuing proposed rules that would implement the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (USERRA). Congress enacted USERRA to protect the rights of persons who voluntarily or involuntarily leave employment positions to undertake military service. USERRA authorizes the Secretary of Labor (in consultation with the Secretary of Defense) to prescribe rules implementing the law as it applies to States, local governments, and private employers. VETS is proposing these rules under that authority in order to provide guidance to employers and employees concerning their rights and obligations under USERRA. The Agency invites written comments on these proposed rules, and any specific issues related to this proposal, from members of the public.

DATES: Comments regarding this proposal, including comments on the information-collection determination described in Section V of the preamble (''Paperwork Reduction Act''), must be received by the Agency on or before November 19, 2004. Please see the sections below entitled **ADDRESSES** and **SUPPLEMENTARY INFORMATION** for additional information on submitting comments.

ADDRESSES: You may submit comments, identified as ''Docket No. VETS–U–04,'' by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Electronic mail (email): vets-public@dol.gov. Include ''Docket No. VETS–U–04'' on the subject line of the message. You can attach materials that are in Microsoft Office formats such as Word, Excel, and Power Point. Attachments may also be made using Adobe Acrobat, Word Perfect, or ASCII/text documents. You cannot attach materials using executables (.exe, .com, .bat) or any encrypted zip files.

Facsimile (fax): VETS at 202–693–4754.

Mail, Express Delivery, Hand Delivery, and Messenger Service: Submit an original and three copies of written comments and attachments to the Office of Operations and Programs, Docket No. VETS–U–04, Room S–1316, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210; telephone (202) 693–4711. If possible, provide your written comments on a computer disc. Contact Mr. Bob Sacoman at (202) 693–4721 with any formatting questions. Normal hours of operation for the VETS Office of Operations and Programs and the Department of Labor are 8:15 a.m. to 4:45 p.m., Eastern Time, Monday through Friday (except Federal holidays).

Note that security-related problems may result in significant delays in receiving comments and other written materials by regular mail. Contact Mr. Charles Dawson, VETS Office of Operations and Programs, at (202) 693–4711 for information regarding security procedures concerning delivery of materials by express delivery, hand delivery, and messenger service.

Docket Access: All comments and submissions will be available for inspection and copying in the VETS Office of Operations and Programs at the address above during normal hours of operation. Contact Mr. Charles Dawson, VETS Office of Operations and Programs, at (202) 693–4711 for information about access to the docket submissions. Because comments sent to the docket are available for public inspection, the Agency cautions commenters against including in their comments personal information such as social security numbers and birth dates.

FOR FURTHER INFORMATION CONTACT: For information, contact Charles Dawson, Office of Operations and Programs, Veterans' Employment and Training Service (VETS), U.S. Department of Labor, Room S1316, 200 Constitution Ave., NW., Washington, DC 20210. Telephone: 202–693–4711 (this is not a toll-free number). Electronic mail: *dawson.charles@dol.gov.*

For press inquiries, contact Michael Biddle, Office of Public Affairs, U.S. Department of Labor, Room S–1032, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–693–5051 (this is not a toll-free number). Electronic mail: *biddle.michael@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Department of Labor proposes to issue regulations to implement the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (USERRA), 38 U.S.C. 4301–4333. Congress enacted USERRA to protect the rights of persons who voluntarily or involuntarily leave employment positions to undertake military service. Section 4331 of USERRA authorizes the Secretary of Labor (in consultation with the Secretary of Defense) to prescribe regulations implementing the law as it applies to States, local governments, and private employers. 38 U.S.C. 4331(a). The Department has consulted with the Department of Defense, and proposes these regulations under that authority in order to provide guidance to employers and employees concerning the rights and obligations of both under USERRA. The Department invites written comments on these proposed regulations from interested parties. The Department also invites public comment on specific issues.

USERRA was enacted in part to clarify prior laws relating to the reemployment rights of service members, rights that were first contained in the Selective Training and Service Act of 1940, 54 Stat. 885, 50 U.S.C. 301, *et seq.* USERRA's immediate predecessor was the Vietnam Era Veterans' Readjustment Assistance Act of 1974, 38 U.S.C. 2021–2027 (later recodified at 38 U.S.C. 4301–4307 and commonly referred to as the Veterans' Reemployment Rights Act), which was amended and recodified as USERRA.

In construing USERRA and these prior laws, courts have followed the Supreme Court's admonition that:

> This legislation is to be liberally construed for the benefit of those who left private life to serve their country in its hour of great need * * * And no practice of employers or agreements between employers and unions can cut down the service adjustment benefits which Congress has secured the veteran under the Act.

See Fishgold v. *Sullivan Drydock and Repair Corp.,* 328 U.S. 275, 285 (1946), cited in *Alabama Power Co.* v. *Davis,* 431 U.S. 581, 584–85 (1977); *King* v. *St. Vincent's Hosp.,* 502 U.S. 215, 221 n.9 (1991). The Department intends that this interpretive maxim apply with full force and effect in construing USERRA and these proposed regulations.

This preamble also selectively refers to many other cases decided under USERRA and its predecessor statutes, to explain and illustrate the rights and benefits established under the Act. The failure to cite or refer to a particular

court decision in this preamble is not intended to indicate the Department's approval or disapproval of the reasoning or holding of that case.

II. Plain Language

The Department wrote this proposed rule in the more personal style advocated by the Presidential Memorandum on Plain Language. ''Plain language'' encourages the use of:

- Personal pronouns (we and you);
- Sentences in the active voice; and,
- A greater use of headings, lists, and questions.

In this proposed rule, ''you,'' ''I,'' and ''my,'' refers to employees because they are the primary beneficiaries of USERRA rights and benefits. The Department recognizes and appreciates the value of comments, ideas, and suggestions from members of the uniformed services, employers, industry associations, labor organizations and other parties who have an interest in uniformed service members' and veterans' employment and reemployment benefits. The Department would appreciate comments and suggestions from all parties on this proposed rule and on language that would improve the clarity of this regulation.

III. Electronic Access and Filing

You may submit comments and data by sending electronic mail (E-mail) to: *vets-public@dol.gov.* Include ''Docket No. VETS–U–04'' on the subject line of the message. You can attach materials that are in Microsoft Office formats such as Word, Excel, and Power Point. Attachments may also be made using Adobe Acrobat, Word Perfect, or ASCII/text documents. You cannot attach materials using executables (.exe, .com, .bat) or any encrypted zip files.

IV. Summary of Proposed Regulations

Subpart A—Introduction to the Regulations Under the Uniformed Services Employment and Reemployment Rights Act of 1994

General Provisions

Proposed sections 1002.1 through 1002.7 describe the regulation's purpose, scope, and background, as well as the sense of the Congress in enacting USERRA. Proposed Section 1002.1 sets out the purpose of these regulations. *See* 38 U.S.C. 4301. Proposed Sections 1002.2 through 1002.4 provide additional background on USERRA, its effective date, and its purposes. Proposed section 1002.5 defines the important terms used in the regulation. *See* 38 U.S.C. 4303. Proposed sections 1002.6 and 1002.7 describe the general coverage of the rule, its applicability and its relationship to other laws, contracts, agreements, and workplace policies and practices. *See* 38 U.S.C. 4302. The Federal Office of Personnel Management has issued a separate body of regulations that govern the USERRA rights of Federal employees. *See* 5 CFR part 353.

Subpart B—Anti-Discrimination and Anti-Retaliation

Protection From Employer Discrimination and Retaliation

USERRA prohibits an employer from engaging in acts of discrimination against past and present members of the uniformed services, as well as applicants to the uniformed services. 38 U.S.C. 4311(a). The anti-discrimination prohibition applies to both employers and potential employers. No employer may deny a person initial employment, reemployment, retention in employment, promotion, or any benefit of employment based on the person's membership, application for membership, performance of service, application to perform service, or obligation for service in the uniformed services. USERRA also protects any person who participates in an action to protect past, present or future members of the uniformed services in the exercise of their rights under the Act. The Act prohibits any employer from discriminating or taking reprisals against any person who acts to enforce rights under the Act; testifies in or assists a statutory investigation; or, exercises any right under the statute pertaining to any person. 38 U.S.C. 4311(b). A person is protected against discrimination and reprisal regardless whether he or she has served in the military.

Proposed sections 1002.18, 1002.19 and 1002.20 implement the protections of section 4311(a) and (b). Proposed section 1002.21 makes clear that the prohibition on discrimination applies to any employment position, regardless of its duration, including a position of employment that is for a brief, non-recurrent period, and for which there is no reasonable expectation that the employment position will continue indefinitely or for a significant period. Proposed section 1002.22 explains who has the burden of proving that certain action violates the statute. The Department requests comment on the application of the anti-discrimination provisions of the Act to potential employers.

In order to establish a case of employer discrimination, the person's membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services must be a ''motivating factor'' in the employer's actions or conduct. 38 U.S.C. 4311(c)(1). Section 4311(c) sets out an evidentiary scheme like that followed by the National Labor Relations Board in interpreting the National Labor Relations Act, as explained by the United States Supreme Court in *NLRB* v. *Transportation Management Corp.,* 462 U.S. 393, 401 (1983). *See Gummo* v. *Village of Depew, NY,* 75 F.3d 98, 106 (2d Cir. 1996) (*citing* S.Rep. No. 158, 103d Cong., 2d Sess. 45 (1993), and H.R. Rep. No. 65, 103d Cong., 2d Sess. 18, 24 (1993). The initial burden of proving discrimination or retaliation rests with the person alleging discrimination (the claimant). The burden then shifts to the employer to prove that it would have taken the action anyway, without regard to the employee's protected status or activity. If the employer successfully establishes such an affirmative defense, the claimant can prevail only by showing that the employer would not have taken the action, but for the claimant's protected activity.

A person alleging discrimination under USERRA must first establish that his or her protected status as a past, present or future service member was a motivating factor in the adverse employment action. *See Robinson* v. *Morris Moore Chevrolet-Buick, Inc.,* 974 F. Supp. 571 (E.D. Tex. 1997). The claimant alleging discrimination must prove the elements of a violation—*i.e.*, membership in a protected class (such as past, present or future affiliation with the uniformed services); an adverse employment action by the employer or prospective employer; and a causal relationship between the claimant's protected status and the adverse employment action (the ''motivating factor''). To meet this burden, a claimant need not show that his or her protected status was the sole cause of the employment action; the person's status need be only one of the factors that ''a truthful employer would list if asked for the reasons for its decision.'' *Kelley* v. *Maine Eye Care Associates,* P.A, 37 F. Supp.2d 47, 54 (D. Me. 1999); *see Robinson,* 974 F. Supp. at 575 (citing *Price Waterhouse* v. *Hopkins,* 490 U.S. 228, 250 (1989) (addressing Title VII gender discrimination claim and related defense)). ''Military status is a motivating factor if the defendant relied on, took into account, considered, or conditioned its decision on that consideration.'' *Fink* v. *City of New York,* 129 F.Supp.2d 511, 520 (E.D.N.Y. 2001), *citing Robinson,* 974 F.Supp. at

576. The employee is not required to provide direct proof of employer animus at this stage of the proceeding; intent to discriminate or retaliate may be established through circumstantial evidence. *See Desert Palace, Inc.* v. *Costa,* 539 U.S. 90 (2003); *United States Postal Service Bd. of Governors* v. *Aikens,* 460 U.S. 711, 714 (1983). If the employer fails to counter this evidence, the claimant's proof establishes that the adverse employment action was more likely than not motivated by unlawful reasons.

After the employee establishes the elements of a violation, the employer may avoid liability by proving that the claimant's military status was not a motivating factor in the adverse employment action. *See Gummo,* 75 F.3d at 106. The employer must demonstrate that it would have taken the same adverse action for legitimate reasons regardless of the claimant's protected status. If the employer satisfies this burden of proof, then the employee can prevail only by demonstrating that the employer would not have taken the action but for the prohibited motive. This burden may be satisfied either directly by proving that a discriminatory reason more likely motivated the employer, or indirectly by persuading the adjudicator that the employer's explanation is not credible. *Aikens,* 460 U.S. at 716.

Section 4311(c)(2) provides the same evidentiary framework for adjudicating allegations of reprisal against any person (including individuals unaffiliated with the military) for engaging in activities to enforce a protected right; providing testimony or statements in a USERRA proceeding; assisting or participating in a USERRA investigation; or exercising a right provided by the statute. 38 U.S.C. 4311(c)(2). Proposed section 1002.19 addresses the elements of a case of retaliation.

Subpart C—Eligibility for Reemployment

General Eligibility Requirements for Reemployment

USERRA requires that the service member meet five general criteria in order to establish eligibility for reemployment:

(1) That the service member be absent from a position of civilian employment by reason of service in the uniformed services;

(2) That the service member's employer be given advance notice of the service;

(3) That the service member have five years or less of cumulative service in the uniformed services with respect to a position of employment with a particular employer;

(4) That the service member return to work or apply for reemployment in a timely manner after conclusion of service; and,

(5) That the service member not have been separated from service with a disqualifying discharge or under other than honorable conditions.

Proposed section 1002.32 sets out these general eligibility requirements. Proposed sections 1002.34–.74 explain the ''absent from a position of civilian service'' requirement, sections 1002.85–.88 explain the ''advance notice'' requirement, sections 1002.99–.104 explain the ''five years or less of cumulative service'' requirement, sections 1002.115–.123 explain the ''return to work or apply for reemployment'' requirement, and sections 1002.134–.138 explain the ''no disqualifying discharge'' requirement.

A person who meets these eligibility criteria, which are contained in 38 U.S.C. 4312(a)–(c) and 4304, is entitled to be reemployed in the position described in 38 U.S.C. 4313, unless the employer can establish one of the three affirmative defenses contained in 38 U.S.C. 4312(d).

There has been some disagreement in the courts over the appropriate burden of proof in cases brought under 38 U.S.C. 4312, the provision in USERRA establishing the reemployment rights of persons who serve in the uniformed services. One court has interpreted that provision to be ''a subsection of § 4311 [the anti-discrimination and anti-retaliation provision].'' *Curby* v. *Archon,* 216 F.3d 549, 556 (6th Cir. 2000). Other courts have interpreted section 4312 to establish a statutory protection distinct from section 4311, creating an entitlement to re-employment for qualifying service members rather than a protection against discrimination. *Wrigglesworth* v. *Brumbaugh,* 121 F. Supp.2d 1126, 1134 (W.D. Mich. 2000) (stating that requirements of section 4311 do not apply to section 4312). *Brumbaugh* relies in part on legislative history and the Department's interpretation of USERRA. *Id.* at 1137. Another district court supports the *Brumbaugh* decision and characterizes the contrary view in *Curby* as *dicta. Jordan* v. *Air Products and Chem.,* 225 F. Supp.2d 1206, 1209 (C.D. Ca. 2002).

The Department agrees with the district court decisions in *Brumbaugh* and *Jordan* that sections 4311 and 4312 of USERRA are separate and distinct. Proposed section 1002.33 provides that a person seeking relief under section 4312 need not meet the additional burden of proof requirements for discrimination cases brought under section 4311. The Department disagrees with the decision in *Curby* v. *Archon* discussed above, insofar as it interprets USERRA to the contrary. The Department invites comments regarding the proper interpretation of the statute regarding the burden of proof for relief under section 4312.

Coverage of Employers and Positions

Proposed sections 1002.34 through 1002.44 list the employers and employment positions that are covered by USERRA. Proposed section 1002.33 provides that the Act's coverage extends to virtually all employers in the United States; the statute contains no threshold or minimum size to limit its reach. The remaining proposed provisions address various aspects of the employment relationship subject to the Act. Proposed section 1002.35 defines the term ''successor in interest.'' Proposed section 1002.37 addresses the situation in which more than one employer may be responsible for one employee. Proposed sections 1002.38 and 1002.42 discuss hiring halls, layoffs and recalls. Proposed section 1002.39 covers States and other political subdivisions of the United States as employers.

Proposed section 1002.40 makes clear that USERRA makes it unlawful for any employer to deny employment to a prospective employee on the basis of his or her membership, application for membership, performance of service, application to perform service, or obligation for service in the uniformed services, or on the basis of his or her exercise of any right guaranteed under the Act. Temporary, part-time, probationary, and seasonal employment positions are also covered by USERRA. Proposed section 1002.41 addresses the limited exception for positions that are for a brief, non-recurrent period and for which the employee has no reasonable expectation of continued employment indefinitely or for a significant period. Proposed section 1002.42 explains that USERRA covers employees on strike, layoff, or leave of absence. Proposed section 1002.43 makes clear that persons occupying professional, executive and managerial positions also are entitled to USERRA rights and benefits. Proposed section 1002.44 addresses the distinction between an independent contractor and an employee under USERRA.

Coverage of Service in the Uniformed Service

Proposed sections 1002.54 through 1002.62 explain the term ''service in the

uniformed services,'' list the various types of uniformed services, and clarify that both voluntary and involuntary duty are covered under USERRA. Proposed section 1002.54 provides that ''service in the uniformed services'' includes a period for which a person is absent from a position of employment for the purpose of an examination to determine his or her fitness to perform duty in the uniformed services. Proposed sections 1002.55 and 1002.56 provide that service under certain authorities for funeral honors duty or as a disaster-response appointee also constitute service in the uniformed services. Proposed section 1002.57 clarifies when service in the National Guard is covered by USERRA, and proposed section 1002.58 addresses service in the commissioned corps of the Public Health Service, a division of the Department of Health and Human Services. Proposed section 1002.59 recognizes coverage for persons designated by the President in time of war or national emergency. Proposed sections 1002.60, 1002.61, and 1002.62 address the coverage of a cadet or midshipman attending a service academy, and members of the Reserve Officers Training Corps, Commissioned Corps of the National Oceanic and Atmospheric Administration, Civil Air Patrol, and Coast Guard Auxiliary.

Absence From a Position of Employment Necessitated by Reason of Service in the Uniformed Services

Proposed section 1002.73 addresses the issue of the employee's reason for leaving employment as it bears on his or her reemployment rights. Section 4312(a) of the Act states that ''any person whose absence from a position of employment is necessitated by reason of service in the uniformed services'' is entitled to the reemployment rights and benefits of USERRA, assuming the Act's eligibility requirements are met. Military service need not be the only reason the employee leaves, provided such service is at least one of the reasons. *See* H.R. Rep. No. 103–65, Part I, at 25 (1993).

USERRA does not impose a limit on the amount of time that may elapse between the date the employee leaves his or her position and the date he or she actually enters the service. Proposed section 1002.74 recognizes that no such limit is warranted. A person entering military service generally needs a period of time to organize his or her personal affairs, travel safely to the site where the service is to be performed, and arrive fit to perform service. The amount of time needed for these preparations will vary from case to case. Moreover, the actual commencement of the period of service may be delayed for reasons beyond the employee's control. If an unusual delay occurs between the time the person leaves civilian employment and the commencement of the uniformed service, the circumstances causing the delay may be relevant to establish that the person's absence from civilian employment was ''necessitated by reason of service in the uniformed services.'' *See Lapine* v. *Town of Wellesley,* 304 F.3d 90 (1st Cir. 2002).

Requirement of Advance Notice

Proposed section 1002.85 explains one of the basic obligations imposed on the service member by USERRA as a prerequisite to reemployment rights: the requirement to notify the employer in advance about impending military service. 38 U.S.C. 4312(a)(1). Section 4312(a)(1) of USERRA contains three general components of adequate notice: (i) The sender of the notice; (ii) the type of notice; and (iii) the timing of notice. First, the employee must notify his or her employer that the employee will be absent from the employment position due to service in the uniformed services. An ''appropriate officer'' from the employee's service branch, rather than the employee, may also provide the notice to the employer. Second, the notice may be either verbal or in writing. *See* 38 U.S.C. 4303(8) (defining ''notice'' to include both written and verbal notification). Although written notice by the employee provides evidence that can help establish the fact that notice was given, the sufficiency of verbal notice recognizes the ''informality and current practice of many employment relationships[.]'' S. Rep. No. 103–158, at 47 (1993). The act of notification is therefore more important than its particular form. Third, the notice should be given in advance of the employee's departure. USERRA does not establish any bright-line rule for the timeliness of advance notice, i.e., a minimum amount of time before departure by which the employee must inform the employer of his or her forthcoming service. Instead, timeliness of notice must be determined by the facts in any particular case, although the employee should make every effort to give notice of impending military service as far in advance as is reasonable under the circumstances. *See* H.R. Rep. No. 103–65, Pt. 1, at 26 (1993).

Proposed section 1002.86 implements the statutory exceptions to the requirement of advance notice of entry into the uniformed services. The statute recognizes that in rare cases it may be very difficult or impossible for an employee to give advance notice to his or her employer. To accommodate these cases, the advance notice requirement may be excused by reason of ''military necessity'' or circumstances that make notice to the employer ''otherwise impossible or unreasonable.'' 38 U.S.C. 4312(b). Section 4312(b) also provides that the uniformed services make the determination whether military necessity excuses an individual from notifying his or her employer about forthcoming military service. Any such determination is to be made according to regulations issued by the Secretary of Defense. *See* 32 CFR part 104. Finally, section 4312(b) states that the ''military necessity'' determination is not subject to judicial review. The same finality and exemption from review, however, do not apply if the employee fails to provide notice to his or her employer because the particular circumstances allegedly make notification ''impossible or unreasonable.'' Whether the circumstances of the case support the employee's failure to provide advance notice of service are questions to be decided by the appropriate fact-finder. *See* S. Rep. No. 103–158, at 47 (1993).

Proposed section 1002.87 makes explicit that the employee is not required to obtain the employer's permission before departing for uniformed service in order to protect his or her reemployment rights. Imposing a prior consent requirement would improperly grant the employer veto authority over the employee's ability to perform service in the uniformed services by forcing the employee to choose between service and potential loss of his or her employment position, if consent were withheld.

Proposed section 1002.88 implements the long-standing legal principle that an employee departing for service is not required to decide at that time whether he or she intends to return to the pre-service employer upon completion of the tour of duty. Rather, the employee may defer the decision until after he or she concludes the period of service, and the employer may not press the employee for any assurances about his or her plans. *See* H.R. Rep. No. 103–65, Part I, at 26 (1993) (''One of the basic purposes of the reemployment statute is to maintain the service member's civilian job as an 'unburned' bridge.'') and S. Rep. No. 103–158, at 47 (1993), both of which cite *Fishgold* v. *Sullivan Drydock and Repair Corp.,* 328 U.S. 275, 284 (1946).

Period of Service

USERRA provides that an individual may serve up to five years in the uniformed services, in a single period of service or in cumulative periods totaling

five years, and retain the right to reemployment by his or her pre-service employer. 38 U.S.C. 4312(c). Proposed sections 1002.99 through 1002.104 implement this statutory provision. Section 1002.99 implements the basic five-year period established by the statute. Proposed section 1002.100 provides that the five-year period includes only actual uniformed service time. Periods of time preceding or following actual service are not included even if those periods may involve absences from the employment position for reasons that are service-related, for example, travel time to and from the duty station, time to prepare personal affairs before entering the service, delays in activation, etc. Proposed section 1002.101 clarifies that the five-year period pertains only to the cumulative period of uniformed service by the employee with respect to one particular employer, and does not include periods of service during which the individual was employed by a different employer. Therefore, the employee is entitled to be absent from a particular position of employment because of service in the uniformed services for up to five years and still retain reemployment rights with respect to that employer; this period starts anew with each new employer. The regulation derives from section 4312(c)'s language tying the five-year period ''to the employer relationship for which a person seeks reemployment[.]'' 38 U.S.C. 4312(c). Note, however, that under these proposed regulations a hiring hall out of which an individual may work for several different employers is considered to be a single employer. *See* proposed section 1002.38.

Proposed section 1002.102 addresses periods of service undertaken prior to the enactment of USERRA, when the Veterans' Reemployment Rights Act (VRRA) was in effect. If an individual's service time counted towards the VRRA's four or five-year periods for reemployment rights, then that service also counts towards USERRA's five-year period. The regulation implements section (a)(3) of the rules governing the transition from the VRRA to USERRA, which appear in a note following 38 U.S.C. 4301. The Department invites comments as to whether this interpretation best effectuates the purpose of the Act. *See* proposed section 1002.102.

Section 4312(c) enumerates eight specific exceptions to the five-year limit on uniformed service that allow an individual to serve longer than five years while working for a single employer and retain reemployment rights under USERRA. 38 U.S.C. 4312(c)(1)–(4)(A)–(E). The exceptions involve unusual service requirements, circumstances beyond the individual's control, or service (voluntary or involuntary) under orders issued pursuant to specific statutory authority or the authority of the President, Congress or a Service Secretary. Proposed section 1002.103 implements this provision by describing each exception set out in the statute.

The regulation also recognizes a ninth exception based on equitable considerations. A service member is expected to mitigate economic damages suffered as a consequence of an employer's violation of the Act. *See Graham* v. *Hall-McMillen Co., Inc.,* 925 F. Supp. 437, 446 (N.D. Miss. 1996). If an individual remains in (or returns to) the service in order to mitigate economic losses caused by an employer's unlawful refusal to reemploy that person, the additional service is not counted against the five-year limit. The Secretary seeks comments on whether an exception to the five-year limit based on the service member's mitigation of economic loss furthers the purposes of the statute.

Proposed section 1002.104 implements section 4312(h), which prohibits the denial of reemployment rights based on the ''timing, frequency, and duration'' of the individual's training or service, as well as the nature of that service or training. 38 U.S.C. 4312(h). A service member's reemployment rights must be recognized as long as the individual has complied with the eligibility requirements specified in the Act. *Id.* The legislative history of section 4312(h) makes clear the Congress' intent to codify the holding of the United States Supreme Court in *King* v. *St. Vincent's Hospital,* 502 U.S. 215 (1991). *See* H.R. Rep. No. 103–65, Part I, at 30 (1993); S. Rep. No. 103–158, at 52 (1993). In *King,* the court held that no service limit based on a standard of reasonableness could be implied from the predecessor version of USERRA. Section 4312(h). Proposed section 1002.104 therefore prohibits applying a ''reasonableness'' standard in determining whether the timing, frequency, or duration of the employee's service should prejudice his or her reemployment rights. Consistent with views expressed in the House report, however, proposed section 1002.104 counsels an employer to contact the appropriate military authority to discuss its concerns over the timing, frequency, and duration of an employee's military service.

Application for Reemployment

In order to protect reemployment rights under USERRA, the returning service member must make a timely return to, or application for reinstatement in, his or her employment position after completing the tour of duty. 38 U.S.C. 4312(a)(3). Sections 4312(e) and (f) establish the required steps of the reinstatement process. 38 U.S.C. 4312(e), (f). Section 4312(e) establishes varying time periods for requesting reinstatement based on the length of the individual's military service. This provision also addresses the time periods for reporting to the employer or applying for reemployment by a person who is hospitalized for, or convalescing from, an injury or illness incurred in, or aggravated during, the performance of service. Section 4312(f) describes the documentary evidence that the service member must submit to the employer in order to establish that the service member meets the statutory requirements for reinstatement. The proposed regulations implement these documentation requirements at 1002.121 to .123.

Proposed section 1002.115 explains the three statutory time periods for making a request for reinstatement, depending on the length of the period of military service, except in the case of an employee's absence for an examination to determine fitness to perform service. The proposed regulation also specifies the actions that must be taken by the employee. Section 4312(e)(1)(A)(i) of USERRA provides that the employee reporting back to the employer following a period of service of less than 31 days must report:

> (i) Not later than the beginning of the first full regularly scheduled work period on the first full calendar day following the completion of the period of service and the expiration of eight hours after a period allowing for the safe transportation of the person from the place of that service to the person's residence * * *

38 U.S.C. 4312(e)(1)(A)(i). The Department interprets this provision as requiring the employee to report at the beginning of the first full shift on the first full day following the completion of service, provided the employee has a period of eight hours to rest following safe transportation to the person's residence. *See* H.R. Rep. No. 103–65 at 29 (1993). The Department also understands the term ''next'' in the clause ''next first full calendar day'' in section 4312(e)(1)(C) to be superfluous. The Department invites comments as to whether these interpretations best effectuate the purpose of this provision. *See* proposed section 1002.115.

If it is impossible or unreasonable for the employee to report within the above time period, he or she must report to the employer as soon as possible after the expiration of the eight-hour period.

If the individual served between 31 and 180 days, he or she must make an oral or written request for reemployment no more than 14 days after completing service. If it is impossible or unreasonable for the employee to apply within 14 days through no fault of the employee, he or she must submit the application not later than the next full calendar day after it becomes possible to do so. Finally, if the individual served more than 180 days, he or she must make an oral or written request for reemployment no more than 90 days after completing service.

Proposed section 1002.116 addresses the situation where a service member is unable to meet the foregoing timeframes due to the individual's hospitalization for or convalescence from a service-related illness or injury. Such a person must comply with the notification procedures determined by the length of service, after the time period required for the person's recovery. The recovery period may not exceed two years unless circumstances beyond the individual's control make notification within the required two-year period impossible or unreasonable.

Proposed section 1002.117 covers the situation where the employee fails to report or to submit a timely application for reemployment. Such failure does not automatically divest the individual of his or her statutory reemployment rights. *See* 38 U.S.C. 4312(e)(3). The employer may subject the employee to the workplace rules, policies and practices that ordinarily apply to an employee's unexcused absence from work.

Proposed sections 1002.118 through 1002.123 establish procedures for notifying the employer that the service member intends to return to work. These sections also address the requirement that the returning service member provide documentation to the employer in certain instances. The documentation provides evidence that the service member meets three of the basic requirements for reemployment: timely application for reinstatement, permissible duration of service, and appropriate type of service discharge. USERRA expressly provides that the Secretary may prescribe, by regulation, the documentation necessary to demonstrate that a service member applying for employment or reemployment meets these requirements. Proposed section 1002.120 makes clear that the service member does not forfeit reemployment rights with one employer by working for another employer after completing his or her military service, as long as the service member complies with USERRA's reinstatement procedures.

Character of Service

USERRA makes entitlement to reemployment benefits dependent on the characterization of an individual's separation from the uniformed service, or ''character of service.'' 38 U.S.C. 4304. The general requirement is that the individual's service separation be under other than dishonorable conditions. Proposed section 1002.135 lists four grounds for terminating the individual's reemployment rights based on character of service: (i) Dishonorable or bad conduct discharge; (ii) ''other than honorable'' discharge as characterized by the regulations of the appropriate service Secretary; (iii) dismissal of a commissioned officer by general court-martial or Presidential order during a war (10 U.S.C. 1161(a)); and, (iv) removal of a commissioned officer from the rolls because of unauthorized absence from duty or imprisonment by a civil authority (10 U.S.C. 1161(b)). 38 U.S.C. 4304(1)–(4). The uniformed services determine the individual's character of service, which is referenced on Defense Department Form 214. For USERRA purposes, Reservists who do not receive character of service certificates are considered honorably separated; many short-term tours of duty do not result in an official separation or the issuance of a Form 214.

Proposed sections 1002.137 and 1002.138 address the consequences of a subsequent upgrading of an individual's disqualifying discharge. Upgrades may be either retroactive or prospective in effect. An upgrade with retroactive effect may reinstate the individual's reemployment rights provided he or she otherwise meets the Act's eligibility criteria, including having made timely application for reinstatement. However, a retroactive upgrade does not restore entitlement to the back pay and benefits attributable to the time period between the individual's discharge and the upgrade.

Employer Statutory Defenses

USERRA provides three statutory defenses with which an employer may defend against a claim for USERRA benefits. The employer bears the burden of proving any of these defenses. 38 U.S.C. 4312(d)(2)(A)-(C).

An employer is not required to reemploy a returning service member if the employer's circumstances have so changed as to make such reemployment impossible or unreasonable. 38 U.S.C. 4312(d)(1)(A). In view of USERRA's remedial purposes, this exception must be narrowly construed. The employer bears the burden of proving that changed circumstances make it impossible or unreasonable to reemploy the returning veteran. 38 U.S.C. 4312(d)(2)(A); proposed section 1002.139. The change must be in the pre-service employer's circumstances, as distinguished from the circumstances of its employees. For example, the defense of changed circumstances is available where reemployment would require the creation of a ''useless job or mandate reinstatement where there has been a reduction in the workforce that reasonably would have included the veteran.'' H.R. Rep. No. 103–65, at 25 (1993), citing *Watkins Motor Lines* v. *De Galliford,* 167 F.2d 274, 275 (5th Cir. 1948); *Davis* v. *Halifax County School System,* 508 F. Supp. 966, 969 (E.D. N.C. 1981). However, an employer cannot establish that it is unreasonable or impossible to reinstate the returning service member solely by showing that no opening exists at the time of the reemployment application or that another person was hired to fill the position vacated by the veteran, even if reemploying the service member would require terminating the employment of the replacement employee. *See Davis* at 968; *see also Cole* v. *Swint,* 961 F.2d 58, 60 (5th Cir. 1992); *Fitz* v. *Bd. of Education of Port Huron Area Schools,* 662 F. Supp. 1011, 1015 (E.D. Mich. 1985), *aff'd,* 802 F.2d 457 (6th Cir. 1986); *Anthony* v. *Basic American Foods, Inc.,* 600 F. Supp. 352, 357 (N.D. Cal. 1984); *Goggin* v. *Lincoln St. Louis,* 702 F.2d 698, 709 (8th Cir. 1983). *Id.*

An employer is also not required to reemploy a returning service member if such reemployment would impose an undue hardship on the employer. 38 U.S.C. 4312(d)(1)(B). As explained in USERRA's legislative history, this defense only applies where a person is not qualified for a position due to disability or other bona fide reason, after reasonable efforts have been made by the employer to help the person become qualified. H.R. Rep. No. 103–65, at 25 (1993). USERRA defines ''undue hardship'' as actions taken by the employer requiring significant difficulty or expense when considered in light of the factors set out in 38 U.S.C. 4303(15). USERRA defines ''reasonable efforts'' as ''actions, including training provided by an employer, that do not place an undue hardship on the employer.'' 38 U.S.C. 4303(10). USERRA defines ''qualified''

in this context to mean having the ability to perform the essential tasks of the position. 38 U.S.C. 4303(9). These definitions are set forth in proposed sections 1002.5(m) (''undue hardship''), 1002.5(h) (''reasonable efforts''), and 1002.5(g) (''qualified'').

The third statutory defense against reemployment requires the employer to establish that ''the employment from which the person leaves to serve in the uniformed services is for a brief, nonrecurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period.'' 38 U.S.C. 4312(d)(1)(C), (2)(C). USERRA does not define ''significant period.'' Under both USERRA and its predecessor, the VRRA, a person holding a seasonal job may have reemployment rights if there was a reasonable expectation that the job would be available at the next season. *See, e.g., Stevens* v. *Tennessee Valley Authority,* 687 F.2d 158, 161–62 (6th Cir. 1982), *and cases cited therein;* S. Rep. No. 103–158, at 46–47.

Subpart D—Rights, Benefits, and Obligations of Persons Absent From Employment Due to Service in the Uniformed Services

Furlough or Leave of Absence

Proposed section 1002.149 implements section 4316(b) of the Act, which establishes the employee's general non-seniority based rights and benefits while he or she is absent from the employment position due to military service. 38 U.S.C. 4316(b). The employer is required to treat the employee as if he or she is on furlough or leave of absence. 38 U.S.C. 4316(b)(1)(A). The employee is entitled to non-seniority employment rights and benefits that are available to any other employee ''having similar seniority, status, and pay who [is] on furlough or leave of absence. * * *'' 38 U.S.C. 4316(b)(1)(B). These non-seniority rights and benefits may be provided ''under a contract, agreement, policy, practice, or plan in effect at the commencement of such service or established while such person performs such service.'' *Id.* For example, if the employer offers continued life insurance coverage, holiday pay, bonuses, or other non-seniority benefits to its employees on furlough or leave of absence, the employer must also offer the service member similar benefits during the time he or she is absent from work due to military service. If the employer has more than one kind of non-military leave and varies the level and type of benefits provided according to the type of leave used, the comparison should be made with the employer's most generous form of comparable leave. *See Waltermyer* v. *Aluminum Company of America,* 804 F.2d 821 (3d Cir. 1986); H.R. Rep. No. 103–65, Part I, at 33–34 (1993); *Schmauch* v. *Honda of America Manufacturing, Inc.,* 295 F. Supp. 2d 823 at 836–839 (S.D. Ohio 2003) (employer improperly treated jury duty more favorably than military leave). The returning employee is entitled not only to the non-seniority rights and benefits of workplace agreements, policies, and practices in effect at the time he or she began the period of military service, but also to those that came into effect during the period of service. The Department invites comments as to whether this interpretation best effectuates the purpose of section 4316(b). Reference should be made to 38 U.S.C. 4316(a) and proposed sections 1002.210 through 1002.214 for the provisions addressing seniority-based rights and benefits.

The Department also interprets section 4316(b) of the Act to mean that an employee who is absent from a position of employment by reason of service is not entitled to greater benefits than would be generally provided to a similarly situated employee on non-military furlough or leave of absence. *See* Sen. Rep. No. 103–158 (1993) at 58. The Department also does not interpret the second use of the term ''seniority'' in section 4316(b)(1)(B) as a limiting factor in determining what non-seniority rights must be provided to the service member during the absence from the employment position. The Department invites comments as to whether this interpretation best effectuates the purpose of this provision. *See* proposed section 1002.149.

Proposed section 1002.152 addresses the circumstances under which an employee waives entitlement to non-seniority based rights and benefits. Section 4316(b)(2) of the Act provides that an employee who ''knowingly'' states in writing that he or she will not return to the employment position after a tour of duty will lose certain rights and benefits that are not determined by seniority. 38 U.S.C. 4316(b)(2). The Department intends for principles of Federal common law pertaining to a waiver of interest to apply in determining whether such notice is effective in any given case. *See Melton* v. *Melton,* 324 F.3d 941, 945 (7th Cir. 2003); *Smith* v. *Amedisys, Inc.,* 298 F.3d 434, 443 (5th Cir. 2002). By contrast, a notice given under 38 U.S.C. 4316(b)(2) does not waive the employee's reemployment rights or seniority-based rights and benefits upon reemployment. The Department invites comments as to whether this interpretation best effectuates the purpose of this provision.

Proposed section 1002.153 clarifies that an employer may not require the employee to use his or her accrued leave to cover any part of the period during which the employee is absent due to military service. 38 U.S.C. 4316(d). The employee must be permitted upon request to use any accrued vacation, annual or similar leave with pay during the period of service. The employer may require the employee to request permission to use such accrued leave. However, sick leave is not comparable to vacation, annual or similar types of leave; entitlement to sick leave is conditioned on the employee (or a family member) suffering an illness or receiving medical care. An employee is therefore not entitled to use accrued sick leave solely to continue his or her civilian pay during a period of service.

Health Plan Coverage

Section 4317 of the Act provides that service members who leave work to perform military service have the right to elect to continue their existing employer-based health plan coverage for a period of time while in the military. Section 4317 also requires that the employee and eligible dependents must, upon reemployment of the service member, be reinstated in the employer's health plan without a waiting period or exclusion that would not have been imposed had coverage not been suspended or terminated due to service in the uniformed services. The employee need not elect to continue health plan coverage during a period of uniformed service in order to be entitled to reinstatement in the plan upon reemployment. Section 4317 of USERRA is the exclusive source in USERRA of service members' rights with respect to the health plan coverage they receive in connection with their employment. Section 4317 therefore controls the entitlement of a person to coverage under a health plan, and supersedes more general provisions of the Act dealing with rights and benefits of service members who are absent from employment. *See* 38 U.S.C. 4316(b)(5).

Under USERRA, the term ''employer'' is defined broadly to cover entities, such as insurance companies or third party plan administrators, to which employer responsibilities such as administering employee benefit plans or deciding benefit claims have been delegated. ''Health plan'' is defined to include an insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or other arrangement under which health

services for individuals are provided, or the expenses of such services are paid. Proposed Section 1002.5(d); 38 U.S.C. 4303(7). However, because USERRA's continuation coverage provisions only apply to health coverage that is provided in connection with a position of employment, coverage obtained by an individual through a professional association, club or other organization would not be governed by USERRA, nor would health coverage obtained under another family member's policy or separately obtained by an individual.

USERRA's health plan provisions are similar but not identical to the continuation of health coverage provisions added to Federal law by the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). As with COBRA, the Act permits the continuation of employment-based coverage. Unlike COBRA, USERRA's continuation coverage is available without regard to either the size of the employer's workforce or to whether the employer is a government entity.

Proposed section 1002.164 addresses the length of time the service member is entitled to continuing health plan coverage. Section 4317(a)(1) provides that the maximum period of continued coverage is either 18 months or the period of military service (beginning on the date the absence begins and ending on the day after the service member fails to apply for reemployment), whichever occurs first.

Under section 4317(a)(2), implemented by proposed section 1002.166, a service member who elects to continue employer-provided health plan coverage may be required to pay no more than 102 percent of the full premium (the employee's share plus the employer's share) for such coverage, except that service members who perform service for fewer than 31 days may not be required to pay more than the employee share, if any, for such coverage. The amount of the full premium is determined in the same manner as for COBRA under section 4980B(f)(4) of the Internal Revenue Code of 1986. 26 U.S.C. 4980B(f)(4). The legislative history of USERRA indicates that the purpose of these provisions, and in particular the requirement that service members pay only the employee share for coverage during service lasting fewer than 31 days, is to ensure that there is no gap in health insurance coverage for the service member's family during a short period of service. Dependents of Reserve Component members are entitled to participate in the military health care system, called TRICARE, only if the period of service exceeds 30 days. *See* H.R. Rep. No. 103–65, Pt. 1, at 34 (1993).

USERRA does not require that any particular type of health plan coverage be provided. The statute requires only that the employer, and hence the plan, permit the service member to continue the coverage that he or she already has obtained through the employment relationship, including family and dependent coverage. USERRA does not provide specific guidance regarding how or within what time period the continuing coverage is to be elected. Proposed section 1002.165 provides that plan administrators and fiduciaries may develop reasonable requirements and operating procedures for the election of continuing coverage, consistent with the Act and the terms of the plan. Such procedures must take into consideration the requirement in USERRA section 4312(b) that where military necessity prevents the service member from giving the employer notice that he or she is leaving for military duty, or where giving such notice would be impossible or unreasonable, plan requirements may not be imposed to deny the service member continuation coverage.

The Department invites comments as to whether this approach—allowing health plan administrators latitude to develop reasonable requirements for employees to elect continuation coverage—best effectuates the purpose of the statute. Alternatively, the Department requests comments on the question whether these USERRA regulations should establish a date certain by which time continuing health plan coverage must be elected. Moreover, should a service member be permitted to delay electing continuation health plan coverage under some circumstances? Finally, in a case where health plan coverage was terminated or suspended by reason of military service, if the employee is permitted to delay reinstatement to the health plan for a period of time after the date of reemployment, the Department invites comments as to whether such delayed reinstatement coverage should be subject to an exclusion or waiting period. *See* 38 U.S.C. 4317(b)(1).

As with every other right and benefit guaranteed by USERRA, the employer is free to provide continuation health plan coverage that exceeds that which is required by the Act. For example, some employers do not require the service member to pay more than the ordinary employee premium for continuation health coverage during an extended period of service in the uniformed services.

Proposed sections 1002.167–1002.168 explain the rights of a reemployed service member whose health plan coverage has been terminated as a result of his or her failure to elect continuation coverage, or length of service. At the time of reemployment, no exclusion or waiting period may be imposed where one would not have been imposed if the coverage of the service member had not terminated as a result of service in the uniformed services. This provision also applies to the coverage of any other person who is covered under the service member's policy, such as a dependent. Injuries or illnesses determined by the Secretary of Veterans' Affairs to have been incurred or aggravated during service are excluded from the ban on exclusions and waiting periods; however, the service member and any dependents must be reinstated as to all other medical conditions covered by the plan.

USERRA provides for the continuation of health coverage available to the service member in connection with his or her employment, so, generally, if the employer cancels health coverage for its employees while the service member is performing service, or if the employer goes out of business, the service member's coverage terminates also. Under USERRA, the treatment of multiemployer health plans provides an exception to this result. Special rules for multiemployer plans are the focus of proposed section 1002.169. This provision requires continued health plan coverage in a multiemployer plan even when the service member's employer no longer exists, or no longer participates in the plan. Any liability under the multiemployer plan for employer contributions and benefits under USERRA is to be allocated as the sponsor maintaining the plan provides. If the sponsor does not provide for an allocation of responsibility under these circumstances, the liability is allocated to the last employer employing the person before the period of uniformed service. Where that employer is no longer functional, the liability is allocated to the plan.

Subpart E—Reemployment Rights and Benefits

Prompt Reemployment

One of the stated purposes of USERRA is ''to minimize the disruption to the lives of persons performing service in the uniformed services * * * by providing for [their] prompt reemployment.'' 38 U.S.C. 4301(2). Section 4313 requires that a returning service member who meets the

eligibility requirements of section 4312 be ''promptly reemployed'' in the appropriate position. 38 U.S.C. 4313(a). The circumstances of each individual case will determine the meaning of ''prompt.'' *See* H.R. Rep. No. 103–65, Part I, at 32 (1993); S. Rep. No. 103–158, at 54 (1993). Proposed section 1002.181 provides guidance for the ''prompt'' reinstatement of returning service members. The regulation states, as a general rule, that the employer shall reinstate the employee as soon as practicable under the circumstances. Reinstatement must occur within two weeks after he or she applies for reemployment ''absent unusual circumstances.'' The reasonableness of any delay depends on a variety of factors, including, for example, the length of the service member's absence or intervening changes in the circumstances of the employer's business. An employer does not have the right to delay or deny reemployment because the employer filled the service member's pre-service position and no comparable position is vacant, or because a hiring freeze is in effect. The Department invites comments as to whether allowing the employer two weeks to reemploy the service member returning from a period of service of more than thirty days best effectuates the purpose of this provision of USERRA. [Note: If the period of service is less than 31 days then the statute requires that the returning employee simply report back to work; these regulations anticipate that such a person will be immediately reemployed.]

Reemployment Position

In construing an early precursor statute to USERRA, the Selective Training and Service Act of 1940, 50 U.S.C. Appendix, 308(b, c), the Supreme Court recognized a basic principle embedded in early protections provided for veterans, which was to become a bedrock concept of all future similar legislation. Thus, in *Fishgold* v. *Sullivan Drydock and Repair Corp.,* 328 U.S. 275, 284–85 (1946), the Supreme Court stated that the returning service member ''does not step back on the seniority escalator at the point he stepped off. He steps back on at the precise point he would have occupied had he kept his position continuously during the war.'' *Id. Fishgold* principally involved the issue of a veteran's seniority; however, the principle applies with equal force to all aspects of the service member's return to the work force. The returning service member therefore should be restored to ''a position which, on the moving escalator of terms and conditions affecting that particular [pre-service] employment, would be comparable to the position which he would have held if he had remained continuously in his civilian employment.'' *Oakley* v. *Louisville & Nashville R.R.,* 338 U.S. 278, 283 (1949). The position to which the returning service member should be restored has become known as the ''escalator position.'' The requirement that the service member be reemployed in the escalator position is implemented in section 4313 of USERRA. 38 U.S.C. 4313.

Proposed sections 1002.191 and 1002.192 implement general principles related to a returning veteran's right to reemployment in this escalator position. Proposed sections 1002.193 and 1002.195 clarify that seniority, status, pay, length of service, and service-related disability may affect the service member's reemployment position. Proposed sections 1002.196 and 1002.197 explain the employer's obligations to reemploy the service member based on the duration of the person's absence from the work place. Proposed section 1002.198 describes the criteria to be followed by the employer in making reasonable efforts to enable the service member to qualify for the reemployment position. Finally, proposed section 1002.199 provides guidance for employers in determining the priority of two or more service members who are eligible for the same employment position.

In some workplaces, where opportunities for promotion are conditioned upon the employee passing a skills test or examination, determining the escalator position will require administering a makeup promotional exam. If a reemployed service member was eligible to take such a promotional exam and missed it while performing military service, the employer should provide the employee with an opportunity to take the missed exam after a reasonable period of time to acclimate to the employment position. *See, e.g., Fink* v. *City of New York,* 129 F.Supp.2d 511 (2001). In some cases, success on a promotional exam entitles an employee to an immediate promotion, and in some cases it entitles an employee only to a particular placement on an eligibility list. If the reemployed employee is successful on the makeup exam, and there is a reasonable certainty that, given the results of that exam, the reemployed employee would have been promoted during the time he or she was in military service, then the reemployed employee's promotion must be made effective as of the date it would have occurred had the employment not been interrupted by military service. Similarly, if the reemployed employee is successful on the makeup exam, and there is a reasonable certainty that, given the results of that exam, the reemployed employee would have been placed in a particular position on an eligibility list during the time he or she was in military service, then the reemployed employee's placement on the list must be made effective as of the date it would have occurred had the employment not been interrupted by military service. This requirement is similar to the requirement in Section 1002.236, that obliges an employer to give a reemployed employee, after a reasonable amount of time to adjust to the reemployment position, a missed skills test or examination that is the basis of a merit pay increase. Proposed section 1002.193 implements these requirements. The Department invites comments as to whether this interpretation best effectuates the purpose of this provision, or whether the issue of promotional exams requires more detailed treatment in these regulations.

The Department understands the statutory term ''qualify'' in 38 U.S.C. 4313 to include the employer's affirmative obligation to make reasonable efforts to assist the returning employee in acquiring the ability to perform the essential tasks of the reemployment position. This understanding is reflected in the language used in the regulations. The Department requests comments on whether this interpretation is proper.

The statute makes the duration of a returning employee's period of service a critical factor in determining the reemployment position to which the employee is entitled upon return from service. After service of 90 days or less, the person is entitled to reinstatement in the position of employment in which he or she would have been employed if not for the interruption in employment due to uniformed service (the escalator position). 38 U.S.C. 4313(a)(1)(A). The employer must make reasonable efforts to assist the individual in becoming qualified for the reemployment position. In the event the returning employee cannot become qualified for the escalator position despite reasonable efforts by the employer, the returning employee is entitled to the employment position in which he or she was employed on the date that the period of service commenced. 38 U.S.C. 4313(a)(1)(B). These requirements are implemented in proposed section 1002.196.

The service member returning from a period of service longer than 90 days is

similarly entitled to reemployment in the escalator position, but, at the employer's option, may also be reinstated in any position for which the employee is qualified with the same seniority, status, and pay as the escalator position. 38 U.S.C. 4313(a)(2)(A). This statutory option is intended to provide the employer with a degree of flexibility in meeting its reemployment obligations. As with an employee returning from a shorter period of service, the employer must first make reasonable efforts to qualify the individual for the escalator position or for the position of like seniority, status, and pay. In the event the returning employee cannot become qualified for one of these positions despite reasonable employer efforts, the person is entitled to the employment position in which he or she was employed on the date that the period of service commenced, or a position of like seniority, status, and pay. 38 U.S.C. 4313(a)(2)(B). These requirements are implemented in proposed section 1002.197.

In some instances, the service member may not be able to qualify for either the escalator position or the pre-service position (or a position similar in seniority, status, and pay to either of these positions) despite reasonable employer efforts. In such an event, the employee is entitled to be reemployed in any other position that is the nearest approximation to the escalator position. If there is no such position for which the returning service member is qualified, he or she is entitled to reemployment in any other position that is the nearest approximation to the preservice position. In either event, the returning service member must be reemployed with full seniority. 38 U.S.C. 4313(a)(4). This requirement is implemented by proposed sections 1002.196(c) and .197(c).

Depending on the circumstances, section 4313 either permits or requires the employer to reemploy a returning service member in a position with equivalent (or the nearest approximation to ''equivalent'') seniority, status and pay to the escalator or pre-service position. 38 U.S.C. 4313(a)(2)(A), (B), (3)(A), (B). Although ''seniority'' and ''pay'' are generally well-understood terms, USERRA does not define ''status'' as it is used in section 4313 of the Act. Case law interpreting VRRA, a precursor to USERRA, recognized status as encompassing a broader array of rights than either seniority or pay. Job status varies from position to position, but generally refers to the incidents or attributes attached to, and inherent in, a particular job. The term often includes the rank or responsibility of the position, its duties, location, working conditions, and the pay and seniority rights attached to the position. *See* H.R. Rep. No. 103–65, Part I, at p. 31 (1993). Examples of status may be the exclusive right to a sales territory; the opportunity to advance in a position; eligibility for possible election to a position with the employee representative organization; greater availability of work where piece rates apply; the opportunity to work additional hours and to advance in a job; the opportunity to withdraw from a union; the opportunity to obtain a license; or, the opportunity to work a particular shift. The facts and circumstances surrounding the position determine whether a specific attribute is part of the position's status for USERRA purposes. Proposed sections 1002.193 and .194 implement these provisions of the Act.

Notwithstanding the escalator principle, USERRA does not require an employer to reinstate a returning service member in an employment position if he or she is not qualified to perform the civilian job. See proposed section 1002.198. USERRA defines ''qualified'' as ''having the ability to perform the essential tasks of the position.'' 38 U.S.C. 4303(9). An individual's performance qualifications are a function of his or her ability to perform the ''essential tasks'' of the employment position. This regulation provides guidelines for determining whether a given task is essential for proper performance of the position. In general, whether a task is essential for a position will depend on its relationship to the actual performance requirements of the position rather than, for example, the criteria enumerated in a job description. An employer may not decline to rehire a returning service member simply because he or she is unable to do some auxiliary, but nonessential, parts of the job. The Department invites comments as to whether this interpretation best effectuates the purpose of this provision.

Proposed section 1002.198 describes the employer's obligation to assist a returning service member for civilian reemployment in becoming qualified for a civilian position. USERRA requires the employer to make reasonable efforts to enable the returning service member to qualify for a position that he or she would be entitled to if qualified. Section 4303(10) defines ''reasonable efforts'' as ''actions, including training provided by an employer, that do not place an undue hardship on the employer.'' 38 U.S.C. 4303(10). Section 4303(15) defines ''undue hardship'' as ''actions [taken by an employer] requiring significant difficulty or expense, when considered in light of * * * the overall financial resources of the employer'' and several other stated factors. 38 U.S.C. 4303(15). Depending upon an employer's size and resources, a given level of effort might be an undue hardship for one employer and yet reasonable for another. The employer has the burden of proving that the training, retraining, or other efforts to enable the returning employee to qualify would impose an undue hardship. The proposed regulation describes the criteria that apply in determining whether the steps for aiding the service member in becoming qualified impose an undue hardship on the employer.

Proposed section 1002.199 implements section 4313(b), which governs the priority of reemploying two (or more) service members who are entitled to reemployment in the same position. 38 U.S.C. 4313(b). The individual who first vacated the employment position for military service has the highest priority for reemployment. 38 U.S.C. 4313(b)(1). If this priority means another returning service member is denied reemployment in that position, the USERRA rules that give reemployment options to the employer would govern the reemployment of the second person. Thus, the second service member is entitled to ''any other position'' offering status and pay similar to the denied position according to the statutory rules generally applicable to returning service members. 38 U.S.C. 4313(b)(2)(A). A disabled service member in this situation would be entitled to any other position offering status and pay similar to the denied position according to the rules governing disabled service members. 38 U.S.C. 4313(b)(2)(B).

Seniority Rights and Benefits

Section 4316(a) provides that a reemployed service member is entitled to ''the seniority and other rights and benefits determined by seniority'' that the service member had attained as of the date he or she entered the service, together with the additional seniority he or she would have attained if continuously employed during the period of service. 38 U.S.C. 4316(a). As with the principles governing the determination of the reemployment position, this provision reflects the escalator principle. As applied to seniority rights under section 4316(a), the escalator principle entitles the returning service member to the ''same seniority and other rights and benefits determined by seniority that [the service member] would have attained if [his or

her] employment had not been interrupted by service in the uniformed services.'' S. Rep. No. 103–158, at 57 (1993); *see also* H.R. Rep. No. 103–65, Part I, at 33 (1993). Proposed section 1002.210 states the basic escalator principle as it applies to seniority and seniority-based rights and benefits. It bears emphasis here that the escalator principle is outcome-neutral in terms of the effect of restoring the service member's seniority. For example, the application of the principle does not offer protection against adverse job consequences that result from placing the service member in his or her proper position on the seniority escalator. Finally, this section explains that the rights and benefits protected by USERRA upon reemployment include those provided by employers and those required by statute, such as the right to leave under the Family and Medical Leave Act of 1993, 29 U.S.C. 2601–2654 (FMLA). Accordingly, a reemployed service member would be eligible for FMLA leave if the number of months and the number of hours of work for which the service member was employed by the civilian employer, together with the number of months and number of hours of work for which the service member would have been employed by the civilian employer during the period of military service, meet FMLA's eligibility requirements. *See* Memorandum of July 22, 2002, *Protection of Uniformed Service Member's Rights to Family and Medical Leave* at *http://www.dol.gov/vets/media/fmlarights.pdf.*

Proposed section 1002.211 makes clear that section 4316(a) is not a statutory mandate to impose seniority systems on employers. Rather, USERRA requires only that those employers who provide benefits based on seniority restore the returning service member to his or her proper place on the seniority ladder.

Proposed section 1002.212 adopts the basic definition of seniority-based rights and benefits developed in Supreme Court decisions. This definition imposes two requirements: first, the benefit must be provided as a reward for length of service rather than a form of short-term compensation for services rendered; second, the service member's receipt of the benefit, but for his or her absence due to service, must have been reasonably certain. *See Coffy* v. *Republic Steel Corp.,* 447 U.S. 191 (1980); *Alabama Power Co.* v. *Davis,* 431 U.S. 581 (1977); *see also* S. Rep. No. 103–158, at 57 (1993), citing with approval *Goggin* v. *Lincoln, St. Louis,* 702 F.2d 698, 701 (8th Cir. 1983) (summarizing Supreme Court formulation of two-part definition of ''perquisites of seniority''). Proposed section 1002.212(c) adds a third consideration which derives from another Supreme Court decision, *McKinney* v. *Missouri-Kansas-Texas R.R. Co.,* 357 U.S. 265 (1958). In that case, the Court allowed consideration of the employer's ''actual practice'' in making advancement an automatic benefit based on seniority under the collective bargaining agreement. Accordingly, proposed section 1002.212(c) adds the requirement that ''actual custom or practice'' in conferring or withholding a benefit also determines whether the benefit is a perquisite of seniority.

Proposed section 1002.213 further defines one aspect of seniority-based rights and benefits: the requirement that receipt of the benefit be ''reasonably certain.'' The proposed regulation describes a ''reasonably certain'' likelihood as a ''high probability'' that the returning service member would have obtained the seniority-based benefit if continuously employed. A ''high probability'' is less than an ''absolute certainty,'' which the Supreme Court has rejected in analyzing the degree of probability a reemployed service member must satisfy in order to establish that his or her advancement would have been ''reasonably certain'' but for the period of service. *See Tilton* v. *Missouri Pacific Railroad Co.,* 376 U.S. 169, 180 (1964). The employer may not deny a reemployed service member seniority-based rights or benefits based on a scenario of unlikely events that allegedly would have occurred during the period of service.

Proposed section 1002.214 emphasizes that the returning employee is also entitled to claim perquisites of seniority that first became available to co-workers or that were modified while he or she was in the service. That the employer did not offer the particular benefit until after the individual began the service is not a justification for denying the benefit to the returning service member. Similarly, if a benefit is modified or eliminated, the change would affect the returning service member. This requirement flows from the fact that the returning service member must be restored to the seniority rights and benefits that he or she would have attained with reasonable certainty if he or she had remained continuously employed during the period of service.

Disabled Employees

USERRA imposes additional requirements in circumstances involving the reemployment of a disabled service member. A disabled service member is entitled, to the same extent as any other individual, to the escalator position he or she would have attained but for military service. If the disability is not an impediment to the service member's qualifications for the escalator position, then the disabling condition is irrelevant for USERRA purposes. If the disability limits the service member's ability to perform the job, however, the statute imposes a duty on the employer to make reasonable efforts to accommodate the disability. 38 U.S.C. 4313(a)(3). In some instances, an employer is unable to accommodate a service member's disability despite reasonable efforts. If, despite the employer's reasonable efforts to accommodate the disability, the returning disabled service member cannot become qualified for his or her escalator position, that person is entitled to be reemployed ''in any other position which is equivalent in seniority, status, and pay, the duties of which the person is qualified to perform or would become qualified to perform with reasonable efforts by the employer.'' 38 U.S.C. 4313(a)(3)(A). If no such position exists, the service member is entitled to reemployment ''in a position which is the nearest approximation * * * in terms of seniority, status, and pay consistent with circumstances of such person's case.'' 38 U.S.C. 4313(a)(3)(B). *See, e.g., Hembree* v. *Georgia Power Co.,* 637 F.2d 423 (5th Cir. 1981); *Blake* v. *City of Columbus,* 605 F. Supp. 567 (S.D. Ohio 1984).

Proposed section 1002.225 sets forth the priority of reemployment positions for which the disabled service member should be considered. The regulation also implements the statutory requirement for reasonable accommodation of the returning service member's disability. Such accommodations may include placing the reemployed person in an alternate position, on ''light duty'' status; modifying technology or equipment used in the job position; revising work practices; or, shifting job functions. The appropriate level of accommodation depends on the nature of the service member's disability, the requirements for properly performing the job, and any other circumstances surrounding the particular situation. *See* 38 U.S.C. 4303(9), (10), and (15); 4313(a)(3); H.R. Rep. No. 103–65, at 31 (1993); S. Rep. No. 103–158, at 53 (1993).

The employer must make reasonable accommodations for any disability incurred in, or aggravated during, a period of service. The accommodation requirement is not limited to disabilities

incurred during training or combat, so long as they are incurred during the period of service. Any disability that is incurred or aggravated outside of a period of service (including a disability incurred between the end of the period of service and the date of reemployment) is not covered as a service-related disability for USERRA purposes. The disability must have been incurred or aggravated when the service member applies for reemployment, even if it has not yet been detected. If the disability is discovered after the service member resumes work and it interferes with his or her job performance, then the reinstatement process should be restarted under USERRA's disability provisions.

A returning service member may have rights under USERRA based on a service-related disability that is not permanent. A service member who incurs a temporary disability may be entitled to interim reemployment in an alternate position provided he or she is qualified for the position and the disability will not affect his or her ability to perform the job. If no such alternate position exists, the disabled service member would be entitled to reinstatement under a ''sick leave'' or ''light duty'' status until he or she completely recovers.

In identifying an alternate position for a disabled service member, the focus should be on the returning service member's ability to perform the essential duties of the job. The position must be one that the person can safely perform without unreasonable risk to the person or fellow employees. The disabled service member is required to provide information on his or her education and experience, the extent of the disability, and his or her present capabilities. The employer then has the duty to disclose all positions that the service member may be qualified to perform. Because the employer has greater knowledge of the various positions and their requirements in the organization, the employer, and not the service member, is exclusively responsible for accommodating the disability by identifying suitable positions within the service member's abilities and capabilities. Proposed sections 1002.225 and .226 implement USERRA's requirements regarding disabled employees.

Rate of Pay

The escalator principle also determines the returning service member's rate of pay after an absence from the workplace due to military service. As with respect to benefits and the reemployment position, the application of this fundamental principle with respect to pay is intended to restore the returning service member to the employment position that he or she would have occupied but for the interruption in employment occasioned by military service. *See generally Fishgold* v. *Sullivan Drydock and Repair Corp.* Proposed section 1002.236 implements the escalator principle for purposes of determining the reemployed service member's rate of pay. The regulation also addresses the various elements of compensation that often compose the returning service member's ''rate of pay.'' Depending on the particular position, the rate of pay may include more than the basic salary. The regulation lists various types of compensation that may factor into determining the employee's overall compensation package under the escalator principle. The list is not exclusive; any compensation, in whatever form, that the employee would have received with reasonable certainty if he or she had remained continuously employed should be considered an element of compensation. The returning employee's rate of pay may therefore include pay increases, differentials, step increases, merit increases, periodic increases, or performance bonuses.

In some workplaces, merit pay increases are conditioned upon the employee passing a skills or performance evaluation. The employer should allow a reasonable period of time for the employee to become acclimated in the escalator position before such an evaluation is administered. In order that the employee not be penalized financially for his or her military service, the employee must be reemployed at the higher rate of pay, assuming that it is reasonably certain that the employee would otherwise have attained the merit pay increase during the period of military service. This requirement is similar to the requirement in Section 1002.193, which obliges an employer to give a reemployed employee, after a reasonable amount of time to adjust to the reemployment position, a missed skills test or examination that is the basis of an opportunity for promotion. The Department invites comments as to whether this interpretation best effectuates the purpose of this provision, or whether the issue of merit pay requires more detailed treatment in these regulations.

What is critical is not how the employer characterizes the compensation, but whether it would have been attained with reasonable certainty if not for the service in the uniformed services. In determining rate of pay, as in other situations, application of the escalator principle may leave the returning service member with less than he or she had before performing service. Thus, if nondiscriminatory adverse changes in the employment position's pay structure would with reasonable certainty have lowered the compensation rate during the period of service if he or she had remained continuously employed, the escalator principle may operate to diminish the returning service member's pay.

Protection Against Discharge

Section 4316(c) of USERRA provides service members special protection from discharge from civilian employment after returning from uniformed service. If the individual served over 180 days before reemployment, then he or she may not be discharged from the employment position within one year after reemployment except for cause. 38 U.S.C. 4316(c)(1). If the individual served between 31 and 180 days in the military, he or she may not be discharged from the employment position within 180 days after reemployment except for cause. 38 U.S.C. 4316(c)(2). A reinstated service member whose duration of service lasted 30 days or less has no similar protection from discharge; however, the individual is protected by USERRA's anti-discrimination provisions, 38 U.S.C. 4311, as explained in proposed sections 1002.18–.23. Proposed section 1002.247 elaborates the general rules for protection against discharge based on the duration of service prior to reemployment.

Prohibiting a reemployed service member's discharge, except for cause, ensures that the service member has a reasonable amount of time to get accustomed to the employment position after a significant absence. A period of readjustment may be especially warranted if the service member has assumed a new employment position after the military service. The discharge protection also guards against an employer's bad faith or *pro forma* reinstatement followed by an unjustified termination of the reemployed service member. Moreover, the time period for special protection does not start until the service member has been fully reemployed and any benefits to which the employee is entitled have been restored. Even assuming the service member receives the benefit of the full protection period prior to dismissal, an employer nevertheless violates the Act if the reason for discharging the service member is impermissible under USERRA.

Section 4316(c) does not provide complete protection from discharge to a reemployed service member for the duration of the protected period. An employer may dismiss a reemployed service member even during the protected period for just cause. Depending on the circumstances of the specific case, just cause may include unacceptable or unprofessional public behavior, incompetent or inefficient performance of duties, or criminal acts. An employer may also discharge the service member for cause if the application of the escalator principle results in a legitimate layoff or in the elimination of the job position itself, provided the person would have faced the same consequences had he or she remained continuously employed. Proposed section 1002.248 provides general guidelines for establishing just cause to discharge a reemployed service member during the protection period, and places the burden of proof on the employer to demonstrate that it is reasonable to discharge the person. *See* H.R. Rep. No. 103–65, Pt. 1, at 35 (1993); S. Rep. No. 103–158, at 63 (1993).

Pension Plan Benefits

USERRA establishes specific rights for reemployed service members in their employee pension benefit plans; the Act's specific provisions for pension benefit plans supersede general provisions elsewhere in the statute. 38 U.S.C. 4316(b)(6). The Act defines an employee pension benefit plan in the same way that the term is defined under the Employee Retirement Income Security Act of 1974 (ERISA). *See* 29 U.S.C. Chapter 18; 38 U.S.C. 4318(a). The term ''employee pension benefit plan'' includes any plan, fund or program established or maintained by an employer or by an employee organization, or by both, that provides retirement income or results in the deferral of income for a period of time extending to or beyond the termination of the employment covered by the plan. Profit sharing and stock bonus plans that meet this test are included. USERRA provides that once the service member is reemployed according to the statute, he or she is treated as not having a break in service with the employer or employers maintaining the plan even though the service member was away from work performing military service.

Proposed sections 1002.259 to .267 describe the types of employee pension benefit plans that come within the Act and the pension benefits that must be provided to reemployed service members. Although USERRA relies on the ERISA definition of an employee pension benefit plan, some plans excluded from ERISA coverage may be subject to USERRA. For example, USERRA (but not ERISA) extends coverage to plans sponsored by religious organizations and plans established under State or Federal law for governmental employees. Benefits paid pursuant to federally legislated programs such as Social Security or the Railroad Retirement Act, however, are not covered by USERRA. USERRA coverage also does not include benefits under the Thrift Savings Plan (TSP); the rights of reemployed service members to benefits under the TSP are governed by another Federal statute. *See* 5 U.S.C. 8432b. 38 U.S.C. 4318(a)(1)(B).

As proposed sections 1002.259 to .267 illustrate, each period of uniformed service is treated as an uninterrupted period of employment with the employer(s) maintaining the pension plan in determining eligibility for participation in the plan, the non-forfeitability of accrued benefits, and the accrual of service credits, contributions and elective deferrals (as defined in section 402(g)(3) of the Internal Revenue Code of 1986 (IRC)) under the plan. 38 U.S.C. 4318(a)(2)(B). As a result, for purposes of calculating these pension benefits, or for making contributions or deferrals to the plan, the reemployed service member is treated as though he or she had remained continuously employed for pension purposes.

Proposed sections 1002.261 and 1002.262 clarify who must make the contribution and/or deferral attributable to a particular period of military service and the timeframes within which payments are to be made to the plan. The employer who reemploys the service member is responsible for funding any employer contribution to the plan to provide the benefits described in the Act and the regulation. 38 U.S.C. 4318(b)(1). Some plans do not require or permit employer contributions. In that case, the plan is funded by employee contributions or elective deferrals. Other plans provide that the employer will match a certain portion of the employee contribution or deferral. If employer contributions are contingent on employee contributions or elective deferrals, such as where the employer matches all or a portion of the employee deferral or contribution, the reemployed service member is entitled to the employer contribution only to the extent that he or she makes the employee contributions or elective deferrals to the plan. 38 U.S.C. 4318(b)(2). A reemployed service member has the right to make his or her contributions or elective deferrals, but is not required to do so. Elective deferrals can be made up only to the extent that the employee has compensation from the employer that can be deferred. Proposed section 1002.262 provides that, if an individual cannot make up missed contributions as an elective deferral because he or she does not have enough compensation from the employer to defer (for example, if the individual is no longer employed by the employer), the plan must provide an equivalent opportunity for the individual to receive the maximum employer matching contributions that were available under the plan during the period of uniform service through a match of after-tax contributions.

USERRA is silent with respect to the amount of time allowed the employer to pay to the plan the contributions attributable to a reemployed service member's period of military service. It is the view of the Department that employer contributions to a pension plan that are not contingent on employee contributions or elective deferrals must be made no later than thirty days after the date of the person's reemployment. Interested parties are requested to comment on this proposed requirement, implemented in proposed section 1002.262. Specifically, the Department requests public comment on whether the proposed thirty-day period is too long or too short.

Where pension benefits are derived from employee contributions or elective deferrals, or from a combination of employee contributions or elective deferrals and matching employer contributions, the reemployed service member may make his or her contributions or deferrals during a time period starting with the date of reemployment and continuing for up to three times the length of the employee's immediate past period of military service, with the repayment period not to exceed five years. 38 U.S.C. 4318(b)(2); proposed section 1002.262. No payment by the service member may exceed the amount that would have been required or permitted during the period of time had the service member remained continuously employed. 38 U.S.C. 4318(b)(2). Any permitted or required amount of employee contributions or elective deferrals would be adjusted for any employee contributions or elective deferrals made to the plan during the employee's period of service. Any employer contributions that are contingent on employee contributions or elective deferrals must be made according to the plan's requirements for employer matching contributions. The Department also invites comments as to whether this interpretation best

effectuates the purpose of this provision.

USERRA does not specify whether the returning service member is entitled to partial credit in return for making up part (but not all) of the missed employee contributions or elective deferrals, but it does not require that the employee make up the full amount. Given that returning service members often face financial hardships on their return to civilian employment, and in view of the remedial purposes of USERRA, the Department interprets the Act to permit the employee to partially make up missed employee contributions (including required employee contributions to a defined benefit plan) or elective deferrals. In such a situation, the employer is required to make any contributions that are contingent on employee make-up contributions or elective deferrals only to the extent that the employee makes such partial contributions or elective deferrals. *See* proposed section 1002.262. For example, in a plan where the employee may or must contribute from zero to five percent of his or her compensation, and receive a commensurate employer match, the reemployed service member must be permitted to partially make up a missed contribution and receive the employer match. Where contributions from all employees are handled in a similar, consistent fashion under the plan, either the plan documents or the normal, established practices of the plan control the disposition of partial contributions or elective deferrals.

Under proposed section 1002.264, if the service member has withdrawn his or her account balance from the employee pension benefit plan prior to entering military service, he or she must be allowed to repay the withdrawn amounts upon reemployment. The amount to be repaid also includes any interest that would have been earned had the monies not been withdrawn. Repayment entitles the individual to appropriate credit in the plan. The reemployed service member may make his or her contributions or deferrals during a time period starting with the date of reemployment and continuing for up to three times the length of the employee's immediate past period of military service, with the repayment period not to exceed five years; during the time period provided by 26 U.S.C. 411(a)(7)(C) (if applicable); or within such longer time period as may be agreed to between the employer and service member. Proposed section 1002.264 applies to defined benefit plans and defined contribution plans. The Department invites comments on whether or how this section should apply to defined contribution plans.

Section 4318(b)(3) describes the method for calculating the reemployed service member's compensation for the period of military service to determine the amount the employer and service member must contribute under the plan. 38 U.S.C. 4318(b)(3). Proposed section 1002.267 provides that the compensation rate the reemployed service member would have earned had he or she remained continuously employed provides the usual benchmark. If that rate cannot be determined with reasonable certainty (for example, where the rate varies based on commissions or tips), the compensation rate may be based on the service member's average compensation rate during the 12-month period before the service period. For an employee who worked fewer than 12 months before entering the service, the entire employment period just prior to the service period may be used.

The employer must allocate its contribution on behalf of the employee in the same manner as contributions made for other employees during the period of the service member's service were allocated. However, under proposed section 1002.265, the employer is not required to allocate accrued earnings and forfeitures to the reemployed service member. 38 U.S.C. 4318(b)(1).

Special rules apply to multiemployer plans. 38 U.S.C. 4318(b)(1). Proposed section 1002.266 focuses on the operation of multiemployer plans. ERISA defines the term ''multiemployer plan'' as a plan to which more than one employer is required to contribute; which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer; and, which satisfies regulations prescribed by the Secretary of Labor. 29 U.S.C. 1002(37). An individual's period of uniformed service that qualifies as employment for purposes of section 4318(a)(2) is also employment under the terms of the pension benefit plan; any applicable collective bargaining agreement under 29 U.S.C. 1145; or, any similar Federal or State law requiring employers who contribute to multiemployer plans to make contributions as specified in plan documents.

With a multiemployer plan, a service member does not have to be reemployed by the same employer for whom he or she worked prior to the period of service in order to be reinstated in the pension plan. As long as the employer is a contributing employer to the plan, the service member is entitled to be treated as though he or she experienced no break in service under the plan. Proposed section 1002.266 describes the allocation of the employer's obligation to fund employer contributions for reemployed service members participating in multiemployer plans. Initially, the benefits liability is to be allocated as specified by the sponsor maintaining the plan. 38 U.S.C. 4318(b)(1)(A). Both of the bargaining parties, usually the union(s) and the employers, and the plan trustees of a multiemployer plan are sponsors of the plan. The initial allocation by the plan sponsor(s) is likely to vary from plan to plan. For purposes of USERRA, if the plan documents make no provision to allocate the obligation to contribute, then the individual's last employer before the service period is liable for the employer contributions. In the event that entity no longer exists or functions, the plan must nevertheless provide coverage to the service member. 38 U.S.C. 4318(b)(1)(B).

By authorizing the plan sponsors to designate how the contribution is to be paid, Congress intended to give employers, employee organizations and plan trustees (all of whom are plan sponsors) flexibility in structuring the payment obligation to suit the plan's particular circumstances. ''The Committee intends that multiemployer pension plan trustees or bargaining parties should be able to adopt uniform standard rules under which another employer, such as the last employer for which the individual worked before going into the uniformed service or the employer for which the returning service member had the most service during a given period following release from the uniformed service, may be considered the 'reemploying' employer for purposes of the pension provisions of Chapter 43. The Committee also intends for multi-employer pension plan trustees to have the right to determine that it would be more appropriate not to make any individual employer liable for such costs and thus to be able to adopt rules under which returning service members' reconstructed benefits would be funded out of plan contributions and other assets without imposing a specific additional funding obligation on any one employer.'' S. Rep. No. 103–158, at 65 (1993). With respect to both multiemployer and single employer plans, however, the Committee indicated: ''It is the intent of the Committee that, with respect to allocations to individual account plans under section 3(34) of ERISA,

allocations to the accounts of returning service members not be accomplished by reducing the account balances of other plan participants.'' *Id.*

If an employer participating in a multiemployer plan reemploys an individual who is entitled to pension benefits attributable to military service, then the employer must notify the plan administrator of the reemployment within 30 days. 38 U.S.C. 4318(c). USERRA requires this notice because multiemployer plan administrators may not be aware that a contributing employer has reemployed a person who may have a pension claim arising from his or her military service. In contrast, administrators of single employer pension plans are more likely to have access to such information. This notification requirement is implemented by proposed section 1002.266.

Although a service member who is not reemployed under the Act would not be entitled to pension benefits for his or her period of service, any vested accrued benefit in the plan to which the service member was entitled prior to entering military service would remain intact whether or not he or she was reemployed. Joint Explanatory Statement on H.R. 995, 103–353, at 2507 (1994); H.R. Rep. No. 103–65, Part I, at 36–37 (1993). The terms of the plan document control the manner and timing of distributions of vested accrued benefits from the plan if the service member is not reemployed by a participant employer.

USERRA provides specific guidance on certain aspects of the reemployed service member's pension plan rights. At the same time, employers, fiduciaries and plan administrators must also comply with other laws that regulate plan administration but are beyond the scope of these proposed regulations. Federal and State laws governing the establishment and operation of pension plans, such as ERISA or the Internal Revenue Code of 1986, as amended, and the regulations of the Pension Benefit Guaranty Corporation, continue to apply in the context of providing benefits under USERRA. Thus, for example, while section 4318(b)(1)(A) provides that liability for funding multiemployer pension plan benefits for a reemployed service member shall be allocated as the plan sponsor specifies, laws other than USERRA govern the technical aspects of the allocation.

Subpart F—Compliance Assistance, Enforcement and Remedies

Compliance Assistance

USERRA authorizes the Secretary of Labor to provide assistance to any person regarding the employment and reemployment rights and benefits provided under the statute. 38 U.S.C. 4321. The Secretary acts through the Veterans' Employment and Training Service (VETS). USERRA promotes the resolution of complaints without resort to litigation. In order to facilitate this process, section 4321 allows VETS to request assistance from other Federal and State agencies and volunteers engaged in similar or related activities. Proposed section 1002.277 describes VETS' authority to provide assistance to both employees and employers. VETS' assistance is not contingent upon the filing of a USERRA complaint.

Investigation and Referral

Proposed section 1002.288 implements section 4322, which authorizes VETS to enforce an individual's USERRA rights. Any person claiming rights or benefits under USERRA may file a complaint with VETS if his or her employer fails or refuses to comply with the provisions of USERRA, or indicates that it will not comply in the future. 38 U.S.C. 4322(a). This avenue, however, is optional. Nothing in section 4322 requires an individual to file a complaint with VETS, to request assistance from VETS, or to await notification from VETS of the right to bring an enforcement action. *Palmatier* v. *Michigan Dept. of State Police,* 981 F. Supp. 529 (W.D. Mich. 1997). Invoking VETS' enforcement authority is an alternative provided by the statute once an employee decides to file a USERRA complaint. *See Gagnon* v. *Sprint Corp.,* 284 F.3d 839, 854 (8th Cir. 2002). Alternatively, the individual may file a complaint directly in the appropriate United States District Court or State court in cases involving a private sector or State employer, respectively (or the Merit Systems Protection Board in cases involving a Federal executive agency). *See* 38 U.S.C. 4323(b) (direct action against State or private employer); 38 U.S.C. 4324(b) (direct action against Federal executive agency). *See* proposed sections 1002.288 and 1002.303. The Office of Personnel Management has issued a separate body of regulations that implement USERRA for employees of Federal executive agencies. *See* 5 CFR Part 353.

Proposed section 1002.288 also implements the statutory criteria for the form of a complaint. 38 U.S.C. 4322(b). Any complaint submitted to VETS must be in writing, using VETS Form 1010, which may be found at *http://www.dol.gov/libraryforms/forms/vets/vets-1010.pdf.* The proposed regulation also contains the procedures for processing a complaint. VETS provides technical assistance to a potential claimant upon request, and his or her employer if appropriate. 38 U.S.C. 4322(c). Technical assistance is not limited to filing a complaint; it also includes responding to requests for information on specific issues that are not yet part of a formal USERRA complaint. Once an individual files a complaint, VETS must conduct an investigation. If the agency determines that a violation of USERRA has occurred, VETS undertakes ''reasonable efforts'' to effectuate compliance by the employer (or other entity) with its USERRA obligations. Proposed section 1002.289–.290; 38 U.S.C. 4322(d). VETS notifies the claimant of the outcome of the investigation and the claimant's right to request that VETS refer the case to the Attorney General). *See* 38 U.S.C. 4322(e), 4323.

Section 1002.289 sets forth VETS' authority to use subpoenas in connection with USERRA investigations. VETS may (i) require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation; and (ii) enforce the subpoena by requesting the Attorney General to apply to a district court for an appropriate order. 38 U.S.C. 4326(a)–(b). VETS' subpoena authority does not apply to the judicial or legislative branch of the Federal Government. 38 U.S.C. 4326(d).

Enforcement of Rights and Benefits Against a State or Private Employer

Section 4323 establishes the procedures for enforcing USERRA rights against a State or private employer. ''State'' includes the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and other territories of the United States. 38 U.S.C. 4303(14). The political subdivisions of a State (counties, municipalities and school districts), however, are private employers for enforcement purposes. 38 U.S.C. 4323(j). Although USERRA does not define ''private employer,'' the term includes all employers other than the Federal Government or a State. Proposed sections 1002.303 to .314 implement section 4323 of the Act.

An aggrieved individual may initiate a USERRA action either by filing an action in court or by filing a complaint with VETS. If a complaint is filed with VETS and voluntary compliance cannot be achieved, the claimant may request VETS to refer the complaint to the Attorney General. 38 U.S.C. 4323(a)(1). If the Attorney General considers the complaint meritorious, the Attorney

General may represent the claimant and file a complaint in the appropriate U.S. district court. In cases where representation is provided by the Attorney General, the complainant is the plaintiff if the case is brought against a private employer, including a political subdivision of a State; however, if the complaint involves a State employer, it is brought in the name of the United States. A claimant may also proceed directly to the courts in the following circumstances: (i) The claimant foregoes informal resolution by VETS; (ii) the claimant declines referral of the complaint to the Attorney General after an unsuccessful informal resolution; or, (iii) the Attorney General refuses to represent the claimant after referral. 38 U.S.C. 4323(a)(2). Proposed sections 1002.303 and .304 implement these provisions.

Section 4323 establishes requirements for several aspects of the judicial process involving USERRA complaints, which are explained in proposed sections 1002.305 through 1002.311. The United States district courts have jurisdiction over actions against a State or private employer brought by the United States, and actions against a private employer by a person. For actions brought by a person against a State, the action may be brought in a State court of competent jurisdiction. 38 U.S.C. 4323(b); proposed section 1002.305. Venue for an action between the United States and a State lies in any Federal district in which the State exercises authority or carries out functions. Venue for an action against a private employer lies in any Federal district in which the employer maintains a place of business. 38 U.S.C. 4323(c); proposed section 1002.307. Only persons claiming rights or benefits under USERRA (or the United States acting on their behalf) have standing to initiate a USERRA action. 38 U.S.C. 4323(f). Proposed section 1002.308 therefore prohibits employers or other entities (such as pension plans or unions) from initiating actions. *See* H.R. Rep. No. 103–65, at 39 (1993). As for the respondents necessary to maintain an action, the statute requires only the employer or prospective employer to be named as necessary parties. 38 U.S.C. 4323(g); *see* H.R. Rep. No. 103–65, at 39 (1993). Proposed section 1002.309 implements this restriction.

No fees or court costs may be imposed on the claimant. In addition, a prevailing claimant may recover his or her attorney's fee, expert witness fee, and other litigation expenses. 38 U.S.C. 4323(h); proposed section 1002.310.

No State statute of limitations applies to a USERRA proceeding. 38 U.S.C. 4323(i). Proposed section 1002.311 provides that an unreasonable delay by the claimant in asserting his or her rights that causes prejudice to the employer may result in dismissal of the claim under the doctrine of *laches. See* H.R. Rep. No. 103–65, at 39 (1994). The legislative history relies in part on a Sixth Circuit decision, which held that any limitation upon a former employee's right to sue is derived from the equitable doctrine of *laches* rather than an analogous State statute of limitations. *See Stevens* v. *Tennessee Valley Authority,* 712 F.2d 1047, 1049 (6th Cir. 1983) (decided under the predecessor Veterans' Reemployment Rights Act).

The Department has long taken the position that no Federal statute of limitations applied to actions under USERRA. USERRA's provision that State statutes of limitations are inapplicable, together with USERRA's legislative history, show that the Congress intended that the only time-related defense that may be asserted in defending against a USERRA claim is the equitable doctrine of *laches.* 38 U.S.C. 4323(i); *see* S. Rep. No. 103–158, at 70 (1993); H.R. Rep. No. 103–65, at 39. Recently, a Federal district court ruled that USERRA claims are subject to a four-year statute of limitations enacted prior to the enactment of USERRA that imposes a general limitations period for all Federal causes of action where no statute of limitations is ''otherwise provided by law,'' 28 U.S.C. 1658. *Rogers* v. *City of San Antonio,* No. Civ. A. SA–99–CA–1110, 2003 WL 1566502 (W.D. Tex. Mar. 4, 2003). The *Rogers* decision is on appeal to the Fifth Circuit Court of Appeals. *City of San Antonio* v. *Rogers,* No. 03–50588 (5th Cir.) Another recent district court decision, *Akhdary* v. *City of Chattanooga,* No. 1:01–CV–106, 2002 WL 32060140 (E.D. Tenn. May 22, 2002), held that 28 U.S.C. 1658 does not apply to USERRA claims. The recent decision of the United States Supreme Court in *Jones* v. *R. R. Donnelley & Sons Co.,* No. 02–1205, 2004 WL 936488 (U.S. May 3, 2004) is not dispositive because USERRA ''otherwise provides by law'' that no statute of limitations applies, and because, with respect to some USERRA claims, the cause of action previously existed under the VRRA and consequently predates the effective date of 28 U.S.C. 1658. The Department continues to believe that no statute of limitations applies to USERRA claims but invites comments on the validity of this view in light of the conflicting court decisions.

With respect to remedies, the court has broad authority to protect the rights and benefits of persons covered by USERRA. The court may order the employer to comply with USERRA's provisions; compensate the claimant for lost wages and/or benefits; and pay additional, liquidated, damages equivalent to the lost wages/benefits if it determines that the employer's violation is willful. 38 U.S.C. 4323(d)(1). The legislative history establishes that ''a violation shall be considered to be willful if the employer or potential employer 'either knew or showed reckless disregard for the matter of whether its conduct was prohibited by the [provisions of this chapter].' '' H.R. Rep. No. 103–65, at 38 (1994), quoting *Hazen Paper Co.* v. *Biggins,* 507 U.S. 604, 617 (1993) (holding that a violation of the ADEA is willful if the employee either knew or showed reckless disregard for whether the statute prohibited its conduct). Proposed section 1002.312 lists the possible remedies allowed under section 4323(d). Proposed section 1002.313 states that compensation consisting of lost wages, benefits or liquidated damages derived from any action brought on behalf of the United States shall be paid directly to the aggrieved individual. Finally, the court may use its equity powers to enforce the rights guaranteed by USERRA. 38 U.S.C. 4323(e); proposed section 1002.314.

Effective Date and Compliance Deadlines

These regulations impose no new legal requirements but explain existing ones, in some cases for the first time. The Department proposes that these regulations be effective 30 days after publication of the final rule, and requests comment on whether this allows adequate time for covered parties to come into full compliance. We expect that most employers are currently in full compliance. However, to the extent that these regulations clarify USERRA's requirements and require adjustments in employer policies and practices, the Department wants to allow a reasonable amount of time for the transition to take place.

V. Procedural Determinations

A. Paperwork Reduction Act

This rule involves information collection, recordkeeping, or reporting requirements, as described in the chart below. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), these requirements have been submitted to the Office of Management and Budget. Send comments regarding this burden or any other aspect of this collection of information, including

suggestions for reducing this burden, to: Office of Information and Regulatory Affairs (Attention: Katherine Astrich, Desk Officer for VETS), 725 17th St., NW., Washington, DC 20503. In addition to regular mail, OIRA will accept comments via electronic mail to *KAstrich@omb.eop.gov,* or by Fax at (202) 395–6974. Please include ''Docket No. VETS–U–04'' on the subject line of the email, fax or letter. Note that security-related problems may result in significant delays in receiving comments by regular mail. In addition, the Agency encourages commenters to submit their comments on the paperwork determination to VETS using the methods described above under **ADDRESSES**.

COMPARISON OF PROPOSED AND STATUTORY LANGUAGE CONTAINING PAPERWORK REQUIREMENTS

Proposed provision and language	Statutory provision and language
1002.85(a) * * * You or an appropriate officer of the uniformed service in which your service is to be performed, must notify your employer that you intend to leave your employment position to perform service in the uniformed services. * * *.	4312(a)(1) [Reemployment rights and benefits available if] the person (or an appropriate officer of the uniformed service in which such service is performed) has given advance written or verbal notice of such service to such person's employer[.]
1002.85(c) Your notice to your employer may be either verbal or written.	
1002.115 * * * When you complete your service in the uniformed services, you must notify your pre-service employer of your intent to return to your employment position by either reporting to work or submitting a timely application for employment.	4312(a)(3) [Reemployment rights and benefits available if] the person reports to, or submits an application for reemployment to, such employer in accordance with the provisions of subsection (e).
1002.118 * * * You may apply either orally or in writing.	
1002.193 * * * Your employer must determine your seniority rights, status, and rate of pay as though you had been continuously employed during the period of service.	4313(a)(2)(A) [A person entitled to reemployment shall be promptly reemployed] in the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service, or a position of like seniority, status and pay [with certain exceptions].
1002.266(b) An employer that contributes to a multiemployer plan and that reemploys you must provide written notice of your reemployment to the plan administrator. * * *.	4318(c) Any employer who reemploys a person under this chapter and who is an employer contributing to a multiemployer plan * * * under which benefits are or may be payable to such person by reason of the obligations set forth in this chapter, shall * * * provide information, in writing, of such reemployment to the administrator of the plan.
1002.228 * * * A complaint filed with VETS must be in writing, using VETS Form 1010, and must include the name and address of your employer, a summary of the basis for your complaint, and a request for relief.	4322(b) Such complaint shall be in writing, be in such form as [VETS] may prescribe, include the name and address of the employer against whom the complaint is filed, and contain a summary of the allegations that form the basis of for the complaint.
Note: VETS Form 1010 is currently approved by OMB, # 1293–0002, expiration date March 2007.	

B. Preliminary Economic Analysis and Regulatory Flexibility Certification

This rule is being treated as a ''significant regulatory action'' within the meaning of Executive Order 12866, because of its importance to the public and the Department's priorities. Therefore, the Office of Management and Budget has reviewed the rule. However, because this rule is not ''economically significant'' as defined in section 3(f)(1) of EO 12866, it does not require a full economic impact analysis under section 6(a)(3)(C) of the Order. The proposed rule is not a ''major rule'' under the Unfunded Mandates Reform Act or Section 801 of the Small Business Regulatory Enforcement Fairness Act (SBREFA). The proposal would impose no additional costs on any private or public sector entity, and does not meet any of the criteria for a economically significant or major rule specified by the Executive Order or relevant statutes.

The Senate Committee report accompanying the passage of USERRA noted that the ''[Congressional Budget Office] estimates that the enactment of [section 9 of USERRA, transitioning from the predecessor veterans' reemployment rights law to USERRA] would entail no significant cost.'' (*See* Senate Report No. 103–158, p. 82 (1993).) The same report states further on page 84, under the heading ''Regulatory Impact Statement,'' that:

> [T]he Committee [on Veterans'' Affairs] has made an evaluation of the regulatory impact which would be incurred in carrying out the Committee bill. The Committee finds that the enactment of the bill would not entail any significant new regulation of individuals or business. * * *

USERRA is the latest in a series of laws protecting veterans' employment and reemployment rights going back to the Selective Training and Service Act of 1940. USERRA's immediate predecessor was the VRRA. USERRA continued the fundamental protections of the VRRA and the case law interpreting the VRRA while clarifying that law, and VETS considers that by recodifying and clarifying longstanding statutory and case law under the VRRA, USERRA did not impose new economic burdens on employers. This proposed rule implements USERRA, and while it imposes no new costs, it may provide some economic benefits. Delays may occur when employers respond to employee claims and inquiries concerning USERRA due to confusion or ambiguity as to the correct interpretation of USERRA. Moreover, some employee claims are contested in part because of a lack of employer knowledge about the statute. The proposed rule should reduce these costs by: providing employers with accurate information necessary to respond efficiently and effectively to employee claims; potentially reducing the number of contested claims and the resulting need for administrative resolution or legal action; expediting the settlement of outstanding claims because employers and employees will have an enhanced knowledge of their rights and responsibilities under USERRA; and reducing the number of inquiries made by employers and employees to administrative agencies such as VETS and the Office of Personnel Management.

VETS also expects the proposed rule to benefit both pension- and health-plan

sponsors and participants by helping to dispel plan administrators' uncertainty about compliance with USERRA provisions, and by reducing delays and the risk of inadvertent noncompliance. The rule may assist participants and beneficiaries to better understand their USERRA rights as well, thereby averting disputes and lost opportunities to elect continuing health-plan coverage, or to obtain reinstated pension-plan coverage.

Based on the above analysis, the Agency concludes that the proposed rule would not impose any additional costs on employers; consequently, the proposal requires no preliminary economic analysis. Furthermore, because the proposal imposes no costs on employers, VETS certifies that it would not have a significant impact on a substantial number of small businesses; accordingly, the Agency need not prepare an initial regulatory flexibility analysis.

C. Unfunded Mandates

The Congressional Budget Office (CBO) determined that State and local governments would incur no cost resulting from passage of USERRA (*see* Senate Report No. 103–158, p. 84 (1993)). In this regard, State and local governments would be obligated to comply with USERRA to the same extent as private employers; therefore, when USERRA (and the proposed rule) impose no cost on private employers, they also impose no cost on State and local government employers. The House Committee Report for USERRA (House Report No. 103–65, pp. 49–51) contained similar CBO language.[1]

The Agency reviewed the proposed rule according to the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) and Executive Order 12875. Based on the CBO determinations described in the previous paragraph, the Agency made a preliminary determination that the proposed rule does not include any Federal mandate that would result in increased expenditures by State, local, or tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million. Therefore, the Agency concludes that the proposed rule: (1) Would not affect State, local, or tribal entities significantly or uniquely; (2) does not contain an unfunded mandate requiring consultation with these entities; and (3) would not impose substantial direct compliance costs on Indian tribal governments. Accordingly, the proposed rule does not mandate that State, local, or tribal governments adopt new, unfunded regulatory obligations.

D. Federalism

The proposed rule does not have federalism implications as specified under Executive Order 13132 (64 FR 43255; August 10, 1999) because it has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 4302 of USERRA provides that its provisions supersede any and all laws of the States as they relate to any rights and benefits provided under USERRA if such State laws reduce, limit, or eliminate in any manner any right or benefit provided by USERRA. Accordingly, the requirements implemented by the proposed rule do not alter these fundamental statutory provisions with respect to military service members' and veterans' employment and reemployment rights and benefits. Therefore, the proposed rule has no implications for the States, or for the relationship or distribution of power between the national government and the States.

VI. Statutory and Rulemaking Background

The Uniformed Services Employment and Reemployment Rights Act (USERRA), Pub. L. 103–353, 108 Stat. 3150 (codified at 38 U.S.C. 4301–4333), became law on October 13, 1994, replacing the Veterans' Reemployment Rights Act (VRRA). Congress enacted USERRA, in part, to clarify the ambiguities of the VRRA and strengthen the rights of service members and veterans. USERRA's guiding principle is that a person who leaves civilian employment to perform service in the uniformed services is entitled to return to that job with the seniority, status, and rate of pay that would have accrued during the absence, provided the person meets USERRA's eligibility criteria. USERRA applies to voluntary or involuntary military service in peacetime as well as wartime. Its provisions apply to virtually all employers, regardless of size. USERRA also codifies 54 years of accumulated case law and clarifies previously existing rights and obligations. For most purposes, USERRA applies to reemployments initiated on or after December 12, 1994. Congress enacted amendments to the Act in 1996, 1998, and 2000.

VII. Statutory Authority

This regulation is proposed pursuant to the authority in section 4331(a) of USERRA (Pub. L. 103–353, 108 Stat. 3150, 38 U.S.C. 4331(a)), and Secretary's Order 3–2004, September 10, 2004.

List of Subjects in 20 CFR Part 1001

Labor, Pensions, Veterans.

Proposed Regulation

For the reasons set out in the preamble, the Department proposes to add a new part 1002 to Chapter IX of Title 20 of the Code of Federal Regulations as follows:

PART 1002—REGULATIONS UNDER THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994

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[1] However, the CBO determined that, because of changes to Thrift Savings Plan provisions, the cost for the Federal government to comply with USERRA would be about $1 million in FY 1994 and 1995, and zero cost thereafter.

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Authority: Pub. L. 103–353, 108 Stat. 3150, 38 U.S.C. 4331(a); Secretary's Order 3–2004, September 10, 2004.

Subpart A—Introduction to the Regulations Under the Uniformed Services Employment and Reemployment Rights Act of 1994

General Provisions

§ 1002.1 What is the purpose of the regulations in this part?

The regulations in this part implement the Uniformed Services Employment and Reemployment Rights Act of 1994 (''USERRA'' or ''the Act''). 38 U.S.C. 4301–4333. USERRA is a law that establishes certain rights and benefits for employees, and duties for employers. USERRA affects employment, reemployment, and retention in employment, when employees serve or have served in the uniformed services. There are five subparts to this part. Subpart A gives an introduction to the USERRA regulations. Subpart B describes USERRA's anti-discrimination and anti-retaliation provisions. Subpart C explains the steps that must be taken by a uniformed service member who wants

to return to his or her previous civilian employment. Subpart D describes the rights, benefits, and obligations of persons absent from employment due to service in the uniformed services, including rights and obligations related to health plan coverage. Subpart E describes the rights, benefits, and obligations of the returning veteran or service member. Subpart F explains the role of the Department of Labor in enforcing and giving assistance under USERRA. The regulations in this part implement USERRA as it applies to States, local governments, and private employers. Separate regulations published by the Federal Office of Personnel Management implement USERRA for Federal executive agency employers and employees.

§ 1002.2 Is USERRA a new law?

USERRA is the latest in a series of laws protecting veterans' employment and reemployment rights going back to the Selective Training and Service Act of 1940. USERRA's immediate predecessor was commonly referred to as the Veterans' Reemployment Rights Act (VRRA), which was enacted as section 404 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974. In enacting USERRA, Congress emphasized USERRA's continuity with the VRRA and its intention to clarify and strengthen that law. Congress also emphasized that Federal laws protecting veterans' employment and reemployment rights for the past fifty years had been successful and that the large body of case law that had developed under those statutes remained in full force and effect, to the extent it is consistent with USERRA. USERRA authorized the Department of Labor to publish regulations implementing the Act for State, local government, and private employers. USERRA also authorized the Office of Personnel Management to issue regulations implementing the Act for Federal executive agencies (other than some Federal intelligence agencies). USERRA established a separate program for employees of some Federal intelligence agencies.

§ 1002.3 When did USERRA become effective?

USERRA became law on October 13, 1994. USERRA's reemployment provisions apply to members of the uniformed services seeking civilian reemployment on or after December 12, 1994. USERRA's anti-discrimination and anti-retaliation provisions became effective on October 13, 1994.

§ 1002.4 What is the role of the Secretary of Labor under USERRA?

(a) USERRA charges the Secretary of Labor (through the Veterans' Employment and Training Service) with providing assistance to any person with respect to the employment and reemployment rights and benefits to which such person is entitled under the Act. More information about the Secretary's role in providing this assistance is contained in subpart F of this part.

(b) USERRA also authorizes the Secretary of Labor to issue regulations implementing the Act with respect to States, local governments, and private employers. The regulations in this part are issued under this authority.

(c) The Secretary of Labor delegated authority to the Assistant Secretary for Veterans' Employment and Training for administering the veterans' reemployment rights program by Secretary's Order 1–83 (February 3, 1983) and for carrying out the functions and authority vested in the Secretary pursuant to USERRA by memorandum of April 22, 2002 (67 FR 31827).

§ 1002.5 What definitions will help me understand USERRA?

(a) *Attorney General* means the Attorney General of the United States or any person designated by the Attorney General to carry out a responsibility of the Attorney General under USERRA.

(b) *Benefit, benefit of employment, or rights and benefits* means any advantage, profit, privilege, gain, status, account, or interest (other than wages or salary for work performed) that accrues to the employee because of an employment contract, employment agreement, or employer policy, plan, or practice. The term includes rights and benefits under a pension plan, health plan, or employee stock ownership plan, insurance coverage and awards, bonuses, severance pay, supplemental unemployment benefits, vacations, and the opportunity to select work hours or the location of employment.

(c) *Employee* means any person employed by an employer. The term also includes any person who is a citizen, national or permanent resident alien of the United States who is employed in a workplace in a foreign country by an employer that is an entity incorporated or organized in the United States, or that is controlled by an entity organized in the United States. ''Employee'' includes the former employees of an employer.

(d)(1) *Employer,* except as provided below in paragraphs (d)(2) and (3) of this section, means any person, institution, organization, or other entity that pays salary or wages for work performed, or that has control over employment opportunities, including—

(i) A person, institution, organization, or other entity to whom the employer has delegated the performance of employment-related responsibilities;

(ii) The Federal Government;

(iii) A State;

(iv) Any successor in interest to a person, institution, organization, or other entity referred to in this definition; and,

(v) A person, institution, organization, or other entity that has denied initial employment in violation of 38 U.S.C. 4311, USERRA's anti-discrimination and anti-retaliation provisions.

(2) In the case of a National Guard technician employed under 32 U.S.C. 709, the term ''employer'' means the adjutant general of the State in which the technician is employed.

(3) An employee pension benefit plan as described in section 3(2) of the Employee Retirement Income Security Act of 1974 (ERISA)(29 U.S.C. 1002(2)) is considered an employer for an individual that it does not actually employ only with respect to the obligation to provide pension benefits.

(e) *Health plan* means an insurance policy, insurance contract, medical or hospital service agreement, membership or subscription contract, or other arrangement under which health services for individuals are provided or the expenses of such services are paid.

(f) *Notice,* when the employee is required to give advance notice of service, means any written or verbal notification of an obligation or intention to perform service in the uniformed services provided to an employer by the employee who will perform such service, or by the uniformed service in which the service is to be performed.

(g) *Qualified,* with respect to an employment position, means having the ability to perform the essential tasks of the position.

(h) *Reasonable efforts,* in the case of actions required of an employer, means actions, including training provided by an employer that do not place an undue hardship on the employer.

(i) *Secretary* means the Secretary of Labor or any person designated by the Secretary of Labor to carry out an activity under USERRA and the regulations in this part, unless a different office is expressly indicated in the regulation.

(j) *Seniority* means longevity in employment together with any benefits of employment that accrue with, or are determined by, longevity in employment.

(k) *Service in the uniformed services* means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority. Service in the uniformed services includes active duty, active and inactive duty for training, National Guard duty under Federal statute, and a period for which a person is absent from a position of employment for an examination to determine the fitness of the person to perform such duty. The term also includes a period for which a person is absent from employment to perform funeral honors duty as authorized by law (10 U.S.C. 12503 or 32 U.S.C. 115). The Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Pub. L. 107–188, provides that service as an intermittent disaster-response appointee upon activation of the National Disaster Medical System or as a participant in an authorized training program is deemed ''service in the uniformed services.'' 42 U.S.C. 300hh–11(e)(3).

(l) *State* means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and other territories of the United States (including the agencies and political subdivisions thereof); however, for purposes of enforcement of rights under 38 U.S.C. 4323, a political subdivision of a State is a private employer.

(m) *Undue hardship,* in the case of actions taken by an employer, means an action requiring significant difficulty or expense, when considered in light of —

(1) The nature and cost of the action needed under USERRA and the regulations in this part;

(2) The overall financial resources of the facility or facilities involved in the provision of the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;

(3) The overall financial resources of the employer; the overall size of the business of an employer with respect to the number of its employees; the number, type, and location of its facilities; and,

(4) The type of operation or operations of the employer, including the composition, structure, and functions of the work force of such employer; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the employer.

(n) *Uniformed services* means the Armed Forces; the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the Public Health Service; and any other category of persons designated by the President in time of war or national emergency.

§ 1002.6 What types of service in the uniformed services are covered by USERRA?

USERRA's definition of ''service in the uniformed services'' covers all categories of military training and service, including duty performed on a voluntary or involuntary basis, in time of peace or war. Although most often understood as applying to National Guard and reserve military personnel, USERRA also applies to persons serving in the active components of the Armed Forces. However, USERRA's reemployment provisions vary according to the length of service in the uniformed services.

§ 1002.7 How does USERRA relate to other laws, public and private contracts, and employer practices?

(a) USERRA establishes a floor, not a ceiling, for the employment and reemployment rights and benefits of those it protects. In other words, an employer may provide greater rights and benefits than USERRA requires, but no employer can refuse to provide any right or benefit guaranteed by USERRA.

(b) USERRA supersedes any State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by USERRA, including the establishment of additional prerequisites to the exercise of any USERRA right or the receipt of any USERRA benefit. For example, an employment contract that determines seniority based only on actual days of work in the place of employment would be superseded by USERRA, which requires that seniority credit be given for periods of absence from work due to service in the uniformed services.

(c) USERRA does not supersede, nullify or diminish any Federal or State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that establishes an employment right or benefit that is more beneficial than, or is in addition to, a right or benefit provided under the Act. For example, although USERRA does not require an employer to pay an employee for time away from work performing service, an employer policy, plan, or practice that provides such a benefit is permissible under USERRA.

(d) If an employer provides a benefit that exceeds USERRA's requirements in one area, it cannot reduce or limit other rights or benefits provided by USERRA. For example, even though USERRA does not require it, an employer may provide a fixed number of days of paid military leave per year to employees who are members of the National Guard or Reserve. The fact that it provides such a benefit, however, does not permit an employer to refuse to provide an unpaid leave of absence to an employee to perform service in the uniformed services in excess of the number of days of paid military leave.

Subpart B—Anti-Discrimination and Anti-Retaliation

Protection From Employer Discrimination and Retaliation

§ 1002.18 What activity is protected from employer discrimination by USERRA?

An employer must not deny initial employment, reemployment, retention in employment, promotion, or any benefit of employment to you on the basis of your membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services.

§ 1002.19 Is any other activity protected under USERRA?

An employer must not retaliate against you by taking any adverse employment action against you because you have taken an action to enforce a protection afforded any person under USERRA; testified or otherwise made a statement in or in connection with a proceeding under USERRA; assisted or participated in a USERRA investigation: or, exercised a right provided for by USERRA.

§ 1002.20 Does USERRA protect me if I do not actually perform service in the uniformed service?

Yes. Employers are prohibited from taking actions against you for any of the activities protected by the Act, whether or not you have performed service in the uniformed services.

§ 1002.21 Do the Act's prohibitions against discrimination and retaliation apply to all employment positions?

The prohibitions against discrimination and retaliation apply to all covered employers (including hiring halls and potential employers, see §§ 1002.36 and 1002.38) and employment positions, including those that are for a brief, non-recurrent period, and for which there is no reasonable expectation that the employment position will continue indefinitely or for a significant period. However, USERRA's reemployment rights and

benefits do not apply to such brief, nonrecurrent positions of employment.

§ 1002.22 Who has the burden of proving discrimination or retaliation in violation of USERRA?

You have the burden of proving that activity protected by USERRA was one of the reasons that your employer took action against you, in order to establish that the action was discrimination or retaliation in violation of USERRA. If you succeed in proving this point, your employer can prevail by proving that he or she would have taken the action anyway, unless you can prove that but for your service the employer would not have taken the action.

§ 1002.23 What do I have to show to carry my burden of proving that my employer discriminated or retaliated against me?

(a) In order to prove that your employer discriminated or retaliated against you, first you must show that the employer's action against you was motivated by either:

(1) Membership or application for membership in a uniformed service;

(2) Performance of service, application for service, or obligation for service in a uniformed service;

(3) Action taken to enforce a protection afforded any person under USERRA;

(4) Testimony or statement made in or in connection with a USERRA proceeding;

(5) Assistance or participation in a USERRA investigation; or,

(6) Exercise of a right provided for by USERRA.

(b) If you prove that the employer's action against you was based on one of the prohibited motives listed in paragraph (a) of this section, your employer may prevail by showing that the action would have been taken anyway. In that event, you can prevail only if you can show that the employer would not have taken the action against you but for your protected activity.

Subpart C—Eligibility for Reemployment

General Eligibility Requirements for Reemployment

§ 1002.32 What criteria must I meet to be eligible under USERRA for reemployment after my service in the uniformed services?

(a) In general, if you have been absent from a position of civilian employment by reason of service in the uniformed services, you will be eligible for reemployment under USERRA if you meet the following criteria:

(1) Your employer had advance notice of your service;

(2) You have five years or less of cumulative service with respect to your position of employment;

(3) You timely return to work or apply for reemployment; and,

(4) You have not been separated from service with a disqualifying discharge or under other than honorable conditions.

(b) These general eligibility requirements have important qualifications and exceptions, which are described in detail in §§ 1002.73 through 1002.138. If you meet these eligibility criteria, then you are eligible for reemployment, unless your employer can establish that one of the defenses described in § 1002.139 apply. The reemployment position that you are entitled to if you meet USERRA's eligibility criteria is described in §§ 1002.191 through 1002.199.

§ 1002.33 To be eligible for reemployment, do I have to show that my employer discriminated against me?

No. To be eligible for reemployment it is not necessary for you to establish that your employer discriminated against you because of your military service.

Coverage of Employers and Positions

§ 1002.34 Which employers are covered by USERRA?

(a) USERRA applies to all public and private employers in the United States, regardless of size. For example, an employer with only one employee is covered for purposes of the Act.

(b) USERRA applies to foreign employers doing business in the United States. A foreign employer that has a physical location or branch in the United States (including U.S. territories and possessions) must comply with USERRA for any of its employees who are employed in the United States.

(c) An American company operating either directly or through an entity under its control in a foreign country must also comply with USERRA for all its foreign operations, unless compliance would violate the law of the foreign country in which the workplace is located.

§ 1002.35 Is a successor in interest an employer covered by USERRA?

USERRA's definition of ''employer'' includes a successor in interest. In general, an employer is a successor in interest where there is a substantial continuity in operations, facilities, and workforce from the former employer. The determination whether an employer is a successor in interest must be made on a case-by-case basis using a multi-factor test that considers the following:

(a) Whether there has been a substantial continuity of business operations from the former to the current employer;

(b) Whether the current employer uses the same or similar facilities, machinery, equipment, and methods of production;

(c) Whether there has been a substantial continuity of employees;

(d) Whether there is a similarity of jobs and working conditions;

(e) Whether there is a similarity of supervisors or managers; and,

(f) Whether there is a similarity of products or services.

§ 1002.36 Can an employer be liable as a successor in interest if it was unaware of my potential reemployment claim when it acquired the business?

Yes. In order to be a successor in interest, it is not necessary for an employer to have notice of a potential reemployment claim at the time of merger, acquisition, or other form of succession.

§ 1002.37 Is it possible for me to be employed in one job by more than one employer?

Yes. Under USERRA, an employer includes not only the person or entity that pays your salary or wages, but also includes a person or entity that has control over your employment opportunities, including a person or entity to whom an employer has delegated the performance of employment-related responsibilities. For example, if you are a security guard hired by a security company and you are assigned to a work site, you may report both to the security company and to the site owner. In such an instance, both employers share responsibility for compliance with USERRA. If the security company declines to assign you to a job because of a uniformed service obligation (for example, your National Guard duties), then the security company could be in violation of the reemployment requirements and the anti-discrimination provisions of USERRA. Similarly, if the employer at the work site causes your removal from the job position because of your uniformed service obligations, then the work site employer could be in violation of the reemployment requirements and the anti-discrimination provisions of USERRA.

§ 1002.38 Can a hiring hall be my employer?

Yes. If you are a longshoreman, stagehand, construction worker, or you work in certain other industries, you may frequently work for many different employers. A hiring hall operated by a union or an employer association typically assigns you to your jobs. In

these industries, it may not be unusual for you to work your entire career in a series of short-term job assignments. The definition of ''employer'' includes a person, institution, organization, or other entity to which the employer has delegated the performance of employment-related responsibilities. A hiring hall therefore is considered your employer if the hiring and job assignment functions have been delegated by an employer to the hiring hall. As your employer, a hiring hall has reemployment responsibilities to you. USERRA's anti-discrimination and anti-retaliation provisions also apply to the hiring hall.

§ 1002.39 Are States (and their political subdivisions), the District of Columbia, the Commonwealth of Puerto Rico, and United States territories, considered employers?

Yes. States and their political subdivisions, such as counties, parishes, cities, towns, villages, and school districts, are considered employers under USERRA. The District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and territories of the United States, are also considered employers under the Act.

§ 1002.40 Does USERRA protect against discrimination in initial hiring decisions?

Yes. The Act's definition of employer includes a person, institution, organization, or other entity that has denied you initial employment in violation of USERRA's anti-discrimination provisions. An employer need not actually employ you to be your ''employer'' under the Act, if it has denied you initial employment on the basis of your membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services. Similarly, the employer would be liable if it denied you initial employment on the basis of your action taken to enforce a protection afforded to any person under USERRA, your testimony or statement in connection with any USERRA proceeding, your assistance or other participation in a USERRA investigation, or your exercise of any other right provided by the Act. For example, if you have been denied initial employment because of your obligations as a member of the National Guard or Reserves, the company or entity denying you employment is an employer for purposes of USERRA. Similarly, if an entity withdraws an offer of employment to you because you are called upon to fulfill an obligation in the uniformed services, the entity withdrawing your offer of employment is an employer for purposes of USERRA.

§ 1002.41 Can I have rights under USERRA even though I hold a temporary, part-time, probationary, or seasonal employment position?

Your rights under USERRA are not diminished because you hold a temporary, part-time, probationary, or seasonal employment position. However, an employer is not required to reemploy you if the employment you left to serve in the uniformed services was for a brief, non-recurrent period and there is no reasonable expectation that your employment would have continued indefinitely or for a significant period. The employer bears the burden of proving this affirmative defense.

§ 1002.42 What rights do I have under USERRA if I am on layoff, on strike, or on a leave of absence?

(a) If you are laid off with recall rights, on strike, or on a leave of absence, you are an employee for purposes of USERRA. If you are on layoff and begin service in the uniformed services, or you are laid off while performing service, you may be entitled to reemployment on return if the employer would have recalled you to employment during the period of service. Similar principles apply if you are on strike or on a leave of absence from work when you begin a period of service in the uniformed services.

(b) If you are sent a recall notice during your period of service in the uniformed services and you cannot resume the position of employment because of the service, you still remain an employee for purposes of the Act. Therefore, if you are otherwise eligible, you are entitled to reemployment following the conclusion of your period of service even if you did not respond to the recall notice.

(c) If you are laid off before or during your service in the uniformed services, and your employer would not have recalled you during your period of service, you are not entitled to reemployment following your period of service simply because you are a covered employee. Your reemployment rights under USERRA cannot put you in a better position than if you had remained in your civilian employment position.

§ 1002.43 Can I have rights under USERRA even if I am an executive, managerial, or professional employee?

Yes. USERRA applies to all employees. There is no exclusion for executive, managerial, or professional employees.

§ 1002.44 Does USERRA cover me if I am an independent contractor?

(a) No. USERRA does not provide protections for you if you are an independent contractor.

(b) In deciding whether you are an independent contractor, the following factors need to be considered:

(1) The extent of the employer's right to control the manner in which your work is to be performed;

(2) Your opportunity for profit or loss that depends upon your managerial skill;

(3) Your investment in equipment or materials required for your tasks, or your employment of helpers;

(4) Whether the service you render requires a special skill;

(5) The degree of permanence of your working relationship; and,

(6) Whether the service you render is an integral part of the employer's business.

(c) No single one of these factors is controlling, but all are relevant to the determination whether you are an employee or an independent contractor.

Coverage of Service in the Uniformed Services

§ 1002.54 Are all military fitness examinations considered ''service in the uniformed services?''

Yes. USERRA's definition of ''service in the uniformed services'' includes a period for which you are absent from a position of employment for the purpose of an examination to determine your fitness to perform duty in the uniformed services. Military fitness examinations can address more than physical or medical fitness, and include evaluations for mental, educational, and other types of fitness. Any examination to determine your fitness for service is covered, whether it is an initial or recurring examination. For example, a periodic medical examination required of a Reserve component member to determine fitness for continued service is covered.

§ 1002.55 Is all funeral honors duty considered ''service in the uniformed services?''

(a) USERRA's definition of ''service in the uniformed services'' includes a period for which you are absent from employment for the purpose of performing authorized funeral honors duty under 10 U.S.C. 12503 (members of Reserve ordered to perform funeral honors duty) or 32 U.S.C. 115 (Member of Air or Army National Guard ordered to perform funeral honors duty).

(b) Funeral honors duty performed by persons who are not members of the uniformed services, such as members of

veterans' service organizations, is not ''service in the uniformed services.''

§ 1002.56 I am participating in a training program to provide emergency assistance in the event of a terrorist attack. Is that considered ''service in the uniformed services?''

Under a provision of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, 42 U.S.C. 300hh 11(e)(3), ''service in the uniformed services'' includes service you perform as an intermittent disaster-response appointee upon activation of the National Disaster Medical System or when you participate in an authorized training program, even if you are not a member of the uniformed services.

§ 1002.57 Is all of my service as a member of the National Guard considered ''service in the uniformed services?''

The National Guard has a dual status. It is a Reserve component of the Army, or, in the case of the Air National Guard, of the Air Force. Simultaneously, it is a State military force subject to call-up by the State Governor for duty not subject to Federal control, such as emergency duty in cases of floods or riots. National Guard members may perform service under either Federal or State authority, but only your Federal National Guard service is covered by USERRA.

(a) Your National Guard service under Federal authority is protected by USERRA. Service under Federal authority includes active duty you perform under Title 10 of the United States Code. Service under Federal authority also includes duty under Title 32 of the United States Code, such as active duty for training, inactive duty training, or full-time National Guard duty.

(b) Your National Guard service under authority of State law is not protected by USERRA. However, many States have laws protecting the civilian job rights of National Guard members who serve under State orders. Enforcement of those State laws is not covered by USERRA or the regulations in this part.

§ 1002.58 Is my service in the commissioned corps of the Public Health Service considered ''service in the uniformed services?''

Yes. Your service in the commissioned corps of the Public Health Service (PHS) is ''service in the uniformed services'' under USERRA.

§ 1002.59 Are there any circumstances in which special categories of persons are considered to perform ''service in the uniformed services?''

Yes. In time of war or national emergency the President has authority to designate any category of persons as a ''uniformed service'' for purposes of USERRA. If the President exercises this authority, your service as a member of that category of persons would be ''service in the uniformed services'' under USERRA.

§ 1002.60 If I am a cadet or midshipman attending a service academy am I covered by USERRA?

Yes. Your service as a cadet or midshipman at a service academy is considered uniformed service for purposes of USERRA. There are four service academies: The United States Military Academy (West Point, New York), the United States Naval Academy (Annapolis, Maryland), the United States Air Force Academy (Colorado Springs, Colorado), and the United States Coast Guard Academy (New London, Connecticut).

§ 1002.61 If I am a member of the Reserve Officers Training Corps am I covered by USERRA?

No. Your membership in the Reserve Officers Training Corps (ROTC) or the Junior ROTC is not ''service in the uniformed services.'' However, many Reserve and National Guard units use a college ROTC program as a means of qualifying enlisted personnel for commissioned officer status. In these cases, if you participate in ROTC training sessions as a member of a Reserve or National Guard unit performing active or inactive duty training, that training is considered ''service in the uniformed services.''

§ 1002.62 If I am a member of the Commissioned Corps of the National Oceanic and Atmospheric Administration, the Civil Air Patrol, or the Coast Guard Auxiliary am I covered by USERRA?

No. Although the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA) is a ''uniformed service'' for some purposes, it is not included in USERRA's definition of this term. Service in the Civil Air Patrol and the Coast Guard Auxiliary similarly is not considered ''service in the uniformed services'' for purposes of USERRA. Consequently, service performed in the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA), the Civil Air Patrol, and the Coast Guard Auxiliary is not protected by USERRA.

Absence From a Position of Employment Necessitated by Reason of Service in the Uniformed Services

§ 1002.73 Does service in the uniformed services have to be my sole reason for leaving my employment position in order to have USERRA reemployment rights?

No. If your absence from a position of employment is necessitated by your service in the uniformed services, and you otherwise meet the Act's eligibility requirements, you have reemployment rights under USERRA, even if you use your absence for other purposes as well. You are not required to leave the employment position for the sole purpose of performing service in the uniformed services. For example, if you are required to report to an out of State location for military training and spend your off-duty time during that assignment moonlighting as a security guard or visiting relatives who live in that State, you will not lose your reemployment rights simply because you used some of the time you were required to be absent from your job to do something other than attend the military training. Also, if you receive advance notification of a mobilization order, and leave your employment position in order to prepare for duty, but the mobilization is cancelled, you will not lose your reemployment rights.

§ 1002.74 Am I required to begin service in the uniformed services immediately after leaving my employment position in order to have USERRA reemployment rights?

No. At a minimum, you must have enough time after leaving your employment position to travel safely to the site where your service in the uniformed services is to be performed, and arrive fit to perform the service. Depending on the specific circumstances, additional time to rest, or to arrange your affairs and report to duty may be necessitated by reason of service in the uniformed services. The following examples help to explain the issue of the period of time between leaving civilian employment and the beginning of service in the uniformed services:

(a) If you perform a full overnight shift for your civilian employer and travel directly from the work site to perform a full day of military service, you would not be considered fit to perform the military service. An absence from that work shift is necessitated so that you can report for military service fit for duty.

(b) If you are ordered to perform an extended period of service in the uniformed services, you will require a reasonable period of time off from your civilian job to put your personal affairs

in order, before beginning the service. Taking such time off is also necessitated by the military service.

(c) If you leave a position of employment in order to enlist or otherwise perform service in the uniformed services and, through no fault of your own, the beginning date of the service is delayed, this delay does not terminate your reemployment rights.

Requirement of Notice

§ 1002.85 Am I required to give advance notice to my employer of my service in the uniformed services?

(a) Yes. You, or an appropriate officer of the uniformed service in which your service is to be performed, must notify your employer that you intend to leave your employment position to perform service in the uniformed services, with certain exceptions described below.

(b) The Department of Defense USERRA regulations at 32 CFR 104.3 provide that an ''appropriate officer'' can give notice on your behalf. An ''appropriate officer'' is a commissioned, warrant, or non-commissioned officer authorized to give such notice by the military service concerned.

(c) Your notice to your employer may be either verbal or written. The notice may be informal and does not need to follow any particular format. Although USERRA does not specify how far in advance your notice must be given, you should provide the notice as far in advance as is reasonable under the circumstances.

§ 1002.86 When am I excused from giving advance notice of my service in the uniformed services?

You are required to give advance notice of pending service unless giving such notice is prevented by military necessity, or is otherwise impossible or unreasonable under all the circumstances.

(a) Only a designated military authority can make a determination of ''military necessity,'' and such a determination is not subject to judicial review. Guidelines for defining ''military necessity'' appear in regulations issued by the Department of Defense at 32 CFR 104.3. In general, these regulations cover situations where a mission, operation, exercise or requirement is classified, or could be compromised or otherwise adversely affected by public knowledge.

(b) It may be impossible or unreasonable for you to give advance notice under certain circumstances. Such circumstances may include the unavailability of your employer or the employer's representative, or a requirement that you report for military service in an extremely short period of time.

§ 1002.87 Am I required to get permission from my employer before I leave to perform service in the uniformed services?

No. You are not required to ask for or get your employer's permission to leave to perform service in the uniformed services. You are only required to give your employer notice of pending service.

§ 1002.88 Am I required to tell my civilian employer that I intend to seek reemployment after completing my military service before I leave to perform service in the uniformed services?

No. When you leave your employment position to begin a period of service you are not required to tell your civilian employer that you intend to seek reemployment after completing your military service. Even if you tell your employer that you do not intend to seek reemployment after completing the military service, you do not forfeit your right to reemployment. You are not required to decide in advance of leaving your civilian employment position whether you will seek reemployment after completing military service.

Period of Service

§ 1002.99 Is there a limit on the total amount of service in the uniformed services that I may perform and still retain reemployment rights with my employer?

Yes. In general, you may perform service in the uniformed services for a cumulative period of up to five (5) years and retain reemployment rights with your employer. The exceptions to this rule are described below.

§ 1002.100 Does the five-year service limit include all absences from my employment position that are related to my service in the uniformed services?

No. The five-year period includes only the time you spend actually performing service in the uniformed services. A period of absence from employment before or after your performance of service in the uniformed services does not count against the five-year limit. For example, after you complete a period of service in the uniformed services, you are provided a certain amount of time, depending upon your length of service, to report back to work or submit an application for reemployment. The period between the completion of the period of service and the time you have to report back to work or seek reemployment does not count against the five-year limit.

§ 1002.101 Does the five-year service limit include periods of service that I performed when I worked for a previous employer?

No. You are entitled to a leave of absence for uniformed service for up to five years with each employer for whom you work. When you take a position with a new employer, the five-year period begins again regardless of how much service you performed while you worked in any previous employment relationship.

§ 1002.102 Does the five-year service limit include periods of service that I performed before USERRA was enacted?

Yes. USERRA provides reemployment rights to which you may become entitled beginning on or after December 12, 1994, but any uniformed service that you performed before December 12, 1994, that was counted against the service limitations of the previous law (the Veterans Reemployment Rights Act), also counts against USERRA's five-year limit.

§ 1002.103 Are there any types of service in the uniformed services that I can perform that do not count against USERRA's five-year service limit?

(a) USERRA creates the following exceptions to the five-year limit on service in the uniformed services:

(1) Service that is required beyond five years to complete your initial period of obligated service. Some military specialties require you to serve more than five years because of the amount of time or expense involved in training. If you work in one of those specialties you have reemployment rights when your initial period of obligated service is completed;

(2) If you were unable to obtain orders releasing you from service in the uniformed services before the expiration of the five-year period, and the inability was not your fault;

(3)(i) Service that you performed to fulfill periodic National Guard and Reserve training requirements as prescribed by 10 U.S.C. 10147 and 32 U.S.C. 502(a) and 503; and,

(ii) Service that you performed to fulfill additional training requirements determined and certified by a proper military authority as necessary for your professional development, or to complete your skill training or retraining;

(4) Service that you performed in a uniformed service if you were ordered to or retained on active duty under:

(i) 10 U.S.C. 688 (involuntary active duty by a military retiree);

(ii) 10 U.S.C. 12301(a) (involuntary active duty in wartime);

(iii) 10 U.S.C. 12301(g) (retention on active duty while in captive status);

(iv) 10 U.S.C. 12302 (involuntary active duty during a national emergency for up to 24 months);

(v) 10 U.S.C. 12304 (involuntary active duty for an operational mission for up to 270 days);

(vi) 10 U.S.C. 12305 (involuntary retention on active duty of a critical person during time of crisis or other specific conditions);

(vii) 14 U.S.C. 331 (involuntary active duty by retired Coast Guard officer);

(viii) 14 U.S.C. 332 (voluntary active duty by retired Coast Guard officer);

(ix) 14 U.S.C. 359 (involuntary active duty by retired Coast Guard enlisted member);

(x) 14 U.S.C. 360 (voluntary active duty by retired Coast Guard enlisted member);

(xi) 14 U.S.C. 367 (involuntary retention of Coast Guard enlisted member on active duty); and

(xii) 14 U.S.C. 712 (involuntary active duty by Coast Guard Reserve member for natural or man-made disasters).

(5) Service that you performed in a uniformed service if you were ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by a proper military authority;

(6) Service that you performed in a uniformed service if you were ordered to active duty (other than for training) in support of an operational mission for which personnel have been ordered to active duty under 10 U.S.C. 12304, as determined by a proper military authority;

(7) Service that you performed in a uniformed service if you were ordered to active duty in support of a critical mission or requirement of the uniformed services as determined by a proper military authority; and,

(8) Service that you performed as a member of the National Guard if you were called to respond to an invasion, danger of invasion, rebellion, danger of rebellion, insurrection, or the inability of the President with regular forces to execute the laws of the United States.

(b) Service that you performed to mitigate economic harm where your employer is in violation of its employment or reemployment obligations to you.

§ 1002.104 Am I required to accommodate my employer's needs as to the timing, frequency or duration of my service?

No. You are not required to accommodate your employer's interests or concerns regarding the timing, frequency, or duration of your uniformed service. Your employer cannot refuse to reemploy you because it believes that the timing, frequency or duration of your service is unreasonable. However, your employer is permitted to bring its concerns over the timing, frequency, or duration of your service to the attention of the appropriate military authority. Regulations issued by the Department of Defense at 32 CFR 104.4 direct military authorities to provide assistance to your employer in addressing these types of employment issues. The military authorities are required to consider requests from employers of National Guard and Reserve members to adjust your scheduled absence from civilian employment to perform service.

Application for Reemployment

§ 1002.115 Am I required to report to or submit a timely application for reemployment to my pre-service employer when I complete my period of service in the uniformed services?

Yes. When you complete your service in the uniformed services, you must notify your pre-service employer of your intent to return to your employment position by either reporting to work or submitting a timely application for reemployment. Whether you are required to report to work or submit a timely application for reemployment depends upon the length of your service, as follows:

(a) *Period of service less than 31 days or for a period of any length for the purpose of a fitness examination.* If your period of service in the uniformed services was less than 31 days, or you were absent from a position of employment for a period of any length for the purpose of an examination to determine your fitness to perform service, you must report back to your employer not later than the beginning of the first full regularly-scheduled work period on the first full calendar day following the completion of the period of service, and the expiration of eight hours after a period allowing for your safe transportation from the place of that service to your residence. For example, if you complete a period of service and travel home, arriving at ten o'clock in the evening, you cannot be required to report to your employer until the beginning of the next full regularly-scheduled work period that begins at least eight hours after you safely arrive home, *i.e.*, no earlier than six o'clock the next morning. If it is impossible or unreasonable for you to report within the above time period through no fault of your own, you must report to your employer as soon as possible after the expiration of the eight-hour period.

(b) *Period of service more than 30 days but less than 181 days.* If your period of service in the uniformed services was for more than 30 days but less than 181 days you must submit an application for reemployment (written or verbal) with your employer not later than 14 days after the completion of your service. If it is impossible or unreasonable for you to apply within 14 days through no fault of your own, you must submit the application not later than the next full calendar day after it becomes possible to do so.

(c) *Period of service more than 180 days.* If your period of service in the uniformed services was for more than 180 days you must submit an application for reemployment (written or verbal) with your employer not later than 90 days after the completion of your service.

§ 1002.116 Is my time period for reporting back to my employer extended if I am hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service?

Yes. If you are hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, your performance of service, you must report to or submit an application for reemployment to your employer at the end of the period necessary for you to recover from the illness or injury. This period may not exceed two years from the date of the completion of your service, except that it must be extended by the minimum time necessary to accommodate circumstances beyond your control that make reporting within the period impossible or unreasonable.

§ 1002.117 Are there any consequences if I fail to report for or submit a timely application for reemployment?

(a) If you fail to timely report for or apply for reemployment you do not automatically forfeit your entitlement to USERRA's reemployment and other rights and benefits. Rather, you become subject to the conduct rules, established policy, and general practices of your employer pertaining to your absence from scheduled work.

(b) If reporting or submitting an employment application to your employer is impossible or unreasonable through no fault of your own, you may report to your employer as soon as possible (in the case of a period of service less than 31 days) or submit an application for reemployment to your employer by the next full calendar day after it becomes possible to do so (in the case of a period of service from 31 to 180 days), and you will be considered to have timely reported or applied for reemployment.

§ 1002.118 Is my application for reemployment required to be in any particular form?

Your application for reemployment need not follow any particular format. You may apply orally or in writing. Your application should indicate that you are a former employee returning from service in the uniformed services and that you seek reemployment with your pre-service employer. You are permitted but not required to identify a particular reemployment position in which you are interested.

§ 1002.119 To whom must I submit my application for reemployment?

Your application must be submitted to your pre-service employer or to an agent or representative of your employer who has apparent responsibility for receiving employment applications. Depending upon the circumstances, such a person could be a personnel or human resources officer, or a first-line supervisor. If there has been a change in ownership of your employer, your application should be submitted to the employer's successor-in-interest.

§ 1002.120 If I seek or obtain employment with an employer other than my pre-service employer before the end of the period within which my reemployment application must be filed, will that jeopardize my reemployment rights with my pre-service employer?

No, you have reemployment rights with your pre-service employer provided that you make a timely reemployment application to that employer. You may seek or obtain employment with an employer other than your pre-service employer during the period of time within which your reemployment application must be made, without giving up your reemployment rights with your pre-service employer.

§ 1002.121 Am I required to submit documentation to my employer in connection with my application for reemployment?

Yes, if the period of service exceeded 30 days. If you submit an application for reemployment after a period of service of more than 30 days you must, upon the request of your employer, provide documentation to establish that:

(a) Your reemployment application is timely;

(b) You have not exceeded the five-year limit on the duration of service (subject to the exceptions listed at § 1002.103); and,

(c) Your separation or dismissal from service was not disqualifying.

§ 1002.122 Is my employer required to reemploy me if documentation establishing my eligibility does not exist or is not readily available?

Yes. Your employer is not permitted to delay or deny your reemployment by demanding documentation that does not exist or is not readily available. You are not liable for administrative delays in the issuance of military documentation. If you are reemployed after an absence from employment for more than 90 days your employer may require that you submit the documentation establishing your entitlement to reemployment before treating you as not having had a break in service for pension purposes. If your documentation is received after reemployment and it shows that you are not entitled to reemployment, your employer may terminate your employment and any rights or benefits that you may have been granted.

§ 1002.123 What documents satisfy the requirement that I establish my eligibility for reemployment after a period of service of more than thirty days?

(a) Documents that satisfy the requirements of USERRA include the following:

(1) DD (Department of Defense) 214 Certificate of Release or Discharge from Active Duty;

(2) Copy of duty orders prepared by the facility where the orders were fulfilled carrying an endorsement indicating completion of the described service;

(3) Letter from the commanding officer of a Personnel Support Activity or someone of comparable authority;

(4) Certificate of completion from military training school;

(5) Discharge certificate showing character of service; and,

(6) Copy of extracts from payroll documents showing periods of service.

(b) The types of documents that are necessary to establish your eligibility or reemployment will vary from case to case. Not all of these documents are available or necessary in every instance to establish your reemployment eligibility.

Character of Service

§ 1002.134 What type of discharge or separation from service is required for me to be entitled to reemployment under USERRA?

USERRA does not require any particular form of discharge or separation from service. However, even if you are otherwise eligible for reemployment you will be disqualified if your characterization of service falls within one of four categories. USERRA requires that you not have received one of these types of discharge.

§ 1002.135 What types of discharge or separation from military service will make me ineligible for reemployment under USERRA?

Your reemployment rights are terminated if you are:

(a) Separated from uniformed service with a dishonorable or bad conduct discharge;

(b) Separated from uniformed service under other than honorable conditions, as characterized by regulations of the uniformed service;

(c) A commissioned officer dismissed as permitted under 10 U.S.C. 1161(a) by sentence of a general court-martial; in commutation of a sentence of a general court-martial; or, in time of war, by order of the President; or,

(d) A commissioned officer dropped from the rolls under 10 U.S.C. 1161(b) due to absence without authority for at least three months; separation by reason of a sentence to confinement adjudged by a court-martial; or, a sentence to confinement in a Federal or State penitentiary or correctional institution.

§ 1002.136 Who determines the characterization of my service?

The branch of service in which you perform your tour of duty determines your characterization of service.

§ 1002.137 If I receive a disqualifying discharge or release from uniformed service and it is later upgraded, will my right to reemployment be restored?

Yes. A military review board has the authority to prospectively or retroactively upgrade your disqualifying discharge or release. A retroactive upgrade would restore your reemployment rights providing you otherwise meet the Act's eligibility criteria.

§ 1002.138 If I receive a retroactive upgrade in my characterization of service will that entitle me to claim back wages and benefits lost as of my date of separation from service?

No. A retroactive upgrade allows you to obtain reinstatement with your former employer, provided you otherwise meet the Act's eligibility criteria. Back pay and other benefits such as pension plan credits attributable to the time period between your discharge and the retroactive upgrade are not required to be restored by your employer in this situation.

Employer Statutory Defenses

§ 1002.139 Are there any circumstances in which my pre-service employer is excused from its obligation to reemploy me following a period of military service? What statutory defenses are available to the employer in an action or proceeding for reemployment benefits?

(a) Even if you are otherwise eligible for reemployment benefits, your employer is not required to reemploy you if it establishes that its circumstances have so changed as to make your reemployment impossible or unreasonable. For example, an employer may be excused from reemploying you where there has been an intervening reduction in force that would have included you. Your employer may not, however, refuse to reemploy you on the basis that an employee was hired to fill your position during your absence, even if your reemployment might require the termination of that replacement employee;

(b) Even if you are otherwise eligible for reemployment benefits, your employer is not required to reemploy you if it establishes that assisting you in becoming qualified for reemployment would impose an undue hardship, as defined in § 1002.5(l) and discussed in § 1002.198, on the employer; or,

(c) Even if you are otherwise eligible for reemployment benefits, your employer is not required to reemploy you if it establishes that the employment you left in order to perform service in the uniformed services was for a brief, non-recurrent period and there was no reasonable expectation that the employment would continue indefinitely or for a significant period.

Subpart D—Rights, Benefits, and Obligations of Persons Absent From Employment Due to Service in the Uniformed Services

Furlough and Leave of Absence

§ 1002.149 What is my status with my civilian employer when I am performing service in the uniformed services?

During your period of service in the uniformed services, you are deemed to be on furlough or leave of absence from your civilian employer. In this status you are entitled to the non-seniority rights and benefits generally provided by the employer to other employees with similar seniority, status, and pay that are on furlough or leave of absence. Your entitlement to these non-seniority rights and benefits is not dependent on how your employer characterizes your status during a period of service. For example, if your employer characterizes you as ''terminated'' during your period of military service, this characterization cannot be used to avoid USERRA's requirement that you be deemed on furlough or leave of absence, and therefore entitled to the non-seniority rights and benefits generally provided to employees on furlough or leave of absence.

§ 1002.150 What non-seniority rights and benefits am I entitled to during my period of service?

(a) The non-seniority rights and benefits to which you are entitled during your service are those that your employer provides to similarly situated employees by an employment contract, agreement, policy, practice, or plan in effect at your workplace. These rights and benefits include those in effect at the beginning of your employment and those established after your employment began. They also include those rights and benefits that become effective during your period of service and that are provided to similarly situated employees on furlough or leave of absence.

(b) If the non-seniority benefits to which employees on furlough or leave of absence are entitled vary according to the type of leave, you must be given the most favorable treatment accorded to any comparable form of leave when you perform service in the uniformed services.

§ 1002.151 If my employer provides full or partial pay to me while I am on military leave is it required to also provide me with the non-seniority rights and benefits ordinarily granted to similarly situated employees on furlough or leave of absence?

Yes. If your employer provides additional benefits such as full or partial pay when you perform service it is not excused from providing other rights and benefits to which you are entitled under the Act.

§ 1002.152 If my employment is interrupted by a period of service in the uniformed services, are there any circumstances under which I am not entitled to the non-seniority rights and benefits ordinarily granted to similarly situated employees on furlough or leave of absence?

If your employment is interrupted by a period of service in the uniformed services and you knowingly provide written notice of intent not to return to your position of employment after service in the uniformed services you are not entitled to those non-seniority rights and benefits. Your written notice does not waive your entitlement to any other rights to which you are entitled under the Act, including your right to reemployment after your service.

§ 1002.153 If my employment is interrupted by a period of service in the uniformed services am I permitted upon request to use my accrued vacation, annual or similar leave with pay during the service? Can my employer require me to use my accrued leave during my period of service?

(a) If your employment is interrupted by a period of service you must be permitted upon request to use any accrued vacation, annual, or similar leave with pay during the period of service, in order to continue your civilian pay. However, you are not entitled to use sick leave that you accrued with your civilian employer during a period of service in the uniformed services. Sick leave is not comparable to annual or vacation leave; it is generally intended to provide income when you or a family member is ill and you are unable to work.

(b) Your employer may not require you to use accrued vacation, annual, or similar leave during a period of service in the uniformed services.

Health Plan Coverage

§ 1002.163 What types of health plans are covered by USERRA?

(a) USERRA defines a health plan to include an insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or arrangement under which your health services are provided or the expenses of those services are paid.

(b) USERRA covers group health plans as defined in the Employee Retirement Income Security Act of 1974 (ERISA) at 29 U.S.C. 1191b(a). USERRA applies to group health plans that are subject to ERISA, and plans that are not subject to ERISA, such as those sponsored by State or local governments or religious organizations for their employees.

(c) USERRA covers multiemployer plans maintained pursuant to one or more collective bargaining agreements between employers and employee organizations. USERRA applies to multiemployer plans as they are defined in ERISA at 29 U.S.C. 1002(37). USERRA contains provisions that apply specifically to multiemployer plans in certain situations.

§ 1002.164 What health plan coverage must my employer provide to me under USERRA?

If you have coverage under a health plan in connection with your employment, the plan must permit you to elect to continue the coverage for a certain period of time as described below:

(a) When you are performing service in the uniformed services you are

entitled to continuing coverage for you (and your dependents if your plan offers dependent coverage) under a health plan provided in connection with your employment. The plan must allow you to elect to continue your coverage for a period of time that is the lesser of:

(1) The 18-month period beginning on the date on which your absence for the purpose of performing service begins; or,

(2) The period beginning on the date on which your absence for the purpose of performing service begins, and ending on the date on which you fail to return from your service or apply for a position of employment as provided under §§ 1002.115 through 1002.123.

(b) USERRA does not require your employer to establish a health plan if there is no health plan coverage in connection with your employment, or, where there is a plan, to provide any particular type of coverage.

(c) USERRA does not require your employer to permit you to initiate new health plan coverage at the beginning of a period of service if you did not previously have such coverage.

§ 1002.165 How do I elect continuing health plan coverage?

USERRA does not specify requirements for electing continuing coverage. Health plan administrators may develop reasonable requirements addressing how continuing coverage may be elected, consistent with the terms of the plan and the Act's exceptions to the requirement that you give advance notice of your service in the uniformed services. For example, you cannot be precluded from electing continuing health plan coverage under circumstances where it is impossible or unreasonable for you to make a timely election of coverage.

§ 1002.166 How much do I have to pay in order to continue my health plan coverage?

(a) If you perform service in the military for fewer than 31 days, you cannot be required to pay more than the regular employee share, if any, for health plan coverage.

(b) If you perform service for 31 or more days you may be required to pay no more than 102% of the full premium under the plan, which represents your employer's share plus your share, plus 2% for administrative costs.

(c) USERRA does not specify requirements for methods of paying for continuing coverage. Health plan administrators may develop reasonable procedures for payment, consistent with the terms of the plan.

§ 1002.167 If my coverage was terminated at the beginning of or during my service, does my coverage have to be reinstated upon my reemployment?

(a) If health plan coverage for you or a dependent was terminated by reason of your service in the uniformed services, that coverage must be reinstated upon reemployment. An exclusion or waiting period may not be imposed in connection with the reinstatement of your coverage upon reemployment, if an exclusion or waiting period would not have been imposed had your coverage not been terminated by reason of such service.

(b) Reinstatement procedures that apply to multiemployer plans are discussed in § 1002.169.

(c) USERRA permits a health plan to impose an exclusion or waiting period as to illnesses or injuries determined by the Secretary of Veterans Affairs to have been incurred in, or aggravated during, performance of service in the uniformed services. The determination that your illness or injury was incurred in, or aggravated during, the performance of service may only be made by the Secretary of Veterans Affairs or his or her representative. Other coverage, for injuries or illnesses that are not service-related (or for your dependents, if you have dependent coverage), must be reinstated.

§ 1002.168 Can I elect to delay reinstatement of my health plan coverage until a date after the date I am reemployed?

USERRA requires your employer to reinstate your health plan coverage upon request at reemployment. USERRA permits but does not require your employer to allow you to delay reinstatement of health plan coverage until a date that is later than the date of your reemployment.

§ 1002.169 Which employer is responsible for providing me with continuing health plan coverage if I am enrolled under a multiemployer plan?

Responsibility under a multiemployer plan for employer contributions and benefits in connection with continuing coverage that you elect must be allocated either as the plan sponsor provides, or, if the sponsor does not provide, to your last employer before your service. If your last employer is no longer functional, liability for continuing coverage is allocated to the health plan.

Subpart E—Reemployment Rights and Benefits

Prompt Reemployment

§ 1002.180 When am I entitled to be reemployed by my civilian employer?

Your employer must promptly reemploy you when you return from a period of service if you meet the Act's eligibility criteria as described in subpart C of this part.

§ 1002.181 How is ''prompt reemployment'' defined?

''Prompt reemployment'' means as soon as practicable under the circumstances of your case. Absent unusual circumstances, your reemployment must occur within two weeks of your application for reemployment. For example, prompt reinstatement after your weekend National Guard duty generally means the next regularly scheduled working day. On the other hand, prompt reinstatement following several years of active duty may require more time, because your employer may have to reassign or give notice to another employee who occupied your position.

Reemployment Position

§ 1002.191 What position am I entitled to upon my reemployment?

As a general rule, you are entitled to reemployment in the job position that you would have attained with reasonable certainty if not for your absence due to military service. This position is known as the escalator position. The principle behind the escalator position is that if not for your period of military service, you could have been promoted (or, alternatively, demoted, transferred, or laid off) due to intervening events. The escalator principle requires that you be reemployed in a position that reflects with reasonable certainty the pay, benefits, seniority, and other job perquisites, that you would have attained if not for the period of service. Depending upon the specific circumstances, your employer may have the option, or be required, to reemploy you in a position other than the escalator position.

§ 1002.192 How is my specific reemployment position determined?

In all cases, the starting point for determining your proper reemployment position is the escalator position, which is the job position that you would have attained if your continuous employment had not been interrupted due to military service. Once this position is determined, your employer may have to consider several factors before

determining your appropriate reemployment position in any particular case. Such factors may include your length of service, qualifications, and disability, if any. Your reemployment position may be either the escalator position; the pre-service position; a position comparable to the escalator or pre-service position; or, the nearest approximation to one of these positions.

§ 1002.193 Does my reemployment position include elements such as my seniority, status, and rate of pay?

Yes. Your reemployment position includes the seniority, status, and rate of pay that you would ordinarily have attained in that position given your job history, including your prospects for future earnings and advancement. Your employer must determine your seniority rights, status, and rate of pay as though you had been continuously employed during the period of service. The seniority rights, status, and pay of an employment position include those established (or changed) by a collective bargaining agreement, employer policy, or employment practice. The sources of seniority rights, status, and pay include agreements, policies, and practices in effect at the beginning of your service, and any changes that may have occurred during your period of service. In particular, your status in the reemployment position could include opportunities for advancement, general working conditions, job location, shift assignment, rank, responsibility, and geographical location. If an opportunity for promotion, or eligibility for promotion, that you missed during service is based on a skills test or examination, then your employer should give you a reasonable amount of time to adjust to your employment position and then give you the skills test or examination. If you are successful on the makeup exam and, based on the results of that exam, there is a reasonable certainty that you would have been promoted, or made eligible for promotion, during the time that you served in the military, then your promotion or eligibility for promotion must be made effective as of the date it would have occurred had your employment not been interrupted by military service.

§ 1002.194 Can the application of the escalator principle result in adverse consequences when I am reemployed?

Yes. The Act does not prohibit lawful adverse job consequences that result from your restoration on the seniority ladder. Depending on your circumstances, your seniority rank may cause you to be reemployed in a higher or lower position, laid off, or even terminated. For example, if your seniority would have resulted in your being laid off during the period of service, and the layoff continued after the date of your reemployment, your reemployment would reinstate you to layoff status. Similarly, the status of your reemployment position requires the employer to assess what would have happened to such factors as your opportunities for advancement, working conditions, job location, shift assignment, rank, responsibility, and geographical location, if you had remained continuously employed. Your reemployment position may involve transfer to another shift or location, more or less strenuous working conditions, or changed opportunities for advancement, depending upon the application of the escalator principle.

§ 1002.195 What other factors can determine my reemployment position?

Once your escalator position is determined, other factors may allow, or require, your employer to reemploy you in a position other than the escalator position. These factors, which are explained in §§ 1002.196 through 1002.199 below, are:

(a) The length of your most recent period of military service;

(b) Your qualifications; and,

(c) Whether you have a disability incurred or aggravated during your military service.

§ 1002.196 What is my reemployment position if my period of service was less than 91 days?

Following a period of service in the uniformed services of less than 91 days, you must be reemployed according to the following priority:

(a) You must be reemployed in the escalator position. You must be qualified to perform the duties of this position. Your employer must make reasonable efforts to help you become qualified to perform the duties of this position.

(b) If you are not qualified to perform the duties of the escalator position after reasonable efforts by your employer, you must be reemployed in the position in which you were employed on the date that your period of service began. You must be qualified to perform the duties of this position. Your employer must make reasonable efforts to help you become qualified to perform the duties of this position.

(c) If you are not qualified to perform the duties of the escalator position or the pre-service position, after reasonable efforts by your employer, you must be reemployed in any other position that is the nearest approximation first to the escalator position and then to the pre-service position. You must be qualified to perform the duties of this position. The employer must make reasonable efforts to help you become qualified to perform the duties of this position.

§ 1002.197 What is my reemployment position if my period of service in the uniformed services was more than 90 days?

Following a period of service of more than 90 days, you must be reemployed according to the following priority:

(a) You must be reemployed in the escalator position or a position of like seniority, status, and pay. You must be qualified to perform the duties of this position. Your employer must make reasonable efforts to help you become qualified to perform the duties of this position.

(b) If you are not qualified to perform the duties of the escalator position or a like position after reasonable efforts by your employer, you must be reemployed in the position in which you were employed on the date that your period of service began or in a position of like seniority, status, and pay. You must be qualified to perform the duties of this position. Your employer must make reasonable efforts to help you become qualified to perform the duties of this position.

(c) If you are not qualified to perform the duties of the escalator position, the pre-service position, or a like position, after reasonable efforts by your employer, you must be reemployed in any other position that is the nearest approximation first to the escalator position and then to the pre-service position. You must be qualified to perform the duties of this position. Your employer must make reasonable efforts to help you become qualified to perform the duties of this position.

§ 1002.198 What efforts must my employer make to help me become qualified for the reemployment position?

You must be qualified for your reemployment position. Your employer must make reasonable efforts to help you become qualified to perform the duties of this position. Your employer is not required to reemploy you on your return from service if you cannot, after reasonable efforts by your employer, qualify for the appropriate reemployment position.

(a) (1) ''Qualified'' means that you have the ability to perform the essential tasks of the position. Your inability to perform one or more non-essential tasks of a position does not make you unqualified.

(2) Whether a task is essential depends on several factors, including:

(i) Whether you regularly perform the task in the job position. It is not necessary or sufficient that the task is labeled ''essential,'' or is part of your job description. If you do not regularly perform the task in your position, it is generally not essential;

(ii) Whether your position exists solely to perform the task;

(iii) Whether a significant portion of your workday or workweek is spent performing the task;

(iv) Whether the result of your failing to correctly perform the task would create a dangerous workplace situation or cause a catastrophe;

(v) Whether the task is highly specialized, and you were hired specifically to perform the task; and,

(vi) Whether your failure to perform the task would place your employer in violation of a law or regulation.

(b) Only after your employer makes reasonable efforts, as defined in § 1002.5(g) and § 1002.5(l), may it determine that you are not qualified for the reemployment position. These reasonable efforts must be made at no cost to you.

§ 1002.199 What priority must my employer follow if two or more returning employees are entitled to reemployment in the same position?

If two or more persons are entitled to reemployment in the same position and more than one person has reported or applied for employment in that position, the employee who first left the position for military service has the first priority on reemployment in that position. The remaining employee (or employees) is entitled to be reemployed in a position similar to that in which the person would have been reemployed according to the rules that normally determine a person's reemployment position, as set out in §§ 1002.196 and 1002.197.

Seniority Rights and Benefits

§ 1002.210 What seniority rights do I have when I am reemployed following a period of uniformed service?

You are entitled to the seniority and seniority-based rights and benefits that you had on the date your service began, plus any seniority and seniority-based rights and benefits that you would have attained if you had remained continuously employed during your period of service. In determining your entitlement to seniority and seniority-based rights and benefits, your period of uniformed service is not considered a break in employment. The rights and benefits protected by USERRA upon reemployment include those provided by the employer and those required by statute. For example, a reemployed service member would be eligible for leave under the Family and Medical Leave Act of 1993, 29 U.S.C. 2601–2654 (FMLA), if the number of months and the number of hours of work for which the service member was employed by the civilian employer, together with the number of months and the number of hours of work for which the service member would have been employed by the civilian employer during the period of military service, meet FMLA's eligibility requirements.

§ 1002.211 Does USERRA require my employer to use a seniority system?

No. USERRA does not require your employer to adopt a formal seniority system. USERRA defines seniority as longevity in employment together with any employment benefits that accrue with, or are determined by, longevity in employment. In the absence of a formal seniority system, such as one established through collective bargaining, USERRA looks to the custom and practice in your place of employment to determine your entitlement to any employment benefits that accrue with, or are determined by, longevity in employment.

§ 1002.212 How do I know whether a particular right or benefit is a seniority-based right or benefit?

A seniority-based right or benefit is one that accrues with, or is determined by, longevity in employment. Generally, whether a right or benefit is seniority-based depends on three factors:

(a) Whether the right or benefit is a reward for your length of service rather than a form of short-term compensation for work performed;

(b) Whether it is reasonably certain that you would have received the right or benefit if you had remained continuously employed during your period of service; and,

(c) Whether it is your employer's actual custom or practice to provide or withhold the right or benefit as a reward for your length of service. Provisions of an employment contract or policies in your employee handbook are not controlling if your employer's actual custom or practice is different from what is written in the contract or handbook.

§ 1002.213 How can I demonstrate a reasonable certainty that I would have received the seniority right or benefit if I had remained continuously employed during my period of service?

A reasonable certainty is a high probability that you would have received the seniority or seniority-based right or benefit if you had been continuously employed. You do not have to establish that you would have received the benefit as an absolute certainty. You can demonstrate a reasonable certainty that you would have received the seniority right or benefit by showing that other employees with seniority similar to that which you would have had if you had remained continuously employed received the right or benefit. Your employer cannot withhold the right or benefit based on an assumption that a series of unlikely events could have prevented you from gaining the right or benefit.

§ 1002.214 What happens if my employer establishes or eliminates seniority and seniority-based rights and benefits after I begin my period of service?

(a) When you are reemployed, you are entitled to seniority and seniority-based rights and benefits that are established or become available after you entered service, even if those rights and benefits were not previously available. Those seniority-based rights and benefits must be made available upon your reemployment if you otherwise qualify for the right or benefit.

(b) If your employer eliminates seniority or a seniority-based right or benefit after you begin your period of service, you are entitled to be treated as if you had been continuously employed. For example, if an employer that previously made an assignment available based on seniority determines while you are absent to make the assignment available only to employees who had previously held certain other assignments or completed certain training, you may be entitled to the assignment if you can show with reasonable certainty that you would have acquired the necessary experience or training had you been continuously employed. In this situation, the employer is obligated to make reasonable efforts to help you become qualified for the position.

Disabled Employees

§ 1002.225 Am I entitled to any specific reemployment benefits if I have a disability that was incurred in, or aggravated during, my period of service?

Yes. If you have a disability incurred in, or aggravated during, your period of service in the uniformed services, your employer must make reasonable efforts to accommodate your disability and to help you become qualified to perform the duties of your reemployment position. If you are not qualified for reemployment in the escalator position because of your disability after reasonable efforts by the employer to accommodate your disability and to

help you to become qualified, you must be reemployed in a position according to the following priority. Your employer must make reasonable efforts to accommodate your disability and to help you to become qualified to perform the duties of one of these positions:

(a) A position that is equivalent in seniority, status, and pay to the escalator position; or,

(b) A position that is the nearest approximation to the equivalent position, consistent with the circumstances of your case, in terms of seniority, status, and pay.

§ 1002.226 If I have a disability that was incurred in, or aggravated during, my period of service, what efforts must my employer make to help me become qualified for my reemployment position?

(a) USERRA requires that you be qualified for your reemployment position regardless of your disability. Your employer must make reasonable efforts to help you to become qualified to perform the duties of this position. Your employer is not required to reemploy you on your return from service if you cannot, after reasonable efforts by your employer, qualify for the appropriate reemployment position.

(b) ''Qualified'' has the same meaning here as in § 1002.198.

Rate of Pay

§ 1002.236 How is my rate of pay determined when I return from a period of service?

Your rate of pay is determined by applying the same escalator principles that are used to determine your reemployment position, as follows:

(a) If you are reemployed in the escalator position, your employer must compensate you at the rate of pay associated with the escalator position. Your rate of pay must be determined by taking into account any pay increases, differentials, step increases, merit increases, or periodic increases that you would have attained with reasonable certainty had you remained continuously employed during your period of service. For example, if you missed a merit pay increase while you were performing service, but you qualified for previous merit pay increases, then your rate of pay should include the merit pay increase that you missed. If the merit pay increase that you missed during service is based on a skills test or examination, then your employer should give you a reasonable amount of time to adjust to your reemployment position and then give you the skills test or examination. The escalator principle also applies in the event a pay reduction occurred in the reemployment position during your period of service. Any pay adjustment must be made effective as of the date it would have occurred had your employment not been interrupted by military service.

(b) If you are reemployed in the pre-service position or another position, your employer must compensate you at the rate of pay associated with the position in which you are reemployed. As with the escalator position, your rate of pay must be determined by taking into account any pay increases, differentials, step increases, merit increases, or periodic increases that you would have attained with reasonable certainty had you remained continuously employed during your period of service.

Protection Against Discharge

§ 1002.247 Does USERRA provide me with protection against discharge?

Yes. If your most recent period of service in the uniformed services was more than 30 days you must not be discharged except for cause—

(a) For 180 days after your date of reemployment if your most recent period of uniformed service was more than 30 days but less than 181 days; or,

(b) For one year after the date of reemployment if your most recent period of uniformed service was more than 180 days.

§ 1002.248 What constitutes cause for discharge under USERRA?

You may be discharged for cause based either on your conduct or, in some circumstances, on the application of the escalator principle.

(a) In a discharge action based on your conduct, your employer bears the burden of proving that it is reasonable to discharge you for the conduct in question, and that you had notice that such conduct would constitute cause for discharge.

(b) If the application of the escalator principle after your reemployment results in your job position being eliminated, or in your being placed on layoff status, either of these situations would constitute cause for purposes of USERRA. Your employer bears the burden of proving that your job would have been eliminated or that you would have been laid off.

Pension Plan Benefits

§ 1002.259 How does USERRA protect my pension benefits?

On reemployment you are treated as not having a break in service with your employer or employers maintaining a pension plan, for purposes of participation, vesting and accrual of benefits, by reason of your period of service in the uniformed services.

(a) Depending on the length of your period of service, you are entitled to take from one to ninety days following your service before reporting back to work or applying for employment (See § 1002.115). This period of time must be treated as continuous service with your employer for purposes of determining participation, vesting and accrual of pension benefits under the plan.

(b) If you are hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, your service you are entitled to report to or submit an application for reemployment at the end of the time period necessary for you to recover from the illness or injury. This period, which may not exceed two years from the date you completed your service, except in circumstances beyond your control, must be treated as continuous service with your employer for purposes of determining the participation, vesting and accrual of pension benefits under the plan.

§ 1002.260 What pension benefit plans are covered under USERRA?

(a) The Employee Retirement Income Security Act of 1974 (ERISA) defines an employee pension benefit plan as a plan that provides retirement income to employees, or defers employee income to a period extending to or beyond the termination of employment. Any such plan maintained by your employer or employers is covered under USERRA. USERRA also covers certain pension plans not covered by ERISA, such as those sponsored by a State, government entity, or church for its employees.

(b) USERRA does not cover pension benefits under the Federal Thrift Savings Plan; those benefits are covered under 5 U.S.C. 8432b.

§ 1002.261 Who is responsible for funding any plan obligation to provide me with pension benefits?

With the exception of multiemployer plans, which have separate rules discussed below, your employer is liable to the pension benefit plan to fund any obligation of the plan to provide benefits that are attributable to your period of service. In the case of a defined contribution plan, once you are reemployed, your employer must allocate the amount of its make-up contribution for you, if any, your make-up employee contributions, if any, your elective deferrals, if any, and the repayment of distributions from the plan, if any, in the same manner and to the same extent that it allocates the amounts for other employees during the

period of service. In the case of a defined benefit plan, your accrued benefit will be increased for your period of service once you are reemployed and, if applicable, have repaid any amounts previously paid to you from the plan and made any employee contributions that may be required to be made under the plan.

§ 1002.262 When is my employer required to make the plan contribution that is attributable to my period of military service?

(a) The employer is not required to make its contribution until you are reemployed. For employer contributions to a plan in which you are not required or permitted to contribute, your employer must make the contribution attributable to your period of service no later than thirty days after the date of your reemployment. If it is impossible or unreasonable for your employer to make the contribution within thirty days after the date you were reemployed, your employer must make the contribution as soon as practicable.

(b) If you are enrolled in a contributory plan you are allowed (but not required) to make up your missed contributions or elective deferrals. These makeup contributions or elective deferrals must be made during a time period starting with your date of reemployment and continuing for up to three times the length of your immediate past period of military service, with the repayment period not to exceed five years. If you cannot make up missed contributions as an elective deferral because you are no longer employed by the employer sponsoring the plan, the plan must give you an equivalent opportunity to receive the maximum employer matching contributions that were available under the plan during your period of uniform service through a match of after-tax contributions.

(c) If your plan is contributory and you do not make up your contributions or elective deferrals, you will not receive the employer match or the accrued benefit attributable to your contribution because your employer is required to make contributions that are contingent on or attributable to your contributions or elective deferrals only to the extent that you make up your payments to the plan. Any employer contributions that are contingent on or attributable to your make-up contributions or elective deferrals must be made according to the plan's requirements for employer matching contributions.

(d) You are not required to make up the full amount of employee contributions or elective deferrals that you missed making during your period of service. If you do not make up all of your missed contributions or elective deferrals, your pension may be less than if you had done so.

(e) Any vested accrued benefit in the pension plan that you were entitled to prior to your period of military service remains intact whether or not you choose to be reemployed under the Act after leaving the military.

(f) An adjustment will be made to the amount of employee contributions or elective deferrals you will be able to make to the pension plan for any employee contributions or elective deferrals you actually made to the plan during your period of service.

§ 1002.263 Am I required to pay interest when I make up my missed contributions or elective deferrals?

No. You are not required to make up a missed contribution in an amount that exceeds the amount you would have been permitted or required to contribute had you remained continuously employed during your period of service.

§ 1002.264 Am I allowed to repay my account balance if I withdrew all or part of my account from the pension benefits plan before becoming reemployed?

Yes. If you withdrew all or part your account balance from the pension benefits plan before you became reemployed, you must be allowed to repay the withdrawn amounts when you are reemployed. In the case of a defined benefit plan (but not a defined contribution plan) the amount you must repay includes any interest that would have accrued had the monies not been withdrawn. The repayment of these amounts must be made:

(a) During a time period starting with the date of reemployment and continuing for up to three times the length of the employee's immediate past period of military service, with the repayment period not to exceed five years; or

(b) During the time period provided by 26 U.S.C. 411(a)(7)(C) (if applicable); or

(c) Within such longer time period as may be agreed to between the employer and service member.

§ 1002.265 If I am reemployed with my pre-service employer is my pension benefit the same as if I had remained continuously employed?

The amount of your pension benefit depends on the type of pension plan.

(a) In a non-contributory defined benefit plan, where the amount of your pension benefit is determined according to a specific formula, your benefit will be the same as though you had remained continuously employed during your period of service.

(b) In a contributory defined benefit plan, you will need to make up your contributions in order to have the same benefit as if you had remained continuously employed during your period of service.

(c) In a defined contribution plan, the benefit may not be the same as if you had remained continuously employed, even though you and your employer make up any contributions or elective deferrals attributable to your period of service, because you are not entitled to forfeitures and earnings or required to experience losses that accrued during your period or periods of service.

§ 1002.266 What are the obligations of a multiemployer pension benefit plan under USERRA?

A multiemployer pension benefit plan is one to which more than one employer is required to contribute, and which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer. The Act uses ERISA's definition of a multiemployer plan. In addition to the provisions of USERRA that apply to all pension benefit plans, there are provisions that apply specifically to multiemployer plans, as follows:

(a) The last employer that employed you before your period of service is responsible for making the employer contribution to the multiemployer plan, if the plan sponsor does not provide otherwise. If the last employer is no longer functional, the plan must nevertheless provide coverage to the service member.

(b) An employer that contributes to a multiemployer plan and that reemploys you must provide written notice of your reemployment to the plan administrator within 30 days after your date of reemployment.

(c) You are entitled to the same employer contribution whether you are reemployed by your pre-service employer or by a different employer contributing to the same multiemployer plan.

§ 1002.267 How is my compensation during my period of service calculated in order to determine my pension benefits, if my benefits are based on my compensation?

In many pension benefit plans, your compensation determines the amount of your contribution or the retirement benefit to which you are entitled.

(a) Where your rate of compensation must be calculated to determine your

pension entitlement, the calculation must be made using the rate of pay that you would have received but for your period of military service.

(b)(1) Where the rate of pay you would have received is not reasonably certain, such as where your compensation is based on commissions that you earned, your average rate of compensation during the 12-month period prior to your period of military service must be used.

(2) Where the rate of pay you would have received is not reasonably certain and you were employed for less than 12 months prior to the period of military service, your average rate of compensation must be derived from this shorter period of employment that preceded your service.

Subpart F—Compliance Assistance, Enforcement and Remedies

Compliance Assistance

§ 1002.277 What assistance does the Department of Labor provide to employees and employers concerning employment, reemployment, or other rights and benefits under USERRA?

The Secretary, through the Veterans' Employment and Training Service (VETS), provides assistance to any person or entity with respect to employment and reemployment rights and benefits under USERRA. This assistance includes a wide range of compliance assistance outreach activities, such as responding to inquiries; conducting USERRA briefings and Webcasts; issuing news releases; and, maintaining the elaws USERRA Advisor (located at *http://www.dol.gov/elaws/userra.htm*), the e-VETS Resource Advisor and other Web-based materials (located at *http://www.dol.gov/vets/#userra*), which are designed to increase awareness of the Act among affected persons, the media, and the general public. In providing such assistance, VETS may request the assistance of other Federal and State agencies, and utilize the assistance of volunteers.

Investigation and Referral

§ 1002.288 How do I file my USERRA complaint?

If you are claiming entitlement to employment rights or benefits or reemployment rights or benefits and you allege that your employer has failed or refused, or is about to fail or refuse, to comply with the Act, you may file a complaint with VETS or initiate a private legal action in a court of law (*see* § 1002.303). A complaint filed with VETS must be in writing, using VETS Form 1010 (instructions and the form can be accessed at *http://www.dol.gov/elaws/vets/userra/1010.asp*), and must include the name and address of your employer, a summary of the basis for your complaint, and a request for relief.

§ 1002.289 How will VETS investigate my USERRA complaint?

(a) In carrying out any investigation, VETS has, at all reasonable times, reasonable access to and the right to interview persons with information relevant to the investigation. VETS also has reasonable access to, for purposes of examination, the right to copy and receive any documents of any person or employer that VETS considers relevant to the investigation.

(b) VETS may require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation. In case of disobedience of or resistance to the subpoena, the Attorney General may, at VETS' request, apply to any district court of the United States in whose jurisdiction such disobedience or resistance occurs for an order enforcing the subpoena. The district courts of the United States have jurisdiction to order compliance with the subpoena, and to punish failure to obey a subpoena as a contempt of court. This paragraph does not authorize VETS to seek issuance of a subpoena to the legislative or judicial branches of the United States.

§ 1002.290 Does VETS have the authority to order compliance with USERRA?

No. If VETS determines as a result of an investigation that the complaint is meritorious, VETS attempts to resolve the complaint by making reasonable efforts to ensure that any persons or entities named in the complaint comply with the Act. If VETS' efforts do not resolve the complaint, VETS notifies the person who submitted the complaint of:

(a) The results of the investigation; and,

(b) The person's right to proceed under the enforcement of rights provisions in 38 U.S.C. 4323 (against a State or private employer), or 38 U.S.C. 4324 (against a Federal executive agency or the Office of Personnel Management (OPM)).

§ 1002.291 What actions may I take if my complaint is not resolved by VETS?

If you receive a notification from VETS of an unsuccessful effort to resolve your complaint relating to a State or private employer, you may request that VETS refer the complaint to the Attorney General.

§ 1002.292 What can the Attorney General do about my complaint?

(a) If the Attorney General is reasonably satisfied that your complaint is meritorious, meaning that you are entitled to the rights or benefits sought, the Attorney General may appear on your behalf and act as your attorney, and initiate a legal action to obtain relief for you.

(b) If the Attorney General determines that your complaint does not have merit, the Attorney General may decline to represent you.

Enforcement of Rights and Benefits Against a State or Private Employer

§ 1002.303 Am I required to file my complaint with VETS?

No. You may initiate a private action for relief against a State or private employer if you decide not to apply to VETS for assistance.

§ 1002.304 If I file a complaint with VETS and VETS' efforts do not resolve my complaint can I pursue the claim on my own?

Yes. If VETS notifies you that it is unable to resolve your complaint, you may pursue the claim on your own. You may choose to be represented by private counsel whether or not the Attorney General decides to represent you as to your complaint.

§ 1002.305 What court has jurisdiction in an action against a State or private employer?

(a) If an action is brought against a State or private employer by the Attorney General, the district courts of the United States have jurisdiction over the action. If the action is brought against a State by the Attorney General, it must be brought in the name of the United States as the plaintiff in the action.

(b) If an action is brought against a State by a person, the action may be brought in a State court of competent jurisdiction according to the laws of the State.

(c) If an action is brought against a private employer or a political subdivision of a State by a person, the district courts of the United States have jurisdiction over the action.

(d) An action brought against a State Adjutant General, as an employer of a civilian National Guard technician, is considered an action against a State for purposes of determining which court has jurisdiction.

§ 1002.306 As a National Guard civilian technician am I considered a State or Federal employee for purposes of USERRA?

If you are a National Guard civilian technician you are considered a State employee for USERRA purposes, although you are considered a Federal employee for most other purposes.

§ 1002.307 What is the proper venue in an action against a State or private employer?

(a) If an action is brought by the Attorney General against a State, the action may proceed in the United States district court for any district in which the State exercises any authority or carries out any function.

(b) If an action is brought against a private employer, or a political subdivision of a State, the action may proceed in the United States district court for any district in which the employer maintains a place of business.

§ 1002.308 Who has legal standing to bring an action under USERRA?

An action may be brought only by the United States or by the person, or representative of a person, claiming rights or benefits under the Act. An employer, prospective employer or other similar entity may not bring an action under the Act.

§ 1002.309 Who is a necessary party in an action under USERRA?

In an action under USERRA only an employer or a potential employer, as the case may be, is a necessary party respondent. In some circumstances, such as where terms in a collective bargaining agreement need to be interpreted, the court may allow an interested party to intervene in the action.

§ 1002.310 How are fees and court costs charged or taxed in an action under USERRA?

No fees or court costs may be charged or taxed against you if you are claiming rights under the Act. If you obtain private counsel for any action or proceeding to enforce a provision of the Act, and you prevail, the court may award reasonable attorney fees, expert witness fees, and other litigation expenses.

§ 1002.311 Is there a statute of limitations in an action under USERRA?

No. USERRA does not have a statute of limitations, and it expressly precludes the application of any State statute of limitations. If you unreasonably delay asserting your rights, and that unreasonable delay causes prejudice to your employer, the courts have recognized the availability of the equitable doctrine of laches to bar a claim under USERRA.

§ 1002.312 What remedies may be awarded for a violation of USERRA?

In any action or proceeding the court may award relief as follows:

(a) The court may require your employer to comply with the provisions of the Act;

(b) The court may require your employer to compensate you for any loss of wages or benefits suffered by reason of your employer's failure to comply with the Act;

(c) The court may require your employer to pay you an amount equal to the amount of lost wages and benefits as liquidated damages, if the court determines that your employer's failure to comply with the Act was willful. A violation shall be considered to be willful if the employer or potential employer either knew or showed reckless disregard for whether its conduct was prohibited by the Act.

(d) Any wages, benefits, or liquidated damages awarded under paragraphs (b) and (c) of this section are in addition to, and must not diminish, any of the other rights and benefits provided by USERRA (such as, for example, the right to be employed or reemployed by the employer).

§ 1002.313 Are there special damages provisions that apply to actions initiated in the name of the United States?

Yes. In an action brought in the name of the United States, for which the relief includes compensation for lost wages, benefits, or liquidated damages, the compensation must be held in a special deposit account and must be paid, on order of the Attorney General, directly to the person. If the compensation is not paid to you because of the Federal Government's inability to do so within a period of three years, the compensation must be converted into the Treasury of the United States as miscellaneous receipts.

§ 1002.314 May a court use its equity powers in an action or proceeding under the Act?

Yes. A court may use its full equity powers, including the issuance of temporary or permanent injunctions, temporary restraining orders, and contempt orders, to vindicate the rights or benefits guaranteed to you under the Act.

Signed at Washington, DC, this 10th day of September, 2004.

Frederico Juarbe Jr.,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 04–20844 Filed 9–17–04; 8:45 am]

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September 20, 2004

Part III

Securities and Exchange Commission

17 CFR Part 248
Disposal of Consumer Report Information; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 248

[Release Nos. 34–50361, IA–2293, IC–26596; File No. S7–33–04]

RIN 3235–AJ24

Disposal of Consumer Report Information

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is publishing for comment amendments to the rule under Regulation S–P requiring financial institutions to adopt policies and procedures to safeguard customer information (''safeguard rule''). The proposed amendments would implement the provision in section 216 of the Fair and Accurate Credit Transactions Act of 2003 requiring proper disposal of consumer report information and records. Section 216 directs the Commission and other federal agencies to adopt regulations requiring that any person who maintains or possesses a consumer report or consumer information derived from a consumer report for a business purpose must properly dispose of the information. The proposed amendments also would require the policies and procedures adopted under the safeguard rule to be in writing.

DATES: Comments should be received on or before October 20, 2004.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–33–04 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number S7–33–04. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed/shtml*). Comments will also be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: For information regarding the proposed rule amendments as they relate to brokers or dealers, contact Catherine McGuire, Chief Counsel, Brian Bussey, Assistant Chief Counsel, or Tara Prigge, Attorney, Office of Chief Counsel, at the Division of Market Regulation, (202) 942–0073; as they relate to transfer agents registered with the Commission, contact Jerry Carpenter, Assistant Director, or David Karasik, Special Counsel, Office of Clearance and Settlement, at the Division of Market Regulation, (202) 942–4187; or as they relate to investment companies or to investment advisers registered with the Commission, contact Penelope W. Saltzman, Branch Chief, or Vincent M. Meehan, Attorney, Office of Regulatory Policy, at the Division of Investment Management, (202) 942–0690, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is requesting public comment on proposed amendments to Regulation S–P under section 501(b) of the Gramm-Leach Bliley Act (''GLBA'') [15 U.S.C. 6801(b)], section 216 of the Fair and Accurate Credit Transactions Act of 2003 (''FACT Act'' or ''Act'') [15 U.S.C. 1681w], the Securities Exchange Act of 1934 (the ''Exchange Act'') [15 U.S.C. 78], the Investment Company Act of 1940 (the ''Investment Company Act'') [15 U.S.C. 80a], and the Investment Advisers Act of 1940 (the ''Investment Advisers Act'') [15 U.S.C. 80b].

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I. Background

Section 216 of the FACT Act adds a new section 628 to the Fair Credit Reporting Act (''FCRA'').[1] The section is intended to prevent unauthorized disclosure of information contained in a consumer report and to reduce the risk of fraud or related crimes, including identity theft, by ensuring that records containing sensitive financial or personal information are appropriately redacted or destroyed before being discarded.[2] Section 216 of the FACT Act requires the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision (collectively, the ''Banking Agencies''), the National Credit Union Administration, the Federal Trade Commission (''FTC'') (collectively with the Banking Agencies, the ''Agencies''), and the Commission to issue regulations requiring ''any person that maintains or otherwise possesses consumer information, or any compilation of consumer information, derived from consumer reports for a business purpose, to properly dispose of any such information or compilation.''[3] The Agencies and the Commission are required to consult and coordinate with each other so that, to the extent possible, regulations implementing this section are consistent and comparable. In addition, section 216 requires that the regulations must be consistent with the GLBA and other provisions of Federal law. The Commission staff has coordinated with the Agencies to develop a proposal regarding the disposal of consumer report information, and the Commission is now requesting public comment on that proposal.[4]

[1] 15 U.S.C. 1681. The FACT Act was signed into law on December 4, 2003. Pub. L. No. 108–159, 117 Stat. 1952 (2003). Section 628 is codified at 15 U.S.C. 1681w.

[2] *See* 108 Cong. Rec. S13,889 (Nov. 4, 2003) (statement of Sen. Nelson).

[3] The regulations must be issued in final form by December 4, 2004.

[4] The Banking Agencies have proposed to implement section 216 of the FACT Act by amending their existing guidelines on safeguarding customer information. *See* Proper Disposal of Consumer Information Under the Fair and Accurate Credit Transactions Act of 2003, 69 FR 31913 (June 8, 2004). The National Credit Union Administration has published a similar proposal. *See* Fair Credit Reporting—Proper Disposal of Consumer Information Under the Fair and Accurate Credit Transactions Act of 2003, 69 FR 30601 (May 28, 2004). The FTC has proposed a separate rule to implement section 216 of the Act. *See* Disposal of Consumer Report Information and Records, 69 FR 21388 (April 20, 2004) (''FTC Proposal'').

The Commission's safeguard rule, section 30 of Regulation S–P,[5] was adopted in 2000 pursuant to section 501(b) of the GLBA. The rule requires brokers, dealers, and investment companies, as well as investment advisers registered with the Commission (''registered investment advisers'') to adopt policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information. Because the proper disposal of information is one aspect of an information safeguard program, we are proposing to place the ''disposal rule'' as paragraph (b) of section 248.30.[6] The existing safeguard rule would be re-designated as paragraph (a).[7]

The Commission also is taking this opportunity to propose another amendment to the safeguard rule to address weaknesses the staff has seen in the documentation of safeguarding policies and procedures. Since 2001, our staff has examined brokers, dealers, investment companies, and registered investment advisers for their compliance with the safeguard rule. In the course of these examinations, our staff has identified firms that lack written policies and procedures that address the safeguarding of customer information and records. Our proposal today would address this weakness by specifying that information safeguard policies and procedures must be ''written.''

II. Discussion

A. Proposed Rule 248.30(b): Disposal of Consumer Report Information and Records

1. Proposed Section 248.30(b)(1): Definitions

The proposed disposal rule would be part of Regulation S–P.[8] Accordingly, the definitions set forth in Regulation S–P also would apply to terms used in the proposed rule. As discussed below, however, proposed section 248.30(b) would include definitions of additional terms used in the proposed disposal rule.

Proposed section 248.30(b)(1)(i) defines the term ''consumer report'' to have the same meaning as in section 603(d) of the FCRA.[9] Proposed section 248.30(b)(1)(ii) defines ''consumer report information'' as any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report. This definition would incorporate the FCRA meaning of ''consumer,'' which is simply ''an individual,'' without regard to the nature of any product or service involved or how it is used.[10] A broad definition of the term, which includes all types of records that are consumer reports, or contain information derived from consumer reports, may best effectuate the purpose of the FACT Act.

Under this definition, however, information that is derived from consumer reports but does not identify any particular individual would not be covered under the proposed rule. Limiting ''consumer report information'' to information that identifies particular individuals is consistent with current law relating to the scope of the term ''consumer report'' under section 603(d) of the FCRA and with the purposes of section 216 of the FACT Act.[11] The Commission requests comment on this proposed definition. Should it be broader or narrower? The Commission also seeks comment on whether the definition of ''consumer report information'' should be further clarified, by example or otherwise.

Proposed section 248.30(b)(1)(iii) defines ''disposal'' to mean the discarding or abandonment of consumer report information, as well as the sale, donation, or transfer of any medium, including computer equipment, upon which consumer report information is stored. The sale, donation, or transfer, as opposed to the discarding or abandonment, of consumer report information would not be considered a ''disposal'' under the proposed rule. For example, an entity subject to the proposed disposal rule that transfers consumer report information to a third party for marketing purposes would not be discarding the information for purposes of the proposed disposal rule.[12] If the entity donates computer equipment on which consumer report information is stored, however, the donation would be considered a disposal under the proposal. The Commission requests comment on the proposed definition of ''disposal.'' Does it appropriately reflect the scope of the FACT Act? Should it be narrower or broader?

Proposed section 248.30(b)(1)(iv) defines ''notice-registered broker-dealers'' to mean a broker or dealer registered by notice with the Commission under section 15(b)(11) of the Exchange Act.[13]

Proposed section 248.30(b)(1)(v) defines ''transfer agent'' to have the same meaning as in section 3(a)(25) of the Exchange Act.[14] The Commission requests comment on these proposed definitions.

2. Proposed Section 248.30(b)(2)(i): Proper Disposal of Consumer Report Information

Maintaining or Possessing Information for a Business Purpose. The proposed disposal rule would require brokers and dealers (other than brokers and dealers registered by notice with the Commission under section 15(b)(11) of the Exchange Act for the purpose of conducting business in security futures products (''notice-registered broker-dealers'')), investment companies, registered investment advisers, and

[5] 17 CFR 248.30.

[6] *See* text accompanying and following note 21 *infra.*

[7] *See* proposed rule 248.30(a).

[8] *See* 17 CFR Part 248.

[9] The FCRA defines ''consumer report'' to mean ''* * *any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for (A) credit or insurance to be used primarily for personal, family, or household purposes; (B) employment purposes; or (C) any other purpose authorized under section 604'' of the FCRA. *See* 15 U.S.C. 1681a(d)(1). A ''consumer reporting agency'' is defined as ''any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.'' *See* 15 U.S.C. 1681a(f). The statute also provides exclusions from the definition, which include: ''any (i) report containing information solely as to transactions or experiences between the consumer and the person making the report; (ii) communication of that information among persons related by common ownership or affiliated by corporate control; or (iii) communication of other information among persons related by common ownership or affiliated by corporate control, if it is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons and the consumer is given the opportunity, before the time that the information is initially communicated, to direct that such information not be communicated among such persons* * *'' *See* 15 U.S.C. 1681a(d)(2).

[10] *See* 15 U.S.C. 1681a(c). The definition of ''consumer'' in the FCRA is broader than the meaning of ''consumer'' in section 248.3(g) of Regulation S–P and in the GLBA, which define the term as an individual who obtains, from a financial institution, financial products or services that are to be used primarily for personal, family or household purposes. *See* 17 CFR 248.3(g); 15 U.S.C. 6809(8). Thus, the proposed disposal rule would follow the FCRA in defining the phrase ''consumer report information'' to mean information about any individual derived from a consumer report. The term ''consumer'' for purposes of the remainder of Regulation S–P would continue to have the meaning set forth in section 248.3(g).

[11] *See* 15 U.S.C. 1681a(d).

[12] The ability of the entity to transfer information to a third party may, however, be limited by other laws, such as the GLBA and Regulation S–P.

[13] 15 U.S.C. 78*o*(b)(11).

[14] 15 U.S.C. 78c(a)(25).

transfer agents registered with the Commission (''registered transfer agents'' and, collectively, with brokers, dealers, investment companies, and registered investment advisers, ''covered entities'') to dispose properly of consumer report information, or any compilation of consumer report information, if the entity maintains or otherwise possesses the information for a business purpose. This language, which tracks the language of section 216 of the FACT Act, creates two criteria for determining whether a covered entity would be required to comply with the proposed rule. First, does the information being disposed of contain consumer report information, or any compilation of consumer report information? Second, does the entity maintain or otherwise possess the consumer report information for a business purpose?

As to the first criterion, the FACT Act and proposed disposal rule make clear that the disposal requirements apply not only to consumer reports, but also to records containing ''consumer information, or any compilation of consumer information, derived from consumer reports.'' [15] The Commission believes that the phrase ''derived from consumer reports'' covers all of the information about an individual that is taken from a consumer report, including information that results in whole or in part from manipulation of information from a consumer report or information from a consumer report that has been combined with other types of information. Thus, any covered entity that possesses such information, including an affiliate that has received it under section 603(d)(2)(A)(iii) of the FCRA, would be obligated to properly dispose of it.[16]

As to the second criterion, ''for a business purpose'' includes all business reasons for which a covered entity may possess or maintain consumer report information.[17] Covered entities that possess consumer report information in connection with the provision of services to another entity would also be directly covered by the proposed rule to the extent that they dispose of the consumer report information.

The Commission requests comment on the scope of the proposed rule. The Commission also requests comment on whether there are any ''persons or classes of persons'' covered by the proposed disposal rule that it should consider exempting from the rule's application.[18]

Reasonable Measures. The proposed disposal rule would require that any covered entity that maintains or otherwise possesses consumer report information ''take reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal.''[19] The Commission recognizes that there are few foolproof methods of record destruction. Accordingly, the proposed rule would not require covered entities to ensure perfect destruction of consumer report information in every instance; rather, it would require covered entities to take reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal.

In determining what measures are ''reasonable'' under the proposed disposal rule, we expect that entities covered by the rule would consider the sensitivity of the consumer report information, the size of the entity and the complexity of its operations, the costs and benefits of different disposal methods, and relevant technological changes. ''Reasonable measures'' may require elements such as the establishment of policies and procedures governing disposal, as well as appropriate employee training.

The flexible standard for disposal in the proposed rule would allow covered entities to make decisions appropriate to their particular circumstances and should minimize the disruption of existing practices to the extent that they already provide appropriate protections for consumer report information. The standard also is intended to minimize the burden of compliance for smaller entities. In addition, a ''reasonable measures'' standard would harmonize the proposed disposal rule with the Commission's safeguard rule, which incorporates a ''reasonable design'' standard in the requirement for policies and procedures to safeguard consumer information. This is designed to prevent covered entities from being subject to conflicting standards.[20]

We recognize that in some circumstances, ''customer records and information'' subject to the safeguard rule may overlap with ''consumer report information'' subject to the proposed disposal rule. To the extent there is overlap, customer records and information would be subject to the proposed disposal rule. We expect, however, that a covered entity subject to the safeguard rule would already have addressed the disposal of customer records and information as one part of its overall safeguard policies and procedures. These procedures must be reasonably designed to insure the security and confidentiality of customer records and information, and protect against unauthorized access to or use of customer records or information that could result in substantial harm or inconvenience to any customer.[21] In other words, the Commission believes that proper disposal policies and procedures are encompassed within, and should be a part of, the overall policies and procedures required under the safeguard rule. Accordingly, a covered entity could comply with the proposed disposal rule by applying its policies and procedures under the safeguard rule, including methods for the proper disposal of customer information, to consumer report information or any compilation of that information.

Despite the benefits of a flexible ''reasonableness'' standard, the Commission recognizes that such a standard could leave covered entities with some uncertainty about compliance. While each covered entity would have to evaluate what is appropriate for its size and the complexity of its operations, we believe that ''reasonable'' disposal measures for purposes of the proposed disposal rule could include:

[15] FACT Act, § 216 (adding § 628(a)(1) to the FCRA).

[16] Information that does not identify particular individuals would not be covered, even if the information were originally ''derived from consumer reports,'' because that information would no longer be ''about a consumer'' (*i.e.,* an individual).

[17] Among the entities that possess or maintain consumer report information for a business purpose are lenders, employers, and other users of consumer reports. These entities could include a broker-dealer that provides margin accounts or sells variable annuity products, or a covered entity that uses consumer reports for employment purposes. Consistent with the FTC's interpretation, the Commission views a ''business purpose'' as broader than a ''permissible purpose'' as defined in section 604 of the FCRA (*see* 15 U.S.C. 1681b) (outlining permissible uses of consumer reports). *See* FTC Proposal, *supra* note 4. Although ''permissible purposes'' are generally ''business purposes,'' there are a variety of business purposes for which persons maintain or possess ''consumer report information'' beyond those listed as ''permissible'' for users of consumer reports.

[18] Section 628(a)(3) of the FCRA, as added to section 216 of the FACT Act, provides that, in issuing regualtions under the section, an agency ''may exempt any persons or class of persons from application of those regulations as such agency deems appropriate to carry out the purpose of th[e] section.''

[19] Proposed rule 248.30(b)(2)(i).

[20] The safeguard rule applies to ''customer records and information'' and the proposed disposal rule applies to ''consumer report information.'' *See* 17 CFR 248.3(j) (defining ''customer''); proposed rule 248.30(b)(1)(iii) (defining ''consumer report information'' for purposes of the proposed disposal requirements). These terms refer to two different (though overlapping) sets of information.

[21] *See* 17 CFR 248.30.

• Implementing and monitoring compliance with policies and procedures that require the burning, pulverizing, or shredding of papers containing consumer report information so that the information cannot practicably be read or reconstructed;

• Implementing and monitoring compliance with policies and procedures that require the destruction or erasure of electronic media containing consumer report information so that the information cannot practicably be read or reconstructed; and

• After due diligence, entering into and monitoring compliance with a written contract with another party engaged in the business of record destruction to dispose of consumer report information in a manner that is consistent with this rule.[22]

We invite comment on the proposed standard for disposal. In particular, we seek comment on whether commenters believe the proposed ''reasonableness'' standard provides sufficient guidance to covered entities. We also seek comment on whether the proposed disposal rule should include alternative standards, specify particular disposal methods, or should provide examples, and what those examples should be. Finally, we seek comment on whether the disposal rule should require disposal measures to be in writing.

3. Proposed Section 248.30(b)(2)(ii): Relation to Other Laws

This section makes clear that nothing in the proposed disposal rule is intended to create a requirement that a covered entity maintain or destroy any record pertaining to an individual. Nor is the rule intended to affect any requirement imposed under any other provision of law to maintain or destroy such records.

4. Scope of the Proposed Disposal Rule

The FACT Act differs in scope from the GLBA. Accordingly, Regulation S–P (including the safeguard rule) and the proposed disposal rule have some differences in scope with respect both to the information and entities that are subject to the respective rules.[23] Four provisions in the proposal would clarify these differences. First, the proposal would amend section 248.1(b) of Regulation S–P to except the proposed disposal rule from the provision that describes the scope of information subject to the Regulation S–P.[24] Second, the proposal would revise section 248.2(b) to except the proposed disposal rule from the provision in Regulation S–P that permits notice-registered broker-dealers to comply with Regulation S–P by complying with financial privacy rules adopted by the Commodity Futures Trading Commission.[25] Third, as noted above, the proposed disposal rule would exclude notice-registered broker-dealers from its application.[26] Fourth, unlike most of the privacy rules under Regulation S–P, the proposed disposal rule would apply to transfer agents.[27] We request comment on these proposed provisions.

B. Proposed Rule 248.30(a): Procedures To Safeguard Customer Records and Information

The current safeguard rule requires brokers, dealers, investment companies, and registered investment advisers to adopt policies and procedures to safeguard customer information. These procedures must be reasonably designed to:

• Insure the security and confidentiality of customer records and information;

• Protect against any anticipated threats or hazards to the security and integrity of those records; and

• Protect against unauthorized access to or use of those records or information which could result in substantial harm or inconvenience to any customer.

As noted above, some firms our staff has examined lack written policies and procedures that address these requirements. In the absence of reasonable documentation, it is difficult to identify these policies and procedures and test for compliance with the safeguard rule. In addition, we strongly question whether an organization of any size and complexity could reasonably manage to safeguard customer records and information without written policies and procedures. Finally, we note that the Agencies have required written policies and procedures.[28] Therefore, to ensure reasonable protection for customer records and information, and to permit compliance oversight by our examiners, we are proposing to require that policies and procedures under the safeguard rule must be written. We believe that this amendment, if adopted, would impose no significant burden on the firms

[22] In this context, due diligence could include reviewing an independent audit of the disposal company's operations and/or its compliance with this rule, obtaining information about the disposal company from several references or other reliable sources, requiring that the disposal company be certified by a recognized trade association or similar third party, reviewing and evaluating the disposal company's information security policies or procedures, or taking other appropriate measures to determine the competency and integrity of the potential disposal company.

[23] The FACT Act does not specifically identify which entities will be subject to the rules prescribed by the Commission. Section 216 of the FACT Act states that implementing regulations must be prescribed by the ''Federal banking agencies, the National Credit Union Administration, and the [Federal Trade] Commission with respect to the entities that are subject to their respective enforcement authority under Section 621 of the Fair Credit Reporting Act and the Securities and Exchange Commission * * *'' Section 621 of the FCRA grants enforcement authority to the FTC for all persons subject to FCRA ''except to the extent that enforcement * * * is specifically committed to some other government agency under subsection (b)'' of section 621. 15 U.S.C. 1681s. The Commission is not one of the agencies included under subsection (b). 15 U.S.C. 1681s(b). The Commission was added to the list of federal agencies required to adopt implementing regulations under sections 214 and 216 of the FACT Act in conference committee. There is no legislative history on this issue. As discussed in our recent proposal for rules implementing section 214 of the FACT Act, Congress' inclusion of the Commission as one of the agencies required to adopt implementing regulations suggests that Congress intended that our rules apply to brokers, dealers, investment companies, registered investment advisers, and registered transfer agents. Consistent with that proposal, however, notice-registered broker-dealers would be excluded from the scope of the proposed disposal rule. *See* Securities Exchange Act Release No. 49985 (July 8, 2004) [69 FR 42302 (July 14, 2004) (''Proposed Regulation S–AM'')].

[24] *See* proposed amended rule 248.1(b). The scope provision of Regulation S–P provides that it applies to ''nonpublic personal information about individuals who obtain financial products or services primarily for personal, family, or household purposes.'' *See* 17 CFR 248.1(b). As discussed above, the proposed disposal rule applies to a different, but overlapping set of information. *See supra* note 20.

[25] *See* proposed amended rule 248.1(b). Regulation S–P currently allows notice-registered broker-dealers to comply with the financial privacy rules of the Commodity Futures Trading Commission (''CFTC'') as a substitute for compliance with Regulation S–P. *See* 17 CFR 248.2(b). This provision acknowledges that notice-registered broker-dealers are subject to primary oversight by the CFTC and are exempted from all but the core provisions of the laws administered by the Commission. This substituted compliance provision could not apply to the disposal rule, however, because Congress did not include the CFTC among the financial regulators required to adopt implementing regulations under section 216 of the FACT Act.

[26] *See* 248.30(b)(2)(i). As discussed in our recent proposal for rules implementing section 214 of the FACT Act, we interpret Congress' exclusion of the CFTC from the list of financial regulators required to adopt implementing regulations under section 216 of the FACT Act to mean that Congress did not intend for the Commission's rules under the FACT Act to apply to entities subject to primary oversight by the CFTC. *See* Proposed Regulation S–AM, *supra* note 22.

[27] *See* 248.30(b)(2)(i). The GLBA did not grant authority to the Commission to promulgate privacy rules in Regulation S–P with respect to transfer agents. Accordingly, transfer agents fall within the residual jurisdiction of the FTC. *See supra* note 23.

[28] *See* Federal Reserve System, Federal Deposit Insurance Corporation, Department of the Treasury Office of Thrift Supervision, and Department of Treasury Office of the Comptroller of the Currency, Interagency Guidelines Establishing Standards for Safeguarding Customer Information, 66 FR 8616 (Feb. 1, 2001) (''Interagency Guidelines''); Federal Trade Commission, Standards for Safeguarding Customer Information, 67 FR 36484 (May 23, 2002) (''FTC Safeguard Rule'').

subject to the safeguard rule because they have been required to have reasonable policies and procedures since 2001. The amendment we propose today only requires them to document those policies and procedures. We do not believe that the documentation of existing policies and procedures would impose a significant burden.

We note that our examiners have inspected many firms that have already adopted such written policies and procedures. In large and complex organizations, with thousands of employees and multiple offices, these written policies and procedures generally address procedures at several levels, going from an organization-wide policy statement down to detailed procedures addressing particular controls.[29] This comprehensive approach to safeguarding is consistent with widely accepted standards adopted by government and private sector standard-setting bodies and professional literature and generally leads to reasonable written policies and procedures.[30]

We recognize that many firms subject to the safeguard rule are small and simple organizations, with few employees and only one office. Nonetheless, we believe these firms would benefit from recording their policies and procedures in writing as a reference for employees. In every case, the written policies and procedures should be reasonably designed, within the circumstances of each particular institution, to achieve the goals set forth in the rule. We ask for comment on our proposal to require that policies and procedures under the safeguard rule must be written.

When we adopted the safeguard rule, we believed that brokers, dealers, investment companies, and registered investment advisers should have the flexibility to tailor their policies and procedures to their own organization's specific circumstances. Thus, our proposal noted that:

> We have not prescribed specific policies or procedures that financial institutions must adopt. Rather, we believe it more appropriate for each institution to tailor its policies and procedures to its own systems of information gathering and transfer and the needs of its customers.[31]

We continue to believe that this approach is appropriate. Therefore, we are not proposing specific policies and procedures that all firms subject to the rule must implement. Nevertheless, we seek comment on ways to maintain a flexible approach, while establishing certain elements in the rule that a firm must include in its policies and procedures. For example, the FTC's Safeguard Rule, which applies to a diverse range of financial institutions, requires that financial institutions subject to the rule adopt a written information security program ''appropriate to [the institution's] size and complexity, the nature and scope of [its] activities, and the sensitivity of any customer information at issue.'' [32] The rule specifies certain elements each program must have, such as identifying certain reasonably foreseeable internal and external risks to the security of customer information, while allowing the institution to determine the particular risks likely to threaten its operations. We seek comment on whether the Commission should propose to amend its safeguard rule in a similar way. Delineating elements would establish more specific standards for safeguarding customer information consistent with the goals of the GLBA. Would it assist financial institutions in developing or reviewing appropriate policies and procedures to safeguard customer information? Would requiring certain elements similar to those established in the FTC Safeguarding Rule preserve flexibility for financial institutions adopting safeguard rules? If the Commission proposed elements, should those elements be limited to those listed in the FTC's Safeguard Rule? Are there other elements that the safeguard rule should include, such as an information security governance framework, including approval and oversight of the safeguard policies and procedures by the institution's board of directors?

III. General Request for Comment

We request comment on all of the provisions of the proposed disposal rule described above and on the proposed amendments to the safeguard rule and to the scope provisions of Regulation S–P. We seek suggestions for additional provisions or changes, and comments on other matters that might have an effect on the proposed disposal rule and proposed amendments. We encourage commenters to provide data to support their views.

IV. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. As discussed above, the proposed amendments to Regulation S–P would: (i) Implement section 216 of the FACT Act by requiring covered entities that maintain or possess consumer report information derived from a consumer report for a business purpose to properly dispose of the information; and (ii) require that an institution's safeguarding policies and procedures be in writing.

A. Benefits

The purpose of section 216 of the FACT Act is to prevent unauthorized disclosure of information contained in a consumer report and to reduce the risk of fraud or related crimes, including identity theft.[33] One recent report estimated that, with respect to identity theft alone, 27.3 million Americans had been victimized during a five-year period.[34] In a single year, identity theft losses to businesses and financial institutions totaled $47.6 billion, and consumer victims reported $5 billion in out-of-pocket expenses.[35] The proposed rule would address this problem by requiring that all of the approximately 6,768 broker-dealers, 5,182 investment companies, 7,977 registered investment advisers, and 814 registered transfer agents [36] that could be subject to the rule take reasonable measures to protect

[29] At one level, the highest levels of management approve an organization-wide policy statement. At another level, more specific policies and procedures address separate areas of safeguarding risk. At a final level, detailed procedures set out the controls, management checks and balances, audit trail functions, and other actions needed to ensure that the firm's safeguarding program is reasonably effective and verifiable by senior management. These written policies and procedures also generally designate a specialized staff of information security professionals to manage the organization's day-to-day safeguarding operations, and an information security governance framework, to ensure that the information security policy is adequately supported throughout the enterprise. Finally, these written policies and procedures generally make provision for measures to verify the safeguarding program's effectiveness, including risk assessments; independent audits and penetration tests; and active monitoring, surveillance, and detection programs.

[30] *See, e.g.*, Generally Accepted Principles and Practices for Securing Information Technology Systems, National Institute of Standards and Technology (''NIST'') (September 1996), *available at: http://csrc.nist.gov/publications/nistpubs/800–14/800–14.pdf*; the Federal Information System Controls Audit Manual, known as ''FISCAM,'' GAO/AIMD–12.19.6 (January 1999), *available at: http://www.gao.gov/special.pubs/ai12.19.6.pdf*; BS ISO/IEC 17799, Code of Practice For Information Security Management (December 2000) (formerly British Standards Institution BS 7799), *available at: http://www.standardsdirect.org/iso17799.htm*; and Control Objectives for Information and Related Technology, known as ''COBIT'', *available at http://www.isaca.org. See also* Interagency Guidelines; FTC Safeguard Rule, *supra* note 28.

[31] Privacy of Consumer Financial Information (Regulation S–P), Securities Exchange Act Release No. 42484 (Mar. 2, 2000) [65 FR 12354 (Mar. 8, 2000)].

[32] 16 CFR 314.3(a).

[33] *See supra* note 2 and accompanying text.

[34] *See* Federal Trade Commission—Identity Theft Survey Report (Sept. 2003), available at: *http://www.ftc.gov/os/2003/09/synovatereport.pdf.*

[35] *Id.*

[36] These figures are based on Commission filings.

against unauthorized access to consumer report information during its disposal. This should benefit covered entities that do not currently have adequate methods for disposing of consumer report information and benefit their consumers by reducing the incidence of identity theft losses.

With respect to the safeguarding amendment, as noted above, we believe it is very unlikely that a firm of any size and complexity could adequately safeguard customer information and records without written policies and procedures. At a minimum, we believe the proposed amendment would benefit firms because written policies and procedures will (i) eliminate uncertainty as to what actions an employee must take to protect customer records and information, and (ii) promote more systematic and organized reviews of safeguard policies and procedures by firms. Some firms and their customers may benefit further from the proposal if the firm develops more comprehensive and effective policies as it translates informal, unwritten policies into writing.

As noted above, it is extremely difficult to test the adequacy of unwritten policies and to ensure that they are in compliance with the requirements in the safeguarding rule. Requiring that a firm's policies and procedures be in writing should benefit investors by enhancing the ability of our examiners to conduct compliance oversight.

B. Costs

We believe that both the proposed disposal rule and the safeguarding rule amendment will impose minimal costs on firms. The proposed disposal rule does not establish any specific requirements for the disposal of consumer report information. In cases in which a firm is already providing adequate protections for consumer report information in conjunction with the existing requirement to protect consumer records and information, no additional actions would have to be taken by the firm. In other cases, a firm, depending on its particular circumstances, may have to provide employee training, or establish clear procedures for consumer report information disposal. Costs to firms that are not already in compliance will vary depending on the size of the firm, the adequacy of its existing disposal policy, and the nature of the firm's operation. As noted above, the flexible standard in the proposed disposal rule is specifically designed to minimize the burden of compliance for smaller entities. The emphasis on performance rather than design standards in the proposed rule takes account of the small entity's size, operations, and sophistication, as well as the costs and benefits of alternative disposal methods. In addition, the ''reasonable measures'' standard in the proposed rule is consistent with the current safeguard rule. Therefore, it should be relatively easy for a firm that does not currently have policies and procedures that could apply to consumer report information to address the disposal of that information by adopting it as one part of its overall safeguarding policies and procedures.

Similarly, we expect any costs associated with the proposed safeguarding rule amendment to be minimal. Firms have been required to have reasonable polices and procedures in place since 2001. As part of this requirement and as a good business practice, we believe that most firms have already established their policies in writing. For the minority of firms that have clear but unwritten policies, the sole cost would involve transcribing what is understood and accepted practice. If a firm has not given significant thought to the safeguarding of customer records and information, the firm may incur additional costs if it develops more comprehensive and effective policies in the course of documentation.

C. Request for Comment

We request comment on the potential costs and benefits identified in the proposal and any other costs and benefits that may result from the proposed disposal rule and safeguard rule amendment. In particular, we invite comment on the costs and benefits of the proposed standards in the disposal rule and the costs and benefits of any alternative standards. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission also requests information regarding the impact of the proposed rule on the economy on an annual basis. Commenters are requested to provide data to support their views.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (''PRA''),[37] the Commission has reviewed the proposed amendments. The proposed disposal rule explicitly provides that it is not intended ''(1) to require a person to maintain or destroy any record pertaining to a consumer that is not imposed under other law; or (2) to alter or affect any requirement imposed under any other provision of law to maintain or destroy such a record.'' As such, the proposed disposal rule would not impose any recordkeeping requirement or otherwise constitute a ''collection of information'' as it is defined in the regulations implementing the PRA.[38]

Certain provisions of the proposed amendment to the safeguard rule may constitute a ''collection of information'' within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The Commission has submitted the proposed collection of information to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is ''Procedures to safeguard customer records and information; disposal of consumer report 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.

Summary of Collection of Information

Brokers, dealers, investment companies, and registered investment advisers are required to adopt policies and procedures to safeguard customer information. The proposed amendment to the safeguard rule would require each of these institutions to document those policies and procedures in writing.

Proposed Use of Information

The proposed amendment to the safeguard rule is intended to ensure reasonable protection for customer records and information, and to permit Commission staff to identify and test effectively for compliance with the rule. In addition, we believe the requirement to document policies and procedures in writing will (i) eliminate uncertainty as to what actions an employee must take to protect customer records and information, and (ii) promote more systematic and organized reviews of safeguard policies and procedures by firms.

Respondents

According to Commission filings, there are approximately 6,768 broker-dealers, 5,182 investment companies, and 7,977 registered investment advisers. Although each of these entities must comply with the safeguard rule, we believe that institutions with one or more financial affiliates (whether they are institutions regulated by the Commission or by other Federal financial regulators) are likely to have developed safeguard policies and

[37] 44 U.S.C. 3506.

[38] *See* 5 CFR 1320.3(c).

procedures on an organization-wide basis, rather than each affiliate having developed policies and procedures on its own.

Based on a review of forms filed with the Commission, we estimate that approximately 70 percent of institutions subject to the safeguard rule, or 13,949 institutions, have a corporate affiliate.[39] We assume that affiliated institutions have developed policies and procedures on an organization-wide basis. For purposes of the PRA, we assume that each of the affiliated institutions has one corporate affiliate. We therefore estimate that only half of affiliated institutions, or 6,974 institutions, have developed policies and procedures, while the other half (6,974 institutions) have not developed their own policies and procedures, but instead use the policies and procedures developed and documented by their affiliate. Thus, we estimate that a total of 12,953 institutions would develop and document safeguard policies and procedures.[40]

We also believe that most institutions we regulate would adopt safeguard policies and procedures and document those policies and procedures as a matter of good business practice, regardless of the Commission's safeguard rule. We expect these institutions have a strong interest apart from our rule in preventing security threats, such as identity theft or threats to the computer system that would allow unauthorized persons to obtain information about the firms' customers and their business. For purposes of the PRA, we estimate that 10 percent of these institutions have not already documented their policies and procedures. Thus, we estimate that, if the proposed rule amendment is adopted, 1,295 institutions would have to document policies and procedures in response to the proposed rule in the first year after adoption.

In addition to existing registrants, we estimate that, on average, approximately 1,475 new broker-dealers, investment companies and registered investment advisers register with the Commission each year.[41] As with existing registrants, we estimate that 70 percent of these registrants, or 1,033 entities are affiliated with another financial institution that has adopted safeguard policies and procedures. We assume that all new registrants affiliated with another financial institution would adopt the same policies, procedures and documentation already established by the affiliated institution. Of the remaining 30 percent of new registrants, or 442 institutions, we assume that 90 percent would develop and document their safeguard policies and procedures as a matter of good business practice. Accordingly, we expect that after the first year the rule is in effect, the annual number of respondents would be 44.[42]

Total Annual Reporting and Recordkeeping Burdens

As noted above, we expect that the policies and procedures adopted by the responding institutions will vary considerably depending on the size of the institution, the way in which it collects information, the number and types of entities to which it transfers information, and the ways in which it stores, transfers, and disposes of customer information. Thus, for example, a small registered investment adviser with fewer than 10 employees may require a limited number of policies and procedures to address a limited scope of information transfer, storage and disposal. A large broker-dealer or fund complex with many affiliated entities, on the other hand, is more likely to have developed extensive policies and procedures on an organization-wide basis that address many different levels of control. The documentation of these policies and procedures will vary widely in length and complexity of the documentation and will correspond to the range and complexity of the institution's policies and procedures.

Of the institutions registered with the Commission, we estimate that 5,424 investment advisers have 10 or fewer employees.[43] We estimate that 1,041 broker-dealers and investment companies are small entities, and are likely to have no more than 10 employees.[44] Consistent with our estimate above, we assume that 50 percent of these smaller institutions with an affiliate, and 30 percent of these smaller institutions that are not affiliated with another financial institution (4,202 institutions) would adopt and document their own policies and procedures.[45] Of that 30 percent, we assume that only 10 percent, or 420 small entities, would not already have documented policies and procedures as a good business practice. For purposes of the PRA, we estimate that the amount of time a smaller entity would take to document the safeguard policies and procedures they have adopted would range from 6 hours to 24 hours with an average of 15 hours. Accordingly, we estimate a one-time hour burden for these smaller entities of 6,300 hours.

Other institutions, such as large fund complexes or clearing broker-dealers, may require more time to document extensive policies and procedures that apply to all the institutions in the complex. We assume that 10 percent of these, or 875 institutions would not already have written policies and procedures in compliance with the proposed rule.[46] For purposes of the PRA, we estimate that the amount of time these institutions would take to document their safeguard rules would range from 30 hours to 1,400 hours with an average of 715 hours. Thus, we estimate a total one-time burden for these institutions of 625,625 hours.[47] Combined with the burden for smaller institutions, we estimate a total annual one-time burden of 631,925 hours.[48] Amortized over three years, we estimate an annual burden of 210,642 hours.

In addition to existing registrants, as noted above, we estimate that 44 new registrants would not have already documented their safeguard policies and procedures as a matter of good business practice. Of these, we estimate that 14 will be smaller institutions.[49]

[39] This estimate is based on the following calculation: (6,768 + 5,182 + 7,977) × 0.7 = 13,948.9. The estimate that 70 percent of registrants have an affiliate is based upon statistics reported on Form ADV, the Universal Application for Investment Adviser Registration, which contains specific questions regarding affiliations between investment advisers and other persons in the financial industry. We estimate that other institutions subject to the safeguard rule would report a rate of affiliation similar to that reported by registered investment advisers.

[40] This estimate is based on the following calculation: (13,949 × 0.5) + (19,927 × 0.3) = 12,952.6.

[41] This estimate is based on annual filings with the Commission for the calendar years 2001, 2002, and 2003.

[42] This estimate is based on the following calculation: 442 new registrants × 0.1 = 44.2.

[43] *See* Investment Counsel Association of America, Evolution Revolution, A Profile of the Investment Advisory Profession (May 2004) (available at *http://www.icaa.org/public/evolution_revolution-2004.pdf*).

[44] As noted below, 808 broker-dealers and 233 investment companies are considered small entities. *See infra* note and accompanying text.

[45] This estimate is based on the following calculation: (6,465 × 0.7 × 0.5) + (6,465 × 0.3) = 4,202.25.

[46] This estimate is based on the following calculation: 1,295 − 420 = 875.

[47] This estimate is based on the following calculation: 875 × 715 = 625,625.

[48] This estimate of hour burden for these institutions is based on the following calculation: 625,625 + 6,300 = 631,925.

[49] We estimate that the percentage of new institutions registering that are smaller entities would be similar to the percent of currently registered institutions that are smaller institutions, as described above. *See supra* notes 43–44 and accompanying text. The calculations for this estimate are: 6,465/19,927 = 0.032; 44 × 0.32 = 14.08.

Thus, we estimate that the annual burden for new small entities would be 210 hours.[50] We estimate that the annual burden for other new institutions would be 715 hours, with a total annual burden for all new registrants of 21,660 hours.[51]

Going forward, we estimate that 10 percent of the 19,927 registered institutions will review and update their policies and procedures each year. For purposes of the PRA, we estimate that 638 of these will be smaller institutions that would take between 2 and 10 hours, with an average of 6 hours each, to review and update their safeguard policies and procedures. Thus, we estimate an annual burden for these smaller institutions of 3,828 hours.[52] For purposes of the PRA, we estimate that 1,355 larger institutions will take between 10 and 50 hours, with an average of 30 hours each, to review and update their safeguard policies and procedures. We estimate an annual burden for the larger institutions of 40,650 hours, and combined with smaller institutions, an annual burden of 44,478 hours.[53] Thus, we estimate the total annual burden to be 276,780 hours.[54]

Retention Period for Recordkeeping Requirements

The proposed rules do not contain express provisions governing the retention of records related to the policies and procedures. Nevertheless, an institution subject to the safeguard rule is likely to retain the documentation in order to assist in informing and training employees, in reviewing the policies for their effectiveness, and to demonstrate compliance with the rule to the Commission's inspections staff. These records would not have to be retained for any particular period, but are likely to be retained as long as the institution maintains policies and procedures.

Collection of Information is Mandatory

Broker-dealers, investment companies and registered investment advisers all are required to comply with the safeguard rule and would be required to comply with the proposed amendment.

Responses to Collection of Information Will Not Be Kept Confidential

Under the proposal, the written safeguard policies and procedures would not be filed with or otherwise submitted to the Commission. Accordingly, we make no assurance of confidentiality with respect to the collections of information.

Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comment to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information;

(iii) Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and

(iv) Determine whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements should direct them 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 3208, New Executive Office Building, Washington, DC 20503; and (ii) Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Any comments should make reference to File Number S7–33–04. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be made in writing, should refer to File Number S7__04, and should be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

VI. Initial Regulatory Flexiblity Analysis

This Initial Regulatory Flexibility Analysis (''IRFA'') has been prepared in accordance with 5 U.S.C. 603. It relates to the proposed disposal rule, which requires that reasonable measures be taken to protect against unauthorized access to consumer report information during its disposal. It also relates to the proposed amendment to the safeguard rule that would require financial institutions to document policies and procedures to safeguard customer information in writing.

A. Reasons for the Proposed Rule

Section 216 of the FACT Act requires the Commission to issue regulations regarding the proper disposal of consumer report information in order to prevent sensitive financial and personal information from falling into the hands of identity thieves or others who might use the information to victimize consumers. The requirements of the proposed rule are intended to fulfill the obligations imposed by section 216.

As discussed above, the proposed amendment to the safeguard rule would require entities subject to the safeguard rule to document their policies and procedures in writing. The proposed amendment is intended to ensure reasonable protection for customer records and information, and to permit compliance oversight by our examiners.

B. Statement of Objectives and Legal Basis

The objectives of the proposed disposal rule and the proposed amendment to the safeguard rule are discussed above. The legal basis for the proposed disposal rule is section 216 of the FACT Act. The legal basis for the proposed amendment to the safeguard rule is section 501(b) of the GLBA, sections 17 and 23 of the Exchange Act, sections 31 and 38 of the Investment Company Act, and sections 204 and 211 of the Investment Advisers Act.

C. Description of Small Entities to Which the Proposed Rule Will Apply

The proposed disposal rule, which tracks the language of section 216 of the FACT Act, would apply to brokers and dealers (other than notice-registered broker-dealers), investment companies, registered investment advisers, and registered transfer agents that maintain or otherwise possess consumer information, or any compilation of consumer information, for a business purpose.[55] Institutions covered by the proposed amendment to the safeguard rule would include brokers and dealers (other than notice-registered broker-dealers), investment companies, and registered investment advisers. Of the

[50] This estimate is based on the following calculation: 14 × 15 = 210.

[51] This estimate is based on the following calculation: (30 × 715) + 210 = 21,660.

[52] These estimates are based on the following calculations: 6,465/19,927 = 0.32; 1,993 × 0.32 = 637.7; 638 × 6 = 3,828.

[53] These estimates are based on the following calculations: 1,993 − 638 = 1,355; 1,355 × 30 = 40,650.

[54] This estimate is based on the following calculation: 210,642 + 21,660 + 44,478 = 276,780.

[55] Proposed rule 248.30(b)(2)(i).

entities registered with the Commission, 808 broker-dealers, 233 investment companies, 592 registered investment advisers, and 170 registered transfer agents are considered small entities.[56]

We invite comment from small entities that would be subject to the proposed disposal rule and amendment to the safeguard rule. We invite comment generally regarding information that would help us to quantify the number of small entities that may be affected by the proposal.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The proposed disposal rule would not impose any reporting or any specific recordkeeping requirements within the meaning of the Paperwork Reduction Act, discussed above. The proposed disposal rule would require covered entities, when disposing of consumer report information, to take reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal. What is considered ''reasonable'' will vary according to an entity's size and the complexity of its operations, the costs and benefits of available disposal methods, and the sensitivity of the information involved. This flexibility is intended to reduce the burden that might otherwise be imposed on small entities by a more rigid, prescriptive rule. The Commission is concerned about the potential impact of the proposed rule on small entities, and invites comment on the costs of compliance for such parties.

With respect to the proposed amendment to the safeguard rule, we note that firms are already required to have policies and procedures that address the safeguarding of customer information and records. As noted above, this requirement provides a flexible standard that allows each firm to tailor these policies and procedures to the firm's particular systems, methods of information gathering, and customer needs. We assume that most institutions have already documented these policies and procedures, but the proposed amendment would require all entities to put their policies and procedures in writing. Nevertheless, the amount of time it will take entities that do not have written policies and procedures will vary based upon the extent and complexity of the policies and procedures the entity has adopted. Accordingly, a small entity with complex and very detailed policies and procedures would likely take more time to document those policies and procedures than would a small entity with relatively simple undocumented policies and procedures.

E. Identification of Other Duplicative, Overlapping, or Conflicting Federal Rules

We have not identified any other federal statutes, rules, or policies that would conflict with the proposed disposal rule's requirement (i) that covered persons take reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal or (ii) that safeguarding policies and procedures must be in writing. However, we request comment on the extent to which other federal standards involving privacy or security of information may duplicate, satisfy, or inform the proposal's requirements. We also seek comment and information about any statutes or rules that may conflict with the proposed disposal rule requirements, as well as any other state, local, or industry rules or policies that require covered entities to implement practices that comport with the requirements of the proposed rule.

F. Discussion of Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objectives while minimizing any significant adverse impact on small businesses. In connection with the proposal, the Commission considered the following alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed rules for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the proposed rules, or any part thereof, for small entities.

With respect to the proposed disposal rule, the Commission does not presently believe that an exemption from coverage or special compliance or reporting requirements for small entities would be consistent with the mandates of the FACT Act. In addition, the Commission does not presently believe that clarification, consolidation, or simplification of the proposed amendment for small entities is feasible or necessary. Section 216 of the FACT Act addresses the protection of consumer privacy, and consumer privacy concerns do not depend on the size of the entity involved. However, we have endeavored throughout the proposed disposal rule to minimize the regulatory burden on all covered entities, including small entities, while meeting the statutory requirements. Small entities should benefit from the flexible standards in the proposed disposal rule. In addition, existing emphasis on performance rather than design standards in the proposed rule take account of the covered entity's size and sophistication, as well as the costs and benefits of alternative disposal methods. The Commission welcomes comment on any alternative system that would be consistent with the FACT Act but would minimize the impact on small entities. Comments should describe the nature of any impact on small entities and provide empirical data.

With respect to the proposed amendment to the safeguard rule, we do not presently believe that an exemption from coverage or special reporting or compliance requirements for small entities is feasible or necessary. The requirement that covered entities document their safeguard policies and procedures in writing is necessary to promote systematic and organized reviews of these policies and procedures by the entity, as well as to allow Commission staff to identify and test effectively for compliance with the safeguard rule.

Similarly, the Commission does not presently believe that clarification, consolidation, or simplification of the proposed amendment for small entities is feasible or necessary. The proposed requirement that the safeguard policies and procedures be in writing, as discussed above, is essential to allowing

[56] For purposes of the Regulatory Flexibility Act, under the Exchange Act a small entity is a broker or dealer that had total capital of less than $500,000 on the date of its prior fiscal year and is not affiliated with any person that is not a small entity. 17 CFR 270.0–10. Under the Investment Company Act a ''small entity'' is an investment company that, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year. 17 CFR 270.0–10. Under the Investment Advisers Act, a small entity is an investment adviser that ''(i) manages less than $25 million in assets, (ii) has total assets of less than $5 million on the last day of its most recent fiscal year, and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that manages $25 million or more in assets, or any person that had total assets of $5 million or more on the last day of the most recent fiscal year.'' 17 CFR 275.0–7. A small entity in the transfer agent context is defined to be any transfer agent that (i) received less than 500 items for transfer and less than 500 items for processing during the preceding six months; (ii) transferred only items of issuers that would be deemed ''small businesses'' or ''small organizations'' under rule 0–10 under the Exchange Act; (iii) maintained master shareholder files that in the aggregate contained less than 1,000 shareholder accounts at all times during the preceding fiscal year; and (iv) is not affiliated with any person (other than a natural person) that is not a small business or small organization under rule 0–10. 17 CFR 240.0–10.

both the entity and Commission staff to review the entity's policies and procedures.

The safeguard rule embodies performance rather than design standards. It affords each firm the flexibility to adopt and implement policies and procedures that are appropriate in light of the institution's size and the complexity of its operations. The documentation of the policies and procedures would reflect these performance standards. Accordingly, the writing required under the proposed amendment would only be as technical or complex as the policies and procedures required to be documented.

We encourage written comments on matters discussed in the IRFA. In particular, the Commission seeks comment on: (i) The number of small entities that would be affected by the proposed rule; and (ii) the impact of the proposed rule on small entities. Commentators are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact.

VII. Analysis of Effects on Efficiency, Competition and Capital Formation

Section 3(f) of the Exchange Act and section 2(c) of the Investment Company Act require the Commission, whenever it engages in rulemaking and must consider or determine if an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation. Moreover, section 23(a)(2) of the Exchange Act requires the Commission, when proposing rules under the Exchange Act, to consider the impact the proposed rules may have upon competition. Section 23(a)(2) of the Exchange Act prohibits the Commission from adopting any rule that would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

We do not believe that the proposed disposal rule will have an anti-competitive impact. The proposed disposal rule applies to all brokers and dealers (other than notice-registered broker-dealers), investment companies, registered investment advisers, and registered transfer agents. Each of these institutions must take reasonable measures to properly dispose of consumer report information.

Other financial institutions will be subject to substantially similar disposal requirements under rules proposed by the Agencies. Under the FACT Act, the Agencies and the Commission have worked in consultation and coordination with one another to ensure the consistency and comparability of the proposed regulations. Therefore, all financial institutions would have to bear the costs of implementing the rules or substantially similar rules. Although these costs would vary among entities subject to the proposed rule, we do not believe that the costs would be significantly greater for any particular entity or entities when calculated as a percentage of overall costs.

Furthermore, we believe the proposed disposal rule would have little effect on efficiency and capital formation. The proposed rule will result in some additional costs for some entities, particularly those entities that do not currently take reasonable measures to properly dispose of consumer report information. However, we believe the additional costs are small enough that they would not affect the efficiency of these entities.

With respect to the proposed amendment to the safeguard rule, we do not believe the proposed amendment will have an anti-competitive impact. As noted above, we believe that most brokers, dealers, investment companies, and registered investment advisers already have written safeguard policies and procedures. To the extent some do not, those firms would have to conform to standards that many firms have met voluntarily. This proposed amendment also would be consistent with the requirement under the Interagency Guidelines and the FTC's Safeguard Rule that financial institutions they regulate must document their policies and procedures in writing.[57] Firms that do not have currently written policies and procedures would incur costs of documentation already borne by firms that have written policies and procedures. Although these costs would vary among institutions subject to the proposed amendment, we do not believe that the costs would be significantly greater for any particular firm or firms when calculated as a percentage of overall costs.

Furthermore, we believe the proposed amendment would have little effect on efficiency and capital formation. We expect the proposal will increase efficiency among those firms that do not currently have written policies and procedures because it should promote more systematic and organized reviews of these policies and procedures. The proposed amendment will result in some additional costs for firms that do not currently have written policies and procedures. However, we believe the additional costs are small enough that they would not affect the efficiency of these firms.

The Commission seeks comment regarding the impact of the proposed rules on efficiency, competition, and capital formation. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission also requests information regarding the potential effect of the proposed rules on the U.S. economy on an annual basis. Commentators are requested to provide empirical data to support their views.

VIII. Statutory Authority

The Commission is proposing amendments to Regulation S–P pursuant to the authority set forth in section 501(b) of the GLBA [15 U.S.C. 6801(b)], section 216 of the FACT Act [15 U.S.C. 1681w], sections 17 and 23 of the Exchange Act [15 U.S.C. 78q and 78w], sections 31(a) and 38 of the Investment Company Act [15 U.S.C. 80a–30(a) and 80a–37], and sections 204 and 211 of the Investment Advisers Act [15 U.S.C. 80b–4 and 80b–11].

List of Subjects in 17 CFR Part 248

Brokers, Dealers, Investment advisers, Investment companies, Privacy, Reporting and recordkeeping requirements, Transfer agents.

Text of Proposed Rules

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 248—REGULATION S–P: PRIVACY OF CONSUMER FINANCIAL INFORMATION

1. The authority citation for part 248 is revised to read as follows:

Authority: 15 U.S.C. 6801–6809; 15 U.S.C.1681w; 15 U.S.C. 78q, 78w, 78mm, 80a–30(a), 80a–37, 80b–4, and 80b–11.

§ 248.1 [Amended]

2. Section 248.1, the first sentence of paragraph (b) is amended by revising the phrase ''This part'' to read ''Except with respect to § 248.30(b), this part''.

§ 248.2 [Amended]

3. Section 248.2, paragraph (b) is amended by revising the phrase ''Any futures commission merchant'' to read ''Except with respect to § 248.30(b), any futures commission merchant''.

4. Section 248.30 is amended as follows:

a. Revise the section heading;

b. Introductory text, paragraphs (a), (b), and (c) are redesignated as

[57] *See supra* note 28.

paragraphs (a) introductory text, (a)(1), (a)(2), and (a)(3) respectively;

c. In the newly redesignated introductory text of paragraph (a), add the word ''written'' before the phrase ''policies and procedures'' in the first and second sentences; and

d. Add paragraph (b).

The revision and addition read as follows:

§ 248.30 Procedures to safeguard customer records and information; disposal of consumer report information.

* * * * *

(b) *Disposal of consumer report information and records*—(1) *Definitions*—(i) *Consumer report* has the same meaning as in section 603(d) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)).

(ii) *Consumer report information* means any record about an individual, whether in paper, electronic or other form, that is a consumer report or is derived from a consumer report.

(iii) *Disposal* means:

(A) The discarding or abandonment of consumer report information; and

(B) The sale, donation, or transfer of any medium, including computer equipment, on which consumer report information is stored.

(iv) *Notice-registered broker-dealers* means a broker or dealer registered by notice with the Commission under section 15(b)(11) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(11)).

(v) *Transfer agent* has the same meaning as in section 3(a)(25) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(25)).

(2) *Proper disposal requirements*—(i) *Standard*. Every broker and dealer other than notice-registered broker-dealers, every investment company, and every investment adviser and transfer agent registered with the Commission, that maintains or otherwise possesses consumer report information or any compilation of consumer report information for a business purpose must properly dispose of the information by taking reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal.

(ii) *Relation to other laws*. Nothing in this section shall be construed:

(A) To require any broker, dealer, or investment company, or any investment adviser or transfer agent registered with the Commission to maintain or destroy any record pertaining to an individual that is not imposed under other law; or

(B) To alter or affect any requirement imposed under any provision of law to maintain or destroy any of those records.

By the Commission.

Dated: September 14, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–21031 Filed 9–17–04; 8:45 am]

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Federal Register

Monday,
September 20, 2004

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 2, 10, 12, 16, and 52

Federal Acquisition Regulation; Additional Commercial Contract Types; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 10, 12, 16, and 52

[FAR Case 2003–027]

RIN 9000–AK07

Federal Acquisition Regulation; Additional Commercial Contract Types

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Advance notice of proposed rulemaking and notice of public meeting.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing this advance notice of proposed rulemaking (ANPR) to solicit comments that can be used to assist in the implementation of section 1432 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136) in the Federal Acquisition Regulation (FAR). Section 1432 amends section 8002(d) of the Federal Acquisition Streamlining Act (FASA) to expressly authorize the use of time-and-materials (T&M) and labor-hour (LH) contracts for the procurement of commercial services. Implementation of section 8002(d) will require certain revisions to the FAR's current commercial item policies and associated clauses to ensure they effectively address the risks associated with T&M and LH contracting. Current policies were designed only to support purchases through firm-fixed price contracts and fixed-rice contracts with economic price adjustments.

DATES: *Comment Date:* Interested parties should submit comments in writing on the ANPR to the address below on or before November 19, 2004, to be considered in the formulation of any proposed or interim rule.

The Councils, in collaboration with OFPP, invite interested parties from both the private and public sector to provide comments on the effective use of T&M and LH contracts for the acquisition of commercial items and suggestions for implementing the specific requirements of section 8002(d). Comments are especially welcome on the specific issues discussed in the ''Supplementary Information'' section of this notice. See, in particular, the two sets of questions posed under ''Solicitation of Public Comment'' and the draft regulatory language provided under ''Regulatory Amendments Under Consideration.''

Public Meeting: A public meeting will be held on October 19, 2004, from 10:00 a.m. to 4:30 p.m. EST, in the GS Building Auditorium, 1800 F Street, NW, Washington, DC, 20405, to facilitate an open dialogue between the Government and interested parties on the implementation of section 8002(d). Interested parties are encouraged to attend and engage in discussions regarding the questions and draft provisions contained in this ANPR. To facilitate discussions at the public meeting, interested parties are encouraged to provide written comments on issues they would like addressed at the public meeting no later than October 1, 2004. Interested parties may register and submit their input electronically at: *http://www.acq.osd.mil/dpap/dars/coming.htm*. Attendees are encouraged but not required to register for the public meeting, to ensure adequate room accommodations. Interested parties may also offer additional questions for discussion at the public meeting.

Directions to the meeting can be found at the Web site. Participants are encouraged to check the Web site prior to the public meeting to ensure the location has not changed as a result of a large number of registrants.

The public meeting is physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to Mr. Gerald Zaffos (202–208–6091) at least 5 days prior to the meeting.

ADDRESSES: *Written comments.*Submit comments identified by ANPR, FAR case 2003–027, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web Site: *http://www.acqnet.gov/far/ProposedRules/proposed.htm*. Click on the FAR case number to submit comments.
- Mail: *ANPR.2003–027@gsa.gov*. Include ANPR, FAR case 2003–027, in the subject line of the message.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VR), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite ANPR, FAR case 2003–027, in all correspondence related to this case. All comments received will be posted without change to *http://www.acqnet.gov/far/ProposedRules/proposed.htm*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Gerald Zaffos, Procurement Analyst, at (202) 208–6091. Please cite ANPR, FAR case 2003–027.

SUPPLEMENTARY INFORMATION:

A. Background

Title XIV of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136), referred to as the Services Acquisition Reform Act (SARA), includes a provision, section 1432, which expressly authorizes the use of T&M and LH contracts for the procurement of commercial services. Section 1432 amends section 8002(d) (41 U.S.C. 264 note) of FASA. As amended, section 8002(d) places certain conditions on the use of T&M and LH contracts for purchases of commercial services under FAR Part 12, namely: (1) The purchase must be made on a competitive basis; (2) The service must fall within certain categories as prescribed by section 8002(d); (3) The contracting officer must execute a determination and findings (D&F) that no other contract type is suitable; and (4) The contracting officer must include a ceiling price that the contractor exceeds at its own risk and that may be changed only upon a determination documented in the contract file that the change is in the best interest of the procuring agency. The Councils are issuing this ANPR to seek the public's input for how best to implement the requirements and authorities of section 8002(d).

This ANPR is not intended to affect the special ordering procedures issued by the GSA pursuant to FAR 8.402 for the procurement of services under the Multiple Award Schedules (MAS) Program. MAS policies regarding the placement of orders on a T&M and LH basis will be conformed to the FAR when FAR coverage is finalized.

B. Solicitation of Public Comment

The Councils, along with OFPP, wish to ensure that T&M and LH contracting is used only when conditions warrant and that the terms and conditions incorporated into resulting T&M and LH contracts adequately protect the parties' respective interests based on the risk each party is being asked to bear. The

following discussion is intended to facilitate input that can assist the Councils in successfully achieving these goals as they develop regulations to implement section 8002(d).

1. *Suitability of T&M and LH contracts.* Section 8002(d) limits use of T&M and LH contracts to the following categories of commercial services:

a. Commercial services procured for support of a commercial item, as described in 41 U.S.C. 403(12)(E); and

b. Any other category of commercial services that is designated by the Administrator of OFPP on the basis that—

(i) The commercial services in such category are of a type of commercial services that are commonly sold to the general public through use of T&M or LH contracts; and

(ii) It would be in the best interests of the Federal Government to authorize use of T&M or LH contracts for purchases of the commercial services in such category.

2. In furtherance of its responsibility under section 8002(d), OFPP seeks to better understand how T&M and LH contracts are used commercially and when their use is in the best interest of the Government. OFPP has developed questions to obtain this information and requested that the Councils pose them as part of this ANPR.

Accordingly, the Councils invite the public to provide comments addressing the appropriate use of T&M and LH contracting in commercial item acquisitions and especially welcome feedback to the following questions: (In commenting, please include citations, as appropriate, to relevant sources of information that may be used to substantiate the basis for the response provided.)

a. What, if any, types of commercial services are sold to the general public predominantly on a T&M or LH basis?

b. What types of commercial services are rarely, if ever, sold to the general public on a T&M or LH basis?

c. What types of commercial services are commonly sold to the general public through both a T&M or LH and fixed-price basis?

d. What conditions typically exist when services are commonly sold to the general public through the use of T&M or LH contracts?

e. Should this rule adopt the same policy set forth in the FAR for non-commercial items and in GSA's special ordering procedures for acquiring commercial services under the Multiple Award Schedules (MAS) (see *http://www.gsa.gov*; click on ''GSA Schedules'') that restricts T&M and LH contracts to situations where it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence? Why or why not?

f. What steps should a contracting officer be required to take to establish that a fixed–price contract is not suitable? (Since use of cost-type contracts is prohibited under FAR Part 12, a contracting officer would not be expected to address why a cost-type contract was not suitable prior to using a T&M and LH contract for a commercial item acquisition.)

OFPP intends to share the public's feedback with the advisory panel that is being established pursuant to section 1423 of SARA to review commercial practices and other acquisition-related issues.

3. *Terms and conditions.* The current FAR clauses prescribed for the acquisition of commercial items were designed to support firm-fixed price contracts and fixed-price contracts with economic price adjustments. In shaping these clauses, the FAR drafters gave little thought to the risk involved when using flexibly priced contracts. For this reason, the Councils are reviewing these clauses to determine where refinements might be needed to more appropriately reflect the relationship that is created between the Government and a contractor under a T&M or LH contract.

As part of their review, the Councils are considering the provisions that have been traditionally incorporated into T&M and LH contracts pursuant to FAR Subpart 16.6. In considering changes, the Councils recognize that the provisions and clauses established and prescribed by Subpart 12.3 are meant to address, to the maximum extent practicable, commercial market practices for a wide range of potential Government acquisitions of commercial items.

To assist in this effort, the Councils invite the public, and especially small business, to provide comment on industry practices, including terms and conditions, relating to commercial use of T&M and LH contracts. Comments are especially welcome in response to the following questions: (In commenting, please include citations, as appropriate, to relevant sources of information that may be used to substantiate the basis for the response provided.)

a. What type of surveillance is conducted under T&M and LH commercial contracts (*e.g.*, quality control and inspections)?

b. What responsibility should the contractor bear for correction of non-conforming services under T&M and LH commercial contracts (*e.g.*, who should bear the cost of correction or re-performance)? Does the burden of responsibility depend on whether the Government has accepted the service?

c. What oversight is used to ensure work is being properly charged under T&M and LH contracts (*e.g.*, what type of information is required to substantiate payment requests)?

d. Is consent to subcontract required for subcontracts not identified in the original proposal?

e. How are material handling or subcontract administration rates charged under T&M commercial contracts? If material handling or subcontract administration rates are reimbursed based on actual rates, how can this be done without application of FAR Subpart 31.2?

f. What is the impact if Cost Accounting Standards apply to these contracts?

g. How often and under what circumstances does the customer provide property on a T&M or LH contract? How is the property managed and controlled?

C. Regulatory Amendments Under Consideration

The Councils are considering amendments to commercial items policies in FAR Part 12 and associated clauses in FAR Part 52 to ensure the effective use of T&M and LH contracts consistent with the parameters established in section 8002(d). Changes are also being considered for FAR Parts 2, 10, and 16.

Although the Councils have not yet agreed upon proposed FAR amendments, their preliminary thinking on regulatory implementation as of the publication of this ANPR is set forth below. The specific shape of a proposed or interim rule will not be decided until after the public's input has been considered. (For example, this language does not attempt to identify categories of services, since, as explained above, additional information will be needed to assist OFPP in making this determination.) The public is welcome to comment on these preliminary changes as part of their comments in response to this notice and at the public meeting. The main changes that would be made by this draft proposal are described below:

1. *Determination and findings (D&F).* Section 8002(d) requires the contracting officer to execute a D&F that no other contract type is suitable before proceeding with a purchase on a T&M or LH basis. The FAR has long relied on contracting officers to execute this type of D&F to protect the Government's interests when using a T&M or LH

contract for the purchase of non-commercial items. The D&F helps to ensure that contracting officers give sufficient consideration to fixed-price arrangements that will frequently represent a more appropriate allocation of risk. This point is underscored by the Conference Report (House Report 108–354) (*http://Thomas.loc.gov/*) accompanying SARA. The Conferees make clear that the option to use T&M and LH contracts was not intended to supplant the statutory preference for performance-based fixed-price task orders established by section 821 of the Defense Authorization Act for FY 2001 (Public Law 106–398). The Conferees state that ''a performance-based contract or task order that contains firm-fixed prices for the specific tasks to be performed remains the preferred option for the acquisition of either commercial or non-commercial items.'' See H. Rept. 108–354 at p. 777.

The Councils and OFPP generally would expect to find that services are likely to be sold on both a T&M or LH and fixed-price basis in many instances. In these cases, determining whether fixed-price contracts are unsuitable may be more a function of the specific circumstances surrounding the acquisition than the specific nature of the service being acquired.

For these reasons, the preliminary draft would require contracting officers to describe the market research they have undertaken to evaluate contract options and the rationale for concluding, based on this research, that fixed-prices for the delivery of completed tasks is unsuitable under the circumstances. The preliminary draft would require the contracting officer to prepare a D&F that establishes either (1) that it is not possible at the time of placing the contract to accurately estimate the extent or duration of the work or to anticipate costs with any reasonable degree of certainty or, (2) if work is sufficiently understood to allow for pricing on a fixed-price basis, that fixed pricing would unnecessarily inflate the Government's costs or impose unreasonable risk on the contractor. The preliminary draft encourages indefinite-delivery contracts that provide for orders to be issued on a T&M or LH basis, to also provide for orders to be issued on a fixed-price basis. In this situation, a D&F is executed for each T&M or LH order. If it is not practicable to provide for both contract types, then the D&F is executed for the contract and additionally must explain why providing for an alternative fixed-price structure is not practicable.

2. *Terms and conditions.* The Councils are considering an alternate to the standard clause used in commercial contracts, set forth at FAR clause 52.212–4, for incorporation into T&M and LH contracts for commercial services. This alternative clause would make the following modifications to FAR clause 52.212–4:

• *Inspection/acceptance.* Paragraph (a) of FAR clause 52.212–4 provides that the Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in price. The Councils anticipate, based on their initial review of commercial contracts, that the requirement at paragraph (a) of FAR clause 52.212–4 for reperformance of nonconforming services is consistent with commercial practice. However, the Councils also determined that, regardless of whether a fixed-price contract or a T&M or LH contract is used, reperformance may not correct defects or may not be possible. In these cases, the Councils believe that the Government should be able to invoke other remedies, such as requiring action by the contractor to ensure that future performance conforms to contract requirements or acceptance of nonconforming supplies or services with appropriate consideration. Accordingly, this clarification is included in a draft revision to paragraph (a) of the basic terms and conditions clause at 52.212–4 and an alternate that would be used for T&M and LH contracts.

• *Payment.* The payment provision at paragraph (i) of FAR clause 52.212–4 provides that payment shall be made for items accepted. Generally, FAR 15.403–1(b)(3) exempts contracts for commercial items from the submission of cost or pricing data, and 15.209(b)(1)(iii) exempts contracts for commercial items from applicability of 52.215–2, Audits and Records-Negotiations. As a result of section 1432 of SARA, these same exceptions would generally apply to T&M and LH contracts used for the acquisition of certain commercial services. However, there are some unique aspects of T&M and LH contracts that may require Government review. These reviews would be limited to review of the labor hours, the actual material costs, and actual subcontract costs. The Councils are, therefore, considering an alternate clause that would provide a special payment provision for T&M and LH contracts. The language of the alternate clause is generally derived from FAR 52.232–7, the payment clause currently used for non-commercial acquisitions on T&M and LH contracts, but has been modified to incorporate commercial buying practices. The proposed alternate payment provision requires the contractor to provide access to employees and their timecards, labor distributions, and material and subcontract invoices. The alternate payment provision does not provide for the withholding and retention of payments subject to final audit. Since the proposal does not provide for reimbursement of actual indirect rates (*e.g.*, a material handling or subcontract administration rate), the proposal does not require application of FAR Part 31.

In addition, paragraphs (b)(1) and (b)(4)(iii) of FAR clause 52.232–7 allow for the reimbursement of reasonable and allocable material handling costs and/or subcontract administration costs arising from the handling of materials and/or the administration of subcontracts (provided these indirect costs are not included in the loaded hourly rate). As a result, T&M and LH contracts for non-commercial items are generally subject to the provisions of FAR Part 31 and the negotiation of final indirect rates. Since commercial item contracts are not subject to FAR Part 31 and final indirect rates, the Councils have discussed the possibility of using a predetermined rate not subject to any audit and adjustment. However, concerns were raised that this would violate the prohibition on cost plus a percentage of cost (CPPC) contracting if the factor is any amount greater than the actual overhead rate the contractor incurs. As a result, the alternate payment provision provides for payment of the direct costs of material or subcontracts only and does not allow for the application and payment of separate indirect rates for materials and subcontracts.

Finally, the alternate clause applies the Prompt Payment Act to T&M and LH contracts, thus maintaining the application of the Act to commercial items acquisitions.

• *Termination for convenience.* The current termination language in paragraph (l) of FAR clause 52.212–4 and the corresponding guidance at 12.403(d) do not currently reflect how a contractor would be paid under a terminated commercial T&M and LH contract. Rather than paying the contractor based on a ''percentage of contract price reflecting the percentage of the work performed prior to notice of termination,'' the alternate clause would pay the contractor for the number of direct labor hours expended before the effective date of termination multiplied by the hourly rate(s) in the contract schedule, plus reasonable charges directly related to the termination.

• *Subcontracts.* Currently, FAR Part 12 does not address subcontracts *i.e.*, there is no guidance addressing issues

such as consent to subcontracts and advanced notification requirements). However, the Councils believe that the additional risks associated with T&M and LH contracting require surveillance, including insight into subcontracts. A new FAR section 12.216 and paragraph (u) for the alternate clause are being considered that would require the contractor to obtain the contracting officer's consent prior to awarding certain subcontracts. Similar to FAR 52.244–2, the subcontracts clause used for non-commercial acquisitions involving either T&M or LH contracts, paragraph (u) of the alternate clause would establish standard conditions under which consent is required, and would permit the contracting officer to designate or exempt additional specific subcontracts or categories of subcontracts for consent. The contracting officer would be required to consider the risk, complexity and dollar value of anticipated subcontracts when determining the consent requirements.

3. *Application of Cost Accounting Standards (CAS).* FAR 12.214 states that CAS does not apply to contracts and subcontracts for the acquisition of commercial items when these contracts and subcontracts are firm-fixed price or fixed-price with economic price adjustment, provided that the price adjustment is not based on actual costs incurred. This FAR provision is based on a CAS exemption that was promulgated by the Cost Accounting Standards Board (CAS Board) after the enactment of the Clinger-Cohen Act (Public Law 104–106) pursuant to its authorities in section 26 of the Office of Federal Procurement Policy Act (OFPP Act) in general and section 26(f)(2)(B)(i) of the OFFP Act in particular (41 U.S.C. 422(f)(2)(B)(i)). The scope of the CAS exemption parallels the scope of contract types currently authorized by FAR 12.207.

The need for potential amendments to the current CAS exemption for commercial items is being considered. Temporary waivers are subject to approval by the CAS Board. Permanent exemptions are subject to the regulatory promulgation process and are codified in 48 CFR Chapter 99. No changes to FAR 12.214 are reflected in the draft amendment that is being published with this notice. However, FAR 12.214 will be revised to reflect any actions that are taken by the CAS Board. Any public comments addressing CAS will be provided to the CAS Board for consideration.

List of Subjects in 48 CFR Parts 2, 10, 12, 16, and 52

Government procurement.

Dated: September 13, 2004.

Laura Auletta,

Director, Contract Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 10, 12, 16, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 10, 12, 16, and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2.101 [Amended]

2. Amend section 2.101 in paragraph (b) in the definition ''Commercial item'', by removing the second sentence of the introductory text of paragraph (6).

PART 10—MARKET RESEARCH

10.001 [Amended]

3. Amend section 10.001 in paragraph (a)(3)(iv) by adding ''type of contract,'' before the word ''terms''.

4. Amend section 10.002 by revising paragraph (b)(1)(iii) to read as follows:

10.002 Procedures.

* * * * *

(b) * * *

(1) * * *

(iii) Customary practices, including warranty, buyer financing, discounts, contract type considering the nature and risk associated with the requirement, etc., under which commercial sales of the products or services are made;

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

5. Revise section 12.207 to read as follows:

12.207 Contract type.

(a) Except as provided in paragraph (b) of this section, agencies shall use firm-fixed-price contracts or fixed-price contracts with economic price adjustment for the acquisition of commercial items.

(b)(1) A time-and-materials contract or labor-hour contract (see Subpart 16.6) may be used for the acquisition of commercial services when—

(i) The service is in a category of commercial service identified in paragraph (b)(2) of this section;

(ii) The service is acquired under a contract awarded using competitive procedures; and

(iii) The contracting officer—

(A) Executes a determination and findings (D&F) for the contract, in accordance with paragraph (b)(3) of this section (but see paragraph (c) of this section for indefinite-delivery contracts), that no other contract type authorized by this subpart is suitable;

(B) Includes a ceiling price in the contract or order that the contractor exceeds at its own risk; and

(C) Authorizes any subsequent change in the ceiling price only upon a determination, documented in the contract file, that it is in the best interest of the procuring agency to change the ceiling price.

(2) The following categories of services may be purchased using a time-and-materials or labor-hour contract:

(i) Commercial services procured for support of a commercial item as defined in paragraph (5) of the ''commercial item'' definition at 2.101.

(ii) Any other category of commercial services that is identified by the Administrator of the Office of Federal Procurement Policy (OFPP) on the basis that—

(A) The commercial services in such category are of a type of commercial services that are commonly sold to the general public through use of time-and-materials or labor-hour contracts; and

(B) It would be in the best interests of the Federal Government to authorize use of time-and-materials or labor-hour contracts for purchases of the commercial services in such category.

(3) Each D&F required by (b)(1)(iii)(A) shall contain sufficient facts and rationale to justify that no other contract type authorized by this part is suitable. At a minimum, the D&F shall—

(i) Include a description of the market research conducted (see 10.002(e));

(ii)(A) Establish that it is not possible at the time of placing the contract or order to accurately estimate the extent or duration of the work or to anticipate costs with any reasonable degree of certainty; or

(B) If work is sufficiently understood to allow for pricing on a fixed-price basis, explain why fixed pricing would unnecessarily inflate the Government's costs or impose unreasonable risk on the contractor; and

(iii) Establish that the requirement has been structured to minimize the use of T&M and LH contracts to the maximum extent practicable (*e.g.*, by limiting the value or length of the contract or order).

(c)(1) Indefinite-delivery contracts (see Subpart 16.5) may be used when—

(i) The prices are established based on a firm-fixed-price or fixed-price with economic price adjustment; or

(ii) Rates are established for commercial services acquired on a time-and-materials or labor-hour basis.

(2) When an indefinite-delivery contract is awarded with services priced on a time-and-materials or labor-hour

basis, contracting officers shall, to the maximum extent practicable, also structure the contract to allow issuance of orders on a firm-fixed-price or fixed-price with economic price adjustment basis. In such contracts, the contracting officer shall execute the D&F required by paragraph (b)(3) of this section at the order level, for each order placed on a time-and-materials or labor-hour basis. Placement of orders shall be in accordance with Subpart 16.5.

(3) If an indefinite-delivery contract only allows for the issuance of orders on a time-and-materials or labor-hour basis, the D&F required by paragraph (b)(3) of this section shall be executed to support the basic contract and shall also explain why providing for an alternative firm-fixed-price or fixed-price with economic price adjustment pricing structure is not practicable. The D&F for this contract shall be approved one level above the contracting officer.

(d) The contract types authorized by this subpart may be used in conjunction with an award fee and performance or delivery incentives when the award fee or incentive is based solely on factors other than cost (see 16.202–1 and 16.203–1).

(e) Use of any contract type other than those authorized by this subpart to acquire commercial items is prohibited.

6. Add section 12.216 to read as follows:

12.216 Subcontracts.

When a time-and-materials or labor-hour contract is awarded pursuant to 12.207(b), Alternate I to 52.212–4 is used. Alternate I includes a subcontract consent provision, which requires the contractor to obtain the contracting officer's consent prior to awarding certain subcontracts. The contracting officer must identify, in an addendum to the clause, subcontracts evaluated during negotiation, any other subcontracts requiring consent, and any exceptions to the standard consent requirements when a contractor does not have an approved purchasing system. The contracting officer shall consider the risk, complexity, and dollar value of anticipated subcontracts when determining the consent requirements.

7. Amend section 12.301 in paragraph (b)(3) by adding a new second sentence to read as follows:

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(b) * * *

(3) * * * Use this clause with its Alternate I when a time-and-materials or labor-hour contract will be awarded. * * *

* * * * *

8. Amend section 12.403 in paragraph (d)(1) by revising paragraph (d)(1)(i);, redesignating paragraph (d)(1)(ii) as (d)(1)(iii); and adding a new paragraph (d)(1)(ii) to read as follows:

12.403 Termination.

* * * * *

(d) * * *

(1) * * *

(i) The percentage of the contract price reflecting the percentage of the work performed prior to the notice of the termination for fixed price or fixed price with economic price adjustment contracts; or

(ii) An amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Schedule; and

* * * * *

PART 16—TYPES OF CONTRACTS

9. Amend section 16.601 by adding a sentence to the end of the introductory text of paragraph (b) to read as follows:

16.601 Time-and-materials contracts.

* * * * *

(b) * * * See 12.207(b) for the use of time-and-material contracts for certain commercial services.

* * * * *

10. Amend section 16.602 by adding a sentence to the end of the paragraph to read as follows:

16.602 Labor–hour contracts

* * * See 12.207(b) for the use of labor-hour contracts for certain commercial services.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

11. Amend section 52.212–4 by revising the date of the clause; adding a new fourth sentence to the introductory text of paragraph (a) of the clause; and adding Alternate I to read as follows:

52.212–4 Contract Terms and Conditions—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS (DATE)

(a) * * * If repair/replacement or reperformance will not correct the defects or is not possible, the Government may require the Contractor to ensure that future performance conforms to contract requirements and may seek consideration for acceptance of nonconforming supplies or services. * * *

* * * * *

Alternate I (Date). When a time-and-materials or labor-hour contract is contemplated, substitute the following paragraphs (a), (i), and (l) for those in the basic clause and add the following paragraph (u) to the basic clause:

(a) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in the cost to the Government. If reperformance will not correct the defects or is not possible, the Government may require the Contractor to ensure that future performance conforms to contract requirements and may seek consideration for acceptance of nonconforming supplies or services. The Government must exercise its post–acceptance rights—

(1) Within a reasonable time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

* * * * *

(i) *Payments.*—(1) *Services accepted.* Payment shall be made for services accepted by the Government that have been delivered to the delivery destination(s) set forth in this contract. The Government will pay the Contractor as follows upon the submission of commercial invoices approved by the Contracting Officer:

(i) *Hourly rate.* (A) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the contract by the number of direct labor hours performed. Fractional parts of an hour shall be payable on a prorated basis if specified in the contract.

(B) Invoices may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer) to the Contracting Officer or designee. When requested by the Contracting Officer, the Contractor shall substantiate invoices by evidence of individual daily job timecards or other substantiation specified in the contract.

(C) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis. If no overtime rates are provided in the Schedule and overtime work is approved in advance by the Contracting Officer, overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this contract. If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

(ii) *Materials costs.* (A) Allowable costs of materials are limited to the actual cost of direct materials (less any rebates, refunds or discounts received by or accrued to the

contractor). When requested by the Contracting Officer, the Contractor shall substantiate any claimed materials costs by evidence of invoices and payment of those invoices. Direct materials, as used in this clause, are those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.

(B) The Government will reimburse the Contractor for the cost of direct materials provided such costs are consistent with paragraph (i)(1)(ii)(C) and the Contractor—

(*1*) Has made payments of cash, checks, or other forms of payment for the direct materials costs; or

(*2*) Will make these payments determined due—

(*i*) In accordance with the terms and conditions of an agreement or invoice; and

(*ii*) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government.

(C) To the extent able, the Contractor shall—

(*1*) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and

(*2*) Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the Contractor shall promptly notify the Contracting Officer and give the reasons. The Contractor shall give credit to the Government for cash and trade discounts, rebates, scrap, commissions, and other amounts that have accrued to the benefit of the Contractor, or would have accrued except for the fault or neglect of the Contractor. The Contractor shall not deduct from gross costs the benefits lost without fault or neglect on the part of the Contractor, or lost through fault of the Government.

(D) If the nature of the work to be performed requires the Contractor to furnish material that the Contractor regularly sells to the general public in the normal course of business, the price to be paid for such material, notwithstanding the other requirements of this paragraph (i)(1)(ii), shall be on the basis of an established catalog or list price, in effect when the material is furnished, less all applicable discounts to the Government, provided that in no event shall such price be in excess of the Contractor's sales price to its most favored customer for the same item in like quantity, or the current market price, whichever is lower.

(iii) *Subcontract costs.* The Government shall reimburse the Contractor for the actual costs of direct subcontract costs that are authorized under paragraph (u), Subcontracts, of this clause, provided the Contractor has made or will make payments determined due of cash, checks, or other forms of payment to the subcontractor—

(A) In accordance with the terms and conditions of the subcontract; and

(B) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government.

(iv) *Total cost.* It is estimated that the total cost to the Government for the performance of this contract shall not exceed the ceiling price set forth in the Schedule and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments, material costs, and subcontract costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the Schedule, the Contractor shall notify the Contracting Officer giving a revised estimate of the total price to the Government for performing this contract with supporting reasons and documentation. If at any time during performing this contract the Contractor has reason to believe that the total price to the Government for performing this contract will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify the Contracting Officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performing this contract the Government has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the Contracting Officer will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

(v) *Ceiling price.* The Government shall not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that the ceiling price has been increased and shall have specified in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

(2) *Access to records.* At any time before final payment under this contract the Contracting Officer (or authorized representative) shall have access to the following (access shall be limited to the listing below unless otherwise agreed to by the Contractor and the Contracting Officer):

(i) For labor hours, when the Contracting Officer has required timecards as substantiation for payment—

(A) The original timecards;

(B) The Contractor's timekeeping procedures;

(C) Contractor reports that show the distribution of labor between jobs or contracts; and

(D) Employees whose time has been included in any invoice for the purpose of verifying that these employees have worked the hours shown on the invoices.

(ii) For material costs—

(A) Any invoices substantiating direct material costs; and

(B) Any documents supporting payment of those invoices.

(iii) For subcontract costs—

(A) The subcontract agreement;

(B) Any invoices submitted by the subcontractor; and

(C) Any documents supporting payment of those invoices.

(3) *Overpayments/underpayments.* (i) Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices, that are found by the Contracting Officer not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Any such reduction shall be promptly paid by the Contractor within 30 days, unless the parties agree otherwise. Any such increases shall be paid by the Government within 30 days, unless the parties agree otherwise. Payment may be made by check or as adjustment to future invoices. If the Contractor becomes aware of a duplicate invoice payment or that the Government has otherwise overpaid on an invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(ii) Upon receipt and approval of the invoice designated by the Contractor as the ''completion invoice'' and substantiating material, and upon compliance by the Contractor with all terms of this contract, any outstanding balances shall be paid within 30 days, unless the parties agree otherwise. The completion invoice, and substantiating material, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.

(4) *Release of claims.* The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(i) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible to exact statement by the Contractor.

(ii) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier.

(iii) Claims for reimbursement of costs (other than expenses of the Contractor by

reason of its indemnification of the Government against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.

(5) *Refunds, rebates, and credits.* The Contractor agrees that any refunds, rebates, or credits (including any related interest) accruing to or received by the Contractor or any assignee, that arise under the materials or subcontracts portion of this contract and for which the Contractor has been paid for or is aware of at the time of submission of the completion invoice, shall be paid by the Contractor to the Government. The Contractor and each assignee, under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, an assignment to the Government of such refunds, rebates, or credits (including any interest) in form and substance satisfactory to the Contracting Officer.

(6) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR part 1315.

(7) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see 52.212–5(b) for the appropriate EFT clause.

(8) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid an amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the contract, less any hourly rate payments already made to the Contractor plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

* * * * *

(u) *Subcontracts.*—(1) *Definitions.* As used in this clause—

Approved purchasing system means a Contractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR).

Consent to subcontract means the Contracting Officer's written consent for the Contractor to enter into a particular subcontract.

Subcontract means any contract, as defined in FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(2) If the Contractor has an approved purchasing system, the Contractor shall obtain the Contracting Officer's written consent only before placing subcontracts identified in an addendum to this clause.

(3) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that—

(i) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or

(ii) Is fixed-price and exceeds—

(A) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or

(B) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(iii) Exceptions to this requirement may be as specified by the Contracting Officer in an addendum to this clause.

(4) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (u)(2) or (u)(3) of this clause, including the following information:

(i) A description of the supplies or services to be subcontracted.

(ii) Identification of the type of subcontract to be used.

(iii) Identification of the proposed subcontractor.

(iv) Extent of competition or basis for determining price reasonableness.

(v) The proposed subcontract amount.

(vi) If a time-and-materials or labor-hour subcontract, a list of the labor categories, corresponding labor rates, and estimated hours.

(5) The Contractor is not required to notify the Contracting Officer in advance of entering into any subcontract for which consent is not required under paragraph (u)(2) or (u)(3) of this clause.

(6) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination—

(i) Of the acceptability of any subcontract terms or conditions, or

(ii) Relieve the Contractor of any responsibility for performing this contract.

(7) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404–4(c)(4)(i).

(8) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.

(9) Paragraphs (u)(2) and (u)(3) of this clause do not apply to the subcontracts, which were agreed to during negotiations, as set forth in an addendum to this clause.

(10) If the Contractor enters into any subcontract that requires consent without obtaining such consent, the Government shall not be liable for any costs incurred under that subcontract prior to the date the Contractor obtains the required consent. Any payment of subcontract costs incurred prior to the date the consent was obtained shall be at the sole discretion of the Government.

[FR Doc. 04–21040 Filed 9–17–04; 8:45 am]

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Federal Register

Monday,
September 20, 2004

Part V

Department of Homeland Security

Transportation Security Administration

49 CFR Part 1552

Flight Training for Aliens and Other Designated Individuals; Security Awareness Training for Flight School Employees; Interim Rule

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Part 1552

[Docket No. TSA–2004–19147]

RIN 1652–AA35

Flight Training for Aliens and Other Designated Individuals; Security Awareness Training for Flight School Employees

AGENCY: Transportation Security Administration (TSA), Department of Homeland Security (DHS).

ACTION: Interim final rule; request for comments.

SUMMARY: In response to recent statutory requirements, the Transportation Security Administration is requiring flight schools to notify TSA when aliens and other individuals designated by TSA apply for flight training. TSA is establishing standards relating to the security threat assessment process that TSA will conduct to determine whether such individuals are a threat to aviation or national security, and thus prohibited from receiving flight training. In addition, TSA is establishing a fee to cover a portion of the costs of the security threat assessments that TSA will perform under this rule. Finally, TSA is establishing standards relating to security awareness training for certain flight school employees. These requirements will help ensure that individuals who intend to use aircraft to perform terrorist attacks in the U.S. do not obtain flight training that would enable them to do so. These requirements also will improve security at flight schools.

DATES: *Effective Date:* This rule is effective September 20, 2004.

Compliance Dates: Flight schools that provide, and individuals who apply for, flight training in the operation of aircraft with a maximum certificated takeoff weight of greater than 12,500 pounds must comply with the requirements of this rule regarding such training beginning October 5, 2004. Flight schools that provide, and individuals who apply for, flight training in the operation of aircraft with a maximum certificated takeoff weight of 12,500 pounds or less must comply with the requirements of this rule regarding such training beginning October 20, 2004.

Comment Date: Comments must be received by October 20, 2004.

ADDRESSES: You may submit comments, identified by the TSA docket number to this rulemaking, using any one of the following methods:

Comments Filed Electronically: You may submit comments through the docket Web site at *http://dms.dot.gov.* Please be aware that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the applicable Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

You also may submit comments through the Federal eRulemaking portal at *http://www.regulations.gov.*

Comments Submitted by Mail, Fax, or In Person: Address or deliver your written, signed comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001; Fax: (202) 493–2251.

Comments that include trade secrets, confidential commercial or financial information, or sensitive security information (SSI) should not be submitted to the public regulatory docket. Please submit such comments separately from other comments on the rule. Comments containing trade secrets, confidential commercial or financial information, or SSI should be appropriately marked as containing such information and submitted by mail to the individual(s) listed in **FOR FURTHER INFORMATION CONTACT.**

Reviewing Comments in the Docket: You may review the public docket containing comments in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is located on the plaza level of the NASSIF Building at the Department of Transportation address above. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

See **SUPPLEMENTARY INFORMATION** for format and other information about comment submissions.

FOR FURTHER INFORMATION CONTACT: *For questions related to flight training for aliens:* Timothy Upham, Credentialing Program Office, Transportation Security Administration Headquarters, East Building, Floor 8, TSA–19, 601 South 12th Street, Arlington, VA 22202; telephone: (571) 227–3940; e-mail: *Timothy.Upham@dhs.gov.*

For questions related to fees: Randall Fiertz, Office of Revenue, Transportation Security Administration Headquarters, West Building, Floor 12, TSA–14, 601 South 12th Street, Arlington, VA 22202; telephone: (571) 227–2323; e-mail: *TSA-Fees@dhs.gov.*

For questions related to security awareness training: Michael Derrick, Office of Aviation Initiatives, Transportation Security Administration Headquarters, West Building, Floor 11, TSA–9, 601 South 12th Street, Arlington, VA 22202–4220; telephone: (571) 227–1198; e-mail: *Michael.Derrick@dhs.gov.*

For legal questions: Dion Casey, Office of Chief Counsel, Transportation Security Administration Headquarters, West Building, Floor 8, TSA–2, 601 South 12th Street, Arlington, VA 22202; telephone: (571) 227–2663; e-mail: *Dion.Casey@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

As required by Section 612 of Vision 100—Century of Aviation Reauthorization Act,[1] this final rule is being adopted without prior notice and prior public comment. However, to the maximum extent possible, operating administrations within DHS will provide an opportunity for public comment on regulations issued without prior notice. Accordingly, TSA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from this rulemaking. See **ADDRESSES** above for information on where to submit comments.

Comments that include trade secrets, confidential commercial or financial information, or SSI should not be submitted to the public regulatory docket. Please submit such comments separately from other comments on the rule. Comments containing this type of information should be appropriately marked and submitted to the address specified in the **ADDRESSES** section. Upon receipt of such comments, TSA will not place the comments in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. TSA will hold them in a separate file to which the public does not have access, and place a note in the public docket that TSA has received such materials from the commenter. If TSA receives a request to examine or copy this information, TSA will treat it as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the Department of

[1] Pub. L. 108–176, December 12, 2003, 117 Stat. 2490.

Homeland Security's FOIA regulation found in 6 CFR part 5.

With each comment, please include your name and address, identify the docket number at the beginning of your comments, and give the reason for each comment. The most helpful comments reference a specific portion of the rule, explain the reason for any recommended change, and include supporting data. You may submit comments and material electronically, in person, by mail, or fax as provided under **ADDRESSES**, but please submit your comments and material by only one means. If you submit comments by mail or delivery, submit them in two copies, in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

If you want the TSA to acknowledge receipt of your comments on this rulemaking, include with your comments a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Except for comments containing confidential information and SSI, we will file in the public docket all comments we receive, as well as a report summarizing each substantive public contact with TSA personnel concerning this rulemaking. The docket is available for public inspection before and after the comment closing date.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late to the extent practicable. We may change this rulemaking in light of the comments we receive.

Availability of Rulemaking Document

You may obtain an electronic copy using the Internet by—

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html;* or

(3) Visiting the TSA's Law and Policy Web page at *http://www.tsa.dot.gov/public/index.jsp.*

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires TSA to comply with small entity requests for information or advice about compliance with statutes and regulations within TSA's jurisdiction. Any small entity that has a question regarding this document may contact the persons listed in the **FOR FURTHER INFORMATION CONTACT** section for information or advice. You may obtain further information regarding SBREFA on the Small Business Administration's Web page at *http://www.sba.gov/advo/laws/law_lib.html.*

Good Cause for Immediate Adoption

This action is being taken without providing the opportunity for prior notice and public comment. Section 612 requires TSA to promulgate an interim final rule (IFR) implementing the requirements of Section 612, including the fee provisions, not later than 60 days after the enactment of Vision 100. See the Background section below for a more detailed description of the Section 612 requirements.

TSA also believes there is good cause under Section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553) for issuing an interim final rule. Section 553(b) of the APA authorizes agencies to dispense with certain notice procedures for rules when they find ''good cause'' to do so. The requirements of notice and opportunity for comment do not apply when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.''

Section 612 of Vision 100—Century of Aviation Reauthorization Act prohibits a flight school from providing flight training to aliens or other individuals designated by the Secretary of Homeland Security (referred to hereinafter as ''candidates''), unless the candidate has first provided the Secretary with certain identifying information, and the Secretary has not determined that the candidate is a threat to aviation or national security. The Department of Justice (DOJ) currently performs this function. However, Section 612 transfers the responsibility for determining whether a candidate poses a threat to aviation or national security from the DOJ to TSA. To ensure that flight schools may continue to provide flight training only to candidates who do not pose a threat to aviation security, TSA must issue this rulemaking as quickly as possible. Although this regulation would prohibit flight schools from training aliens until the TSA security threat assessment program takes effect, this prohibition will not be known until this rule is issued.

TSA notes that the DOJ final rule, requiring candidates who apply for flight training at U.S. flight schools to be screened, was issued on February 13, 2003. Thus, DOJ has performed this screening function for over a year. In developing this rule, TSA consulted with DOJ to address stakeholder concerns with the DOJ screening program. TSA also met with flight training providers, aircraft manufacturers, and other stakeholders to identify their areas of concern. As a result, TSA's issuance of this interim final rule is not likely to have significant adverse impacts on the regulated community.

For these reasons, TSA finds that notice and public comment to this final rule are impracticable, unnecessary, and contrary to the public interest. However, TSA is requesting public comments on all aspects of the rule. If, based upon information provided in public comments, TSA determines that changes to the rule are necessary to address transportation security more effectively, or in a less burdensome but equally effective manner, the agency will not hesitate to make such changes.

This IFR will take effect upon publication in the **Federal Register**. Section 553(d) of the APA mandates that a substantive rule may take effect no less than 30 days after the date it is published in the **Federal Register**, unless as otherwise provided by the agency for ''good cause.''

The DOJ will stop accepting completed applications from candidates under its rule on September 28, 2004, and thereafter will not accept any further training applications. Section 612 prohibits a flight school from providing flight training to candidates, unless the candidate first provides TSA with certain identifying information, and TSA does not determine that the person is a threat to aviation or national security. Thus, flight schools will be barred from providing flight training to candidates until the IFR establishing the TSA security threat assessment program takes effect. This could have a significant adverse economic impact on flight schools.

Moreover, as noted above, TSA consulted extensively with DOJ to address stakeholder concerns with the DOJ program and met with flight training providers, aircraft manufacturers, and other stakeholders to identify their areas of concern. TSA also is using an application process similar to the DOJ process, including the use of the same Web site for submission of information. Thus, the agency believes that both candidates and flight schools will be able to comply with the requirements of the IFR fairly easily.

In addition, the security benefits of the rule also justify making the rule

effective upon publication. Doing so will eliminate any gap between the DOJ program and implementation of the TSA program. In the event that information on flight school candidates is submitted to TSA after the DOJ program has ended, TSA will be in a position to identify individuals who pose a risk and should not be trained. An additional security benefit of implementing this regulation as soon as possible is that the TSA program applies to candidates for training on aircraft whose maximum takeoff weight is below 12,500 pounds; the DOJ program does not apply to these candidates. It is important that these candidates be evaluated as soon as practicable because training in the operation of these smaller aircraft can be sufficient to allow a candidate to operate a larger aircraft.

Finally, the IFR provides two compliance dates, one for flight training in the operation of aircraft with a maximum certificated takeoff weight of greater than 12,500 pounds and another for flight training in the operation of aircraft with a maximum certificated takeoff weight of 12,500 pounds or less. Flight schools that provide, and individuals who apply for, flight training in the operation of aircraft with a maximum certificated takeoff weight of greater than 12,500 pounds must comply with the requirements of this rule regarding such training beginning October 5, 2004. Flight schools that provide, and individuals who apply for, flight training in the operation of aircraft with a maximum certificated takeoff weight of 12,500 pounds or less must comply with the requirements of this rule regarding such training beginning October 20, 2004. TSA believes that flight schools and individuals who train in smaller aircraft will need additional time to comply with the IFR because they currently are not subject to the DOJ rule, as are flight schools and individuals who train in larger aircraft.

For these reasons, TSA finds good cause for this IFR taking effect upon publication in the **Federal Register**.

Abbreviations and Terms Used in This Document

Administrator—Administrator of the Transportation Security Administration
ATSA—Aviation and Transportation Security Act
DHS—Department of Homeland Security
DOD—Department of Defense
DOJ—Department of Justice
FAA—Federal Aviation Administration
FBI—Federal Bureau of Investigation
FTCCP—Flight Training Candidate Checks Program
GA—General Aviation
IFR—Interim Final Rule
INS—Immigration and Naturalization Service
MTOW—Maximum Certificated Takeoff Weight
Secretary—Secretary of Homeland Security
TSA—Transportation Security Administration
USCIS—United States Citizenship and Immigration Services
Vision 100—Vision 100—Century of Aviation Reauthorization Act

I. Background

A. Aviation and Transportation Security Act

On November 19, 2001, Congress enacted the Aviation and Transportation Security Act (ATSA).[2] Under Section 113 of ATSA (49 U.S.C. 44939), certain aviation training providers were prohibited from providing training to aliens and other designated individuals in the operation of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more, unless the aviation training provider notified the Attorney General of the identity of the candidate seeking training, and the Attorney General did not notify the aviation training provider within 45 days that the candidate presented a threat to aviation or national security. If the Attorney General determined that a candidate presented a threat to aviation or national security more than 45 days after receiving notification from the training provider, the Attorney General was required to notify the training provider, and the training provider was required to terminate the training immediately.

For purposes of Section 113, flight training included in-flight training, training in a simulator, and any other form or aspect of training.

Also, under Section 113 the training provider was required to furnish the Attorney General with the candidate's identification in a form required by the Attorney General. Thus, the Attorney General had the discretion to request a wide variety of information from a candidate in order to determine whether the candidate presented a threat to aviation or national security.

B. Department of Justice Rule

On February 13, 2003, the Department of Justice (DOJ) issued a final rule implementing Section 113 of ATSA.[3] The DOJ rule applies to individual training providers, training centers, certificated carriers, and flight schools, including those located in countries other than the United States if they provided training leading to a U.S. license, certification, or rating (referred to as ''providers'' in the DOJ rule). The DOJ rule does not apply to any military training provided by the Department of Defense (DOD), the U.S. Coast Guard, or an entity under contract with the DOD or Coast Guard because such training is not subject to FAA regulations. Under the DOJ rule, ''training'' includes any instruction in the operation of an aircraft with a maximum certificated takeoff weight (MTOW) of 12,500 pounds or more, including ground school, flight simulator, and in-flight training, but not the provision of training manuals or other materials or mechanical training that would not enable the trainee to operate such an aircraft in flight.

The DOJ rule requires a provider to submit to DOJ certain identifying information (including fingerprints and financial information) for each alien and other individual designated by the Administrator of TSA[4] (referred to as ''candidates'' in the DOJ rule) before the provider may provide training to the candidate. A provider is not required to submit such information for U.S. citizens or nationals, unless they have been designated by the Administrator of TSA. An individual seeking training may establish U.S. citizenship or nationality by showing the provider certain documentation, such as a valid, unexpired U.S. passport or birth certificate or a selection of U.S. Citizenship and Immigration Services (USCIS) or Immigration and Naturalization Service (INS) forms documenting naturalization.

The DOJ rule provides for two types of processing, expedited and non-expedited. Expedited processing is typically completed within 5 to 15 days of receiving all of a candidate's identifying information, while non-expedited processing is typically completed within 45 days of receiving all of a candidate's identifying information (including fingerprints). A candidate is eligible for expedited processing if he or she is part of any of several categories of pilots whom the Attorney General has determined present a minimal additional risk to aviation or national security, including foreign nationals who are current and qualified as a pilot in command, second in command, or flight engineer with respective certificates with ratings recognized by the FAA for aircraft with an MTOW of over 12,500 pounds. If a candidate does not fall into any of these categories, he or she must undergo the non-expedited processing.

Either a provider or a candidate must submit the candidate's identifying

[2] Pub. L. 107–71, 115 Stat. 597, November 19, 2001.

[3] 68 FR 7313, February 13, 2003.

[4] The Administrator is now known as the Assistant Secretary of Homeland Security for TSA.

information to DOJ via the Internet at *https://www.flightschoolcandidates.gov*. A candidate's fingerprints must be taken by, or under the supervision of, a Federal, State, or local law enforcement agency, by another entity approved by DOJ, or, where available, by U.S. Government personnel at a U.S. embassy or consulate. A candidate is required to pay for all costs associated with taking and processing his or her fingerprints.

DOJ performs a risk assessment based on the information submitted by the candidate and the provider. If DOJ determines that a candidate does not present a risk to aviation or national security, DOJ notifies the candidate and/or the provider electronically that the provider may initiate the candidate's training. If DOJ determines that a candidate does present some risk to aviation or national security, DOJ notifies the provider electronically that training is prohibited or must be terminated.

If DOJ does not complete a candidate's risk assessment within the appropriate time period, the provider may initiate the candidate's training. However, if DOJ subsequently determines that the candidate presents a risk to aviation or national security, DOJ notifies the provider, and the provider is required to cease the candidate's training.

C. Section 612 of Vision 100—Century of Aviation Reauthorization Act

On December 12, 2003, Congress enacted Vision 100—Century of Aviation Reauthorization Act. Section 612 of Vision 100 makes several changes to 49 U.S.C. 44939. First, it transfers the threat assessment requirements from the Attorney General to the Secretary of Homeland Security, and requires the Secretary to issue an interim final rule (IFR) implementing Section 612. Second, its applicability is clarified to cover ''a person operating as a flight instructor, pilot school, or aviation training center or subject to regulation under this part.''

Third, Section 612 specifies various categories of identifying information the Secretary can require providers to submit for candidates for training in the operation of aircraft with an MTOW of greater than 12,500 pounds. Section 113 of ATSA required a candidate's identifying information to be submitted ''in such form as the Attorney General may require.'' (49 U.S.C. 44939 (a)(1)). However, Section 612 provides that the Secretary may require the following information to be submitted: the candidate's full name, including any aliases or variations in spelling; passport and visa information; country of citizenship; date of birth; dates of training; and fingerprints.

Fourth, Section 612 reduces the time a provider must wait after submission of a candidate's information before initiating training for a candidate, and thus the time the Secretary has to conduct a threat assessment, from 45 days to 30 days. It also requires the Secretary to establish a process to ensure that the waiting period for certain classes of pilots, such as pilots who are employed by a foreign air carrier that is certified under 14 CFR part 129 and that has a security program approved under 49 CFR part 1546, does not exceed 5 days.

Fifth, Section 612 adds a notification requirement for training in the operation of aircraft with an MTOW of 12,500 pounds or less. It prohibits a flight training provider from providing training in the operation of an aircraft having an MTOW of 12,500 pounds or less to an alien or any other individual specified by the Secretary unless the provider has notified the Secretary that the individual has requested such training and furnished the Secretary with the individual's identification in a form required by the Secretary. It requires a provider to submit a candidate's identifying information ''in such form as the Secretary may require.'' (49 U.S.C. 44939 (c)).

Sixth, Section 612 authorizes the Secretary to assess a fee for the threat assessment. The fee may not exceed $100 (exclusive of the cost of collecting and transmitting fingerprints from overseas facilities) during fiscal years 2003 and 2004. For fiscal year 2005 and thereafter, the Secretary may adjust the fee to reflect the costs of the threat assessment.

Seventh, Section 612 specifies that the threat assessment requirements do not apply to foreign military pilots who are endorsed by the DOD for flight training in the U.S.

Eighth, Section 612 clarifies the definition of training that was in place under Section 113 of ATSA. Section 113 defined ''covered training'' as ''in-flight training, training in a simulator, and any other form or aspect of training.'' (49 U.S.C. 44939(c)). Under Section 612, ''training'' means ''training received from an instructor in an aircraft or aircraft simulator and does not include recurrent training, ground training, or demonstration flights for marketing purposes.''

Finally, Section 612 mandates that the Secretary require flight schools to conduct a security awareness program for flight schools to increase their awareness of suspicious circumstances and activities of individuals enrolling in or attending flight school.[5] This mandate was put in effect under Section 113 of ATSA and was repeated in Section 612.

II. Summary of the Interim Final Rule (IFR)

This IFR prohibits a flight school from providing flight training to aliens and other individuals designated by TSA (candidates) unless the flight school or the candidate submits certain information to TSA, the candidate remits the specified fee to TSA, and TSA determines that the candidate is not a threat to aviation or national security. Under the IFR, there are four categories of candidates. Category 1 is for candidates who are not eligible for expedited processing for flight training in the operation of aircraft weighing greater than 12,500 pounds. Category 2 is for candidates who are eligible for expedited processing for flight training in the operation of aircraft weighing greater than 12,500 pounds. Category 3 is for candidates applying for flight training in the operation of aircraft weighing 12,500 pounds or less. Category 4 is for candidates applying for recurrent training. Candidates in Categories 1–3 are required to submit training information, such as the type of training the candidate is requesting, and identifying information, including fingerprints. Flight schools are required to submit similar training and identifying information for candidates in Category 4, but are not required to submit the candidates' fingerprints.[6] TSA intends to use a process for submitting information similar to the current DOJ process, including the use of the same Web site for applying and submitting information to TSA.

The IFR sets the time periods a flight school must wait for TSA approval before the school may initiate a candidate's training, and thus the time period TSA has to conduct a candidate's threat assessment. For Category 1 candidates (regular processing), a flight school must wait 30 days after TSA receives all the required information, including the specified fee and the candidate's fingerprints. For Category 2 candidates (expedited processing), a flight school must wait 5 days after TSA receives all the required information.

[5] The Secretary delegated his responsibilities under Section 612 to TSA.

[6] As explained further below, Category 4 candidates are not required to submit fingerprints because TSA is not conducting a security threat assessment for them. The agency is only verifying that Category 4 candidates are applying for recurrent training. Thus, TSA does not require Category 4 candidates' fingerprints.

For candidates in Categories 3 (training for aircraft 12,500 pounds or less) and 4 (recurrent training), a candidate (or a flight school for Category 4 candidates) must submit the specified information to TSA before the flight school may initiate the candidate's training, but the flight school is not required to wait for TSA approval. However, if TSA determines that any candidate, including candidates in Categories 3 and 4, is a threat to aviation or national security, or that the candidate is not receiving recurrent training, after the flight school has initiated the candidate's training, the IFR requires the flight school immediately to cancel or otherwise terminate the candidate's training.

The IFR also establishes a fee for the security threat assessments that TSA will perform and procedures for candidates to remit the fee to TSA. Candidates in Categories 1–3 are required to pay the same $130 fee per application. Candidates in Category 4 are not required to pay a fee.

Finally, the IFR requires flight schools to provide security awareness training for certain flight school employees and establishes standards and criteria such security awareness training programs must meet.

III. Discussion of the IFR

A. Flight Training for Aliens and Other Designated Individuals

1. Scope and Definitions

This IFR creates a new part 1552 in title 49 of the Code of Federal Regulations (CFR). Subpart A applies to flight schools, as defined below, and to individuals who apply to obtain flight training. As noted above, Section 612 of Vision 100 specifies that the threat assessment requirements apply only to aliens and other individuals designated by the Secretary, and do not apply to U.S. citizens or nationals or foreign military pilots who are endorsed by the DOD for flight training in the U.S. However, Subpart A requires U.S. citizens and nationals and foreign military pilots endorsed by the DOD to submit certain information that will enable TSA to verify their status as U.S. citizens or nationals or DOD endorsees.

''Alien'' is defined as any person not a citizen or national of the United States, as mandated at 8 U.S.C. 1101(a)(3) and in Section 612 of Vision 100.

''National of the United States'' is defined as a person who, though not a citizen of the United States, owes permanent allegiance to the United States. This is the definition of the term at 8 U.S.C. 1101.

''Candidate'' is defined as an alien or other individual designated by TSA who applies for flight training. It does not include an individual endorsed by the Department of Defense for flight training.

''Day'' is defined two different ways, depending on the time period specified in the IFR. If the IFR specifies a time period of less than 11 days, such as the 5-day waiting period for expedited processing candidates, the term ''day'' means a day from Monday through Friday. This excludes Saturdays and Sundays and Federal holidays, but includes State and local holidays. If the IFR specifies a time period of greater than 11 days, such as the 30-day waiting period for regular processing candidates, the term ''day'' means a calendar day.

This definition of the term ''day'' is consistent with the computation of time periods under the Federal Rules of Civil Procedure (FRCP). Rule 6 of the FRCP provides that when a period of time prescribed or allowed under the FRCP is less than 11 days, weekends and legal holidays are excluded from the computation. The legal holidays specified in Rule 6 include New Year's Day, Birthday of Martin Luther King Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States. These are the Federal holidays referred to in the definition of ''day'' in this IFR.

In addition, in light of the extremely short time periods TSA has to conduct the security threat assessment required under Section 612, TSA believes that days must be limited to business days. Otherwise there could be situations in which the agency would have little time to perform a threat assessment. For example, if a candidate who is eligible for expedited processing under this part (a 5-day waiting period) submits his or her information to TSA on the Friday before a Federal holiday weekend, such as Labor Day or Christmas, TSA essentially would have only 2 days to perform that candidate's security threat assessment because of the weekend and the holiday. TSA believes that Congress, in enacting Section 612, intended TSA to conduct a thorough threat assessment on each alien and other individual designated by TSA who applies for flight training in the U.S. TSA believes that excluding weekends and Federal holidays from the waiting period under this part, which gives the agency sufficient time to conduct a thorough threat assessment, is in accordance with that intent.

''Flight school'' is defined as any pilot school, flight training center, air carrier flight training facility, or flight instructor certificated under 14 CFR part 61, 121, 135, 141, or 142; or any other person or entity that provides instruction under 49 U.S.C. Subtitle VII, Part A, in the operation of any aircraft or aircraft simulator. TSA is defining this term broadly to include any individual, as well as any entity, that provides such instruction. This definition also includes any individual or entity located outside of the U.S. that provides such instruction. For example, a flight school located in Canada that provides instruction in the operation of an aircraft or aircraft simulator under 49 U.S.C. Subtitle VII, Part A, that would enable an individual to receive a U.S. Airman's Certificate is subject to this rule.

''Flight training'' is defined as instruction received from a flight school in an aircraft, or aircraft simulator. As specified in Section 612 of Vision 100, the term does not include recurrent training, ground training, or demonstration flights for marketing purposes. Section 612 of Vision 100 also provides that the requirements of the TSA program do not apply to a foreign military pilot endorsed by the Department of Defense (DOD). The DOJ rule excludes military flight training provided by DOD, the U.S. Coast Guard, or any entity under contract with DOD or the U.S. Coast Guard, and TSA has retained the exclusion in this IFR.

''Aircraft simulator'' is defined as a flight simulator or flight training device, as those terms are defined at 14 CFR 61.1.

''Recurrent training'' is defined as periodic training required for employees of certificated aircraft operators under 14 CFR part 61, 121,125, 135, or Subpart K of part 91. Recurrent training programs are established by these operators and approved by the FAA for flight crewmembers to remain proficient in the performance of their duties during common carriage in an aircraft for compensation or hire. For the purposes of this IFR, recurrent training shall pertain only to those candidates who are current and qualified as a pilot in command, second in command, or flight engineer with respective certificates with ratings recognized by the FAA; who are employed by a carrier approved under 14 CFR parts 121, 125, 135, or Subpart K of part 91; and who are applying for training while still current and prior to the end of their grace month as established by their previously documented recurrent

training course. For example, a candidate who was approved for flight training in a particular type of aircraft, and who has a unique student identification number in the TSA database that indicates he or she was approved by TSA for flight training in that type of aircraft, will be considered applying for recurrent training if he or she applies for training in the same type of aircraft as previously approved.[7]

TSA notes that there is no definition of the term ''recurrent training'' in 14 CFR part 61. Recurrent training is a term specific to flight crewmember training requirements in 14 CFR parts 121, 125 and 135 aircraft operators, and more recently of Fractional Ownership programs regulated under 14 CFR part 91, Subpart K. TSA notes that this definition of ''recurrent training'' is applicable to both training in aircraft with an MTOW greater than 12,500 pounds and in aircraft with an MTOW of 12,500 pounds or less.

''Ground training'' is defined as classroom or computer-based instruction in the operation of aircraft, aircraft systems, or cockpit procedures. This ground training includes the provision of written materials, such as manuals, but does not include instruction in a computer-based aircraft simulator.

''Demonstration flight for marketing purposes'' is defined as a flight for the purpose of demonstrating an aircraft's or aircraft simulator's capabilities or characteristics to a potential purchaser, or to an agent of a potential purchaser, of the aircraft or simulator. For example, when an aircraft manufacturer delivers an aircraft to a purchaser, the purchaser typically takes the aircraft for what is known as an acceptance flight so that the purchaser can check for any potential discrepancies. During an acceptance flight, the purchaser may ask the aircraft manufacturer pilot about the operation of some aircraft equipment. Such an acceptance flight is a demonstration flight for marketing purposes, not flight training, under the IFR.

2. General Requirements

For candidates in Categories 1–3, the IFR generally prohibits a flight school from providing flight training to a candidate unless: (i) the flight school notifies TSA that the candidate has requested such flight training; (ii) the candidate has submitted certain information to TSA; (iii) the flight school has submitted to TSA, in a form and manner acceptable to TSA, a photograph of the candidate taken when the candidate arrives at the flight school for flight training; and (iv) TSA has informed the flight school that the candidate does not pose a threat to aviation or national security. The information submitted by the candidate must be in a form and manner acceptable to TSA. To the extent possible, TSA intends to use the DOJ process for submitting the required information to TSA. TSA intends to continue using the DOJ Web site, with modifications, at *https://www.flightschoolcandidates.gov.* The candidate is required to submit information to TSA electronically via the Web site in accordance with the procedures described below.[8] The candidate is required to electronically sign a form that is submitted with the required information.

For candidates in Category 4, the flight school must submit certain identifying and training information electronically via the Web site. The flight school also must submit to TSA, in a form and manner acceptable to TSA, a photograph of the candidate taken when the candidate arrives for flight training. TSA is requiring flight schools to submit a photograph of the candidate when the candidate arrives at the flight school for flight training to help ensure that the person who was cleared by TSA is the person who receives the flight training. TSA will check the photograph submitted by the flight school against the photograph of the candidate that is taken when he or she enters the U.S. TSA intends to accept photographs either electronically (digital or scanned photo sent by e-mail) or via fax. The email address and fax numbers where the photographs may be sent will be available on the Web site. TSA requests comment on this requirement.

In addition, for all categories of candidates a flight school will be required to verify that a candidate has applied for training at that school. To ensure that only FAA-certificated flight schools verify this information, flight schools are required to register for initial access to the TSA system through the FAA. Flight schools should register through their local FAA Flight Standards District Office (FSDO). Upon registration, flight schools will be sent (via e-mail) a password to access the system. TSA notes that flight schools that have registered under the DOJ's program will not be required to register again under the TSA program. TSA intends to transfer the information from the DOJ database to the TSA database.

If a flight school makes a willful false statement, or omits a material fact, when submitting the information required under this part, the flight school may be subject to enforcement action. For example, the flight school may be subject to civil penalties under 49 U.S.C. 46301 and 49 CFR 1503. If a candidate makes a knowing and willful false statement, or omits a material fact, when submitting the information required under this part, the candidate may be subject to fine or imprisonment or both under 18 U.S.C. 1001; will be denied approval for flight training under this part; and may be subject to other enforcement action, as appropriate.[9]

TSA considers the flight school's or candidate's electronic signature a sufficient certification that the information provided is truthful and accurate. TSA also considers the electronic signature a sufficient certification for civil penalties under 49 U.S.C. 46301 and 49 CFR 1503, punishment under 18 U.S.C. 1001, and denial of training under this part if the information provided is not truthful and accurate.

TSA notes that the U.S. Department of State requires issuance of an I–20 form by the flight school before issuing the candidate a student visa. Thus, for purposes of expediting a candidate's visa process with the U.S. Department of State, TSA may give a flight school preliminary approval of a candidate so that the school may issue an I–20 form and the candidate may receive his or her visa and begin classroom instruction or other training not subject to the IFR. Preliminary approval from TSA will not impact the Department of State's normal visa procedures. A candidate who receives preliminary approval for flight training from TSA may still be denied a visa by the Department of State.

The preliminary approval will be based on all information required to be submitted for the online application, which is, in turn, based on information required to be submitted under the IFR. Typically, this information will not include the candidate's fingerprints since the fingerprinting process may be time-consuming or logistically impossible for some candidates. Thus, TSA may provide preliminary approval of a candidate to the candidate and the flight school, if the candidate has

[7] To ease the application process, as well as TSA's determination as to whether a candidate is applying for recurrent training, TSA intends to track candidates using their unique student identification number. This will make it easier to track candidates who apply for training at different flight schools.

[8] Candidates will be required to complete a TSA form, located on the Web site, and submit the form to TSA electronically.

[9] For example, a candidate may be subject to civil penalties under 49 CFR 1540.103.

submitted all the required information, except for his or her fingerprints.[10] For all categories of candidates, both the candidate and the flight school will receive notification of preliminary approval from TSA. The flight school then may issue the I–20 form and, if the candidate is issued a visa, may initiate the candidate's classroom instruction or other training not subject to the IFR. However, if TSA, based on the candidate's fingerprint or other information subsequently disclosed, determines that a candidate poses a threat to aviation or national security, TSA will inform the flight school, and the flight school must immediately terminate or cancel the candidate's training.

3. Requirements for Different Categories of Candidates

a. Category 1—Regular Processing for Flight Training on Aircraft More Than 12,500 Pounds

Candidates who are not eligible for expedited processing under the IFR (Category 1 candidates) must complete an electronic form, similar to the DOJ's Flight Training Candidate Checks Program (FTCCP) form, that will be available on the Web site at *https://www.flightschoolcandidates.gov.* Candidates must sign the form electronically, and submit it electronically to TSA. TSA will not accept any paper submissions of this form.

To confirm that a candidate has applied for flight training at the flight school specified in the candidate's form, TSA will forward the candidate's information to the flight school and ask for verification that the candidate has applied for training at that flight school. The flight school must verify that the candidate has applied for training at that flight school via the Web site *https://www.flightschoolcandidates.gov.*

Category 1 candidates must submit the following information: (1) The candidate's full name, including any aliases used, or variations in the spelling of his or her name; (2) a unique student identification number as a means of identifying records concerning the candidate;[11] (3) a legible copy of the candidate's current, unexpired passport and visa;[12] (4) the candidate's passport and visa information, including all current and previous passports and visas held by the candidate and all the information necessary to obtain a passport or visa;[13] (5) the candidate's country of birth, current country or countries of citizenship, and each previous country of citizenship, if any; (6) the candidate's actual date of birth or, if the candidate does not know his or her date of birth, the approximate date of birth used consistently by the candidate for his or her passport or visa; (7) the dates and location of the candidate's requested training; (8) the type of training for which the candidate is applying, including the aircraft type rating the candidate would be eligible to obtain upon completion of the training; (9) the candidate's current U.S. pilot certificate, certificate number, and type rating, if any; (10) the candidate's fingerprints; (11) the candidate's current address and telephone number, as well as each address for the 5 years prior to the date of the candidate's application; and (12) the candidate's gender. Candidates also are required to submit the fee specified under this part. The fee requirements are discussed in further detail below.

This information is either specified under Section 612 of Vision 100, is necessary for TSA to determine the identity of the candidate, or is necessary for TSA to determine what type of training a candidate is applying to receive. TSA believes that the information that is required under the IFR but not specified under Section 612 will aid the agency in performing the threat assessment more quickly and accurately, and thus will result in shorter waiting times and fewer false positives. For example, a candidate's country of birth is not specified under Section 612 but is required under the IFR. In consulting with the DOJ on the assessment it performs, TSA learned that knowledge of a candidate's country of birth greatly aided the DOJ in narrowing its searches of the necessary databases. Because the waiting times under Section 612 are significantly shorter, TSA believes that information that will significantly aid the agency in performing the threat assessment quickly and accurately is necessary. Moreover, TSA believes that the usefulness of this information (*i.e.*, faster and more accurate threat assessments) will substantially outweigh the burden of providing it. Thus, TSA adopted several of the information requirements that were not specified in Section 612 but were in the DOJ rule, including the country of birth requirement.

A candidate is required to submit his or her fingerprints to TSA as part of the identification process. A candidate must complete the TSA form and submit it to TSA electronically before the candidate submits his or her fingerprints so that TSA can match the candidate's information with his or her fingerprints.

During the first six months after this IFR takes effect, the candidate's fingerprints must be collected either: (1) By, or under the supervision of, a U.S. Federal, State, or local law enforcement agency; (2) by U.S. Government personnel at a U.S. embassy or consulate that possesses appropriate fingerprint collection equipment and personnel certified to capture fingerprints; or (3) by another entity approved by the Federal Bureau of Investigation (FBI) or TSA, including airports that possess appropriate fingerprint collection equipment and personnel certified to capture fingerprints.[14] A TSA contractor, the Association of American Airport Executives (AAAE), will provide flight schools with a fingerprinting package. Candidates will be able to obtain the fingerprinting package from the flight school where they are applying for flight training or directly from AAAE. The candidate will be required to take the fingerprinting package to the entity that captures the candidate's fingerprints. That entity will capture the candidate's fingerprints and forward them to AAAE. AAAE will convert them to electronic form and then forward the electronic fingerprints to TSA for use in the security threat assessment.

After the first six months, TSA is planning for implementation of a new fingerprint capture process. TSA is working with the U.S. Citizenship and Immigration Services (CIS) to allow candidates to have their fingerprints captured at CIS Application Support Centers (ASC). At least one ASC is located in each State, as well as the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. TSA is also working with the Department of State to allow candidates to have their fingerprints captured overseas at U.S. embassies and consulates. TSA will inform candidates via the Web site of any changes in the fingerprint capture requirements, including the locations of any ASCs, embassies, or consulates that

[10] TSA notes that the waiting period does not begin until TSA receives all the information required under the IFR, including the candidate's fingerprints.

[11] When a candidate or flight school completes the TSA form on the Web site and submits it to TSA, the Web site generates a unique identification number for that candidate.

[12] A candidate may either scan his or her complete passport and submit it to TSA electronically, or copy his or her complete passport and fax it to TSA using the fax number provided on the Web site.

[13] More details on the type of visa and passport information required will be available on the Web site.

[14] TSA will provide a list of airports with fingerprint capture capabilities on the Web site.

are capable of capturing candidate fingerprints.

The candidate is required to confirm his or her identity to the entity taking his or her fingerprints by showing the entity his or her passport (if a non-resident alien), or resident alien card or U.S. driver's license (if a resident alien). The candidate also must pay for the cost of collecting and transmitting his or her fingerprints to TSA. Those costs are not part of the TSA fee.

Under the IFR, a flight school is prohibited from providing flight training to a Category 1 candidate until TSA has informed the flight school that the candidate does not pose a threat to aviation or national security, or the appropriate waiting period has expired. For Category 1 candidates, the waiting period is 30 days. The waiting period does not begin until TSA has received all the information required under the IFR, including a candidate's fingerprints and the fee required under this part.

Under the IFR, a flight school may initiate a Category 1 candidate's flight training if TSA has not informed the flight school whether the candidate poses a threat to aviation or national security within 30 days. However, if TSA notifies the flight school that a candidate poses a threat to aviation or national security at any time, the flight school must immediately terminate or cancel the candidate's flight training.

Once TSA informs a flight school that a candidate is not a threat to aviation or national security, or the 30-day waiting period has expired, the flight school must initiate the candidate's flight training within 180 days. If the flight school does not initiate the candidate's flight training within 180 days, the flight school or the candidate must resubmit to TSA the information required in the TSA form, including the required fee, but not the candidate's fingerprints. The flight school then must wait until TSA informs the flight school that a candidate is not a threat to aviation or national security or until the appropriate waiting period expires (for Category 1 candidates, 30 days after TSA receives all the required information, including the candidate's fingerprints and the required fee) before initiating the candidate's flight training. As discussed in the section on fees, a candidate is required to submit the required fee each time he or she is required to apply for a TSA security threat assessment.

b. Category 2—Expedited Processing for Flight Training on Aircraft More Than 12,500 Pounds

Section 612 of Vision 100 mandates that certain types of candidates be eligible for expedited processing. These are candidates who: (1) Hold an airman's certificate from a foreign country that is recognized by the FAA or a U.S. military agency, and that permits the candidate to operate a multi-engine aircraft that has a certificated takeoff weight of more than 12,500 pounds; (2) are employed by a foreign air carrier that operates under 14 CFR part 129 and that has a security program approved under 49 CFR part 1546; (3) have unescorted access authority to a secured area of an airport under 49 U.S.C. 44936(a)(1)(A)(ii), 49 CFR 1542.209, or 49 CFR 1544.229; (4) are a flightcrew member who has successfully completed a criminal history records check in accordance with 49 CFR 1544.230; or (5) are part of a class of individuals to which TSA has determined that providing flight training poses a minimal threat to aviation or national security because of the flight training already possessed by that class of individuals.[15]

Under the IFR, candidates who meet any of these criteria are eligible for expedited processing (Category 2 candidates). Category 2 candidates are required to submit the same information required of Category 1 candidates, including their fingerprints. They also are required to submit information that establishes that they are eligible for expedited processing, such as a copy of their security identification display area (SIDA) badge. TSA will specify the information that establishes that a candidate is eligible for expedited processing on the TSA Web site.

TSA believes that it is necessary to require Category 2 candidates to submit their fingerprints to ensure a thorough security threat assessment. The threat assessment consists, in part, of checks of databases that may be searched only through fingerprint information.

Under the IFR, a flight school is prohibited from providing flight training to a candidate until TSA has informed the flight school that the candidate does not pose a threat to aviation or national security, or the appropriate waiting period has expired. For Category 2 candidates, the waiting period is 5 days. The waiting period does not begin until TSA has received all the information required under the IFR, including the candidate's fingerprints and the required fee.

Under the IFR, a flight school may initiate a Category 2 candidate's flight training if TSA has not informed the flight school whether the candidate poses a threat to aviation or national security within 5 days. However, if TSA notifies a flight school that a candidate poses a threat to aviation or national security at any time, the flight school must immediately terminate or cancel the candidate's flight training.

Once TSA informs a flight school that a Category 2 candidate is not a threat to aviation or national security, a flight school must initiate the candidate's flight training within 180 days. If the flight school does not initiate the candidate's flight training within 180 days, the flight school or candidate must resubmit to TSA the information required in the TSA form, including the required fee, but not the candidate's fingerprints. The flight school then must wait until TSA informs the flight school that a candidate is not a threat to aviation or national security, or until 5 days after TSA receives all the required information before initiating the candidate's flight training. As discussed in the section on fees, a candidate is required to submit the required fee each time he or she is required to submit information for a TSA security threat assessment.

c. Category 3—Flight Training on Aircraft 12,500 Pounds or Less

The IFR prohibits a flight school from providing flight training in the operation of any aircraft having an MTOW of 12,500 pounds or less to an alien or any other individual specified by TSA unless the flight school notifies TSA that the candidate has requested such flight training, and the candidate submits to TSA certain identifying and training information. The information submitted by the candidate must be in a form and manner acceptable to TSA. TSA intends to use the same form and process for submitting the required information to TSA that the agency will use for flight training for aircraft with an MTOW greater than 12,500 pounds. Thus, the candidate must complete the same TSA form on the TSA Web site and submit the form electronically to TSA. The candidate is required to submit the same information as a candidate for flight training for aircraft with an MTOW greater than 12,500 pounds, including the candidate's fingerprints.

TSA is requiring candidates for this type of flight training to submit the same information, including fingerprints, because an individual who receives flight training on aircraft with an MTOW of 12,500 pounds or less may be familiar enough with aircraft operations to operate an aircraft with an MTOW greater than 12,500 pounds.

[15] Currently, TSA has not designated any such class of individuals. However, if TSA does designate such a class of individuals in the future, the agency will do so through a rulemaking process.

TSA notes that nine of the nineteen September 11 hijackers received flight training on aircraft with an MTOW of less than 12,500 pounds. The agency also believes that requiring candidates for flight training on aircraft with an MTOW of 12,500 pounds or less will not be overly burdensome because a flight school is not required to wait until TSA approves the candidate before initiating the candidate's training. A flight school may initiate the candidate's training as soon as the candidate provides all the information required under this section, including the candidate's fingerprints and the required fee.[16] For these reasons, TSA believes that candidates for flight training on aircraft with an MTOW of 12,500 pounds or less should undergo the same security threat assessment as candidates for flight training on aircraft with an MTOW greater than 12,500 pounds.

Section 612 of Vision 100 only requires flight schools to notify TSA when a candidate applies for flight training for aircraft with an MTOW of 12,500 pounds or less, and to provide TSA with the candidate's identification in such form and manner as TSA may require. Section 612 does not require flight schools to wait for TSA approval before initiating such training for candidates.[17] Thus, the IFR does not require flight schools to wait for TSA approval before initiating such training for Category 3 candidates.

However, the IFR does require a flight school to terminate or cancel a Category 3 candidate's flight training immediately if TSA notifies the flight school that the candidate poses a threat to aviation or national security at any time. Although Section 612 does not specifically mandate this, TSA believes such a requirement is necessary to carry out the intent of the statute—preventing individuals who pose a threat to aviation or national security from obtaining flight training, and thus preventing them from conducting terrorist attacks using aircraft.

d. Additional or Missed Flight Training

Under the IFR, a Category 1, 2, or 3 candidate who has received TSA approval for flight training and completes the flight training may take additional flight training without resubmitting his or her fingerprints if he or she submits all the other required information, including the fee. Before beginning the additional training, the candidate must resubmit to TSA the information required in the TSA form,[18] along with the required fee,[19] and wait for TSA approval or until the applicable waiting period expires. In addition, a Category 1, 2, or 3 candidate who is approved for flight training by TSA, but does not initiate that flight training within 180 days, may reapply for flight training without resubmitting fingerprints if he or she resubmits all other information required in paragraph (a)(2) of this section, including the fee. The candidate must wait for TSA approval or until the applicable waiting period expires before initiating training.

e. Category 4—Recurrent Training on All Aircraft

As mandated by Section 612 of Vision 100, the IFR exempts candidates who apply for recurrent training from the security threat assessment requirements. However, TSA must be able to determine whether a candidate is eligible for recurrent training and thus not subject to the threat assessment requirements. To do that, TSA is requiring a flight school, prior to beginning a Category 4 candidate's recurrent training, to notify TSA that the candidate has requested such recurrent training and submit to TSA the following information: (1) The candidate's full name, including any aliases used by the candidate or variation in the spelling of the candidate's name; (2) any unique student identification number issued by the DOJ or TSA that would help establish a candidate's eligibility for the recurrent training exemption; (3) a copy of the candidate's current, unexpired passport and visa; (4) the candidate's current U.S. pilot certificate, certificate number, and type rating(s); (5) the type of training for which the candidate is applying; (6) the date of the candidate's prior recurrent training, if any, and a copy of the training form documenting that recurrent training; and (7) the dates and location of the candidate's requested training. This information is necessary to establish a candidate's identity and determine whether he or she is applying for recurrent training and thus exempt from the security threat assessment requirements.

As discussed above, ''recurrent training'' is defined as periodic training required for employees of certificated aircraft operators under 14 CFR parts 121,125, 135, or Subpart K of part 91. Only candidates who apply for such training are exempt from the fingerprinting and security threat assessment requirements under the IFR.

The IFR requires a flight school to submit to TSA the required information before initiating a Category 4 candidate's recurrent training. TSA will notify the flight school via e-mail when the agency has received the required information for a candidate. Once the flight school has received the TSA e-mail, it may initiate the candidate's recurrent training. To ease the application process, as well as TSA's determination as to whether a candidate is applying for recurrent training, TSA intends to monitor candidates using their unique student identification number to make it easier to track candidates who apply for training at different flight schools.

The requirements for Category 4 candidates are applicable both to candidates who apply for recurrent training for aircraft with an MTOW greater than 12,500 pounds and to candidates who apply for recurrent training for aircraft with an MTOW of 12,500 pounds or less.

4. U.S. Citizens and Nationals and Department of Defense Endorsees

The threat assessment requirements in the IFR apply to aliens and other individuals designated by TSA. They do not apply to U.S. citizens and nationals or individuals who have been endorsed by the DOD, unless they have been designated by TSA. To ensure that individuals who are not U.S. citizens or nationals or DOD endorsees do not evade the security threat assessment requirements, the IFR requires flight schools to determine whether an individual is a U.S. citizen or national or DOD endorsee.

To establish U.S. citizenship or nationality, an individual must present to the flight school one of the following: (1) A copy of the individual's valid, unexpired U.S. passport; (2) the individual's original or government-

[16] TSA will notify a flight school by e-mail when the agency has received all the required information for a Category 3 candidate. The flight school then may initiate the candidate's flight training.

[17] TSA is conducting the security threat assessment for these candidates under its authority to assess threats to transportation and to enforce security-related regulations and requirements. 49 U.S.C. 114(f)(2) and (7).

[18] At this time, the candidate must complete the application and submit it to TSA. However, TSA is working on the application program to allow the candidate to update any information that has changed or is new since the last time the candidate submitted the application, rather than completing the entire application again. TSA will notify candidates of this feature via the Web site as soon as it is completed.

[19] A candidate will be required to submit the fee each time he or she resubmits an application for flight training because TSA will conduct the security threat assessment each time a candidate applies for flight training, and thus TSA will incur the costs of the security threat assessment. TSA will maintain candidates' fingerprints on file and use them to conduct the fingerprint-based checks and will use the information submitted by candidates, including any new or changed information, to conduct the name-based and other checks that make up the security threat assessment.

issued certified U.S., American Samoa, or Swains Island birth certificate, together with a government-issued picture identification of the individual; (3) the individual's original U.S. naturalization certificate with raised seal, U.S. Citizenship and Immigration Services (USCIS) or Immigration and Naturalization Service (INS) Form N–550, or Form N–570 (Certificate of Naturalization),[20] together with a government-issued picture identification of the individual; (4) the individual's original certification of birth abroad with raised seal, U.S. Department of State Form FS–545, or U.S. Department of State Form DS–1350, together with a government-issued picture identification of the individual; (5) the individual's original certificate of U.S. citizenship with raised seal, USCIS or INS Form N–560, Form N–561 (Certificate of United States Citizenship), or a USCIS or INS Form N–581 (Certificate of Repatriation), together with a government-issued picture identification of the individual; or (6) in the case of flight training provided to a Federal employee (including military personnel) pursuant to a contract between a Federal agency and a flight school, the agency's written certification as to its employee's U.S. citizenship or nationality, together with the employee's government-issued credentials or other Federally-issued picture identification.

To establish that an individual has been endorsed by the DOD for flight training, the individual must present to the flight school a written statement acceptable to TSA from the DOD attacheé in the individual's country of residence, together with a government-issued picture identification of the individual.

These identification requirements are currently contained in the DOJ rule or required under DOJ procedures. TSA is maintaining these requirements to ensure that individuals who are subject to the IFR do not circumvent the security threat assessment process.

These requirements are applicable both to individuals who apply for flight training for aircraft with an MTOW greater than 12,500 pounds and to individuals who apply for flight training for aircraft with an MTOW of 12,500 pounds or less.

5. Recordkeeping Requirements

The IFR requires a flight school to maintain the following information for a minimum of 5 years: (1) In the case of an individual who is a U.S. citizen or national, a copy of the candidate's proof of U.S. citizenship or nationality; (2) in the case of an individual who has been endorsed by the DOD for flight training, a copy of the DOD letter and the candidate's identifying information; (3) for all candidates, a copy of all the information required under the IFR for each category of candidate, except for the candidate's fingerprints; (4) a photograph of each candidate taken within one year before the candidate receives flight training subject to this section; (5) a copy of the approval sent by TSA confirming the candidate's eligibility for flight training; and (6) a record of all fees paid to TSA in accordance with this IFR. A flight school must permit persons authorized by TSA or the FAA to inspect these records.

TSA believes that these records are necessary to ensure that flight schools are complying with the requirements of the IFR and for identification and investigative purposes in the event that an individual who receives flight training commits a criminal or terrorist act. In particular, TSA believes that a current photograph of each candidate subject to this IFR would be useful for identification and investigation purposes. TSA notes that a flight school is required to maintain a current photograph of all candidates for flight training, including candidates eligible for expedited processing under the IFR, as well as candidates for recurrent training. A flight school is not required to maintain a current photograph of U.S. citizens or nationals or DOD endorsees.

These requirements are applicable both to individuals who apply for flight training for aircraft with an MTOW greater than 12,500 pounds and to individuals who apply for flight training for aircraft with an MTOW of 12,500 pounds or less.

6. Candidates Subject to the DOJ Rule

The IFR provides that a candidate who submits a completed Flight Training Candidate Checks Program (FTCCP) form and fingerprints to the DOJ in accordance with the DOJ rule (28 CFR Part 105) will be processed in accordance with the requirements of the DOJ rule. The requirements include the information submission requirements, risk assessment standards, and notification timelines in the DOJ rule. TSA believes this provision is necessary to ensure the smooth transition of the program from the DOJ to TSA and avoid confusion over to which requirements a candidate is subject and which agency is responsible for performing the threat assessment for a candidate. TSA notes that, to facilitate the transition from the DOJ application process to the TSA application process in an orderly manner, the DOJ will accept completed FTCCP applications validated by a Flight Training Provider up to 5 p.m. Eastern Daylight Savings Time on September 28, 2004, or a later date specified by DOJ and TSA on the Web site at *https://www.flightschoolcandidates.gov,* and thereafter will not accept any further training applications. Furthermore, the DOJ will not accept expedited and non-expedited applications for training that is scheduled to start after December 28, 2004, or a later date specified by the two agencies. Candidates who submit a completed FTCCP form to the DOJ by the specified deadlines will be processed by the DOJ in accordance with the DOJ rule. Thereafter, candidates will be required to comply with the TSA IFR. TSA intends to begin accepting applications from candidates for flight training in the operation of aircraft with an MTOW of greater than 12,500 pounds on October 5, 2004. Thus, if there is a gap between the date on which DOJ ceases accepting applications and that date, the Federal Government will not accept any flight training applications. During this time period, flight schools may not initiate flight training for any candidate who has not been approved under the DOJ rule.

TSA notes that if TSA and the DOJ specify a date for DOJ later than the compliance dates identified in this rule, individuals and flight schools who comply with 28 CFR part 105 up to that date will be considered to be in compliance with the requirements of this part.

B. Fees

The IFR requires candidates in Categories 1–3 to remit to TSA a fee when they are required under section 1552.3 to submit to TSA the required information for a security threat assessment.[21] TSA will not conduct a security threat assessment for a candidate until the agency has received the candidate's fee. The fee must be

[20] The USCIS formerly was the INS. Thus, the rule permits the use of these same forms if they were issued by the INS.

[21] As discussed above, a Category 1, 2, or 3 candidate who receives TSA approval for flight training (or who did not have his or her flight training interrupted) and then completes that flight training may take additional flight training without resubmitting his or her fingerprints if he or she submits all the other required information, including the fee. The candidate will be required to submit the fee each time he or she resubmits an application for flight training because TSA will be conducting the security threat assessment each time a candidate applies for flight training, and thus TSA will incur the costs of the security threat assessment.

remitted to TSA in a form and manner acceptable to TSA. A candidate must submit the fee through the Internet at *https://www.flightschoolcandidates.gov.* Instructions for payment and acceptable payment forms will be available on that Web site. Essentially, TSA will accept the same payment mechanisms as accepted by *https://www.pay.gov,* the U.S. Government's electronic fee payment portal.

TSA will begin conducting a candidate's security threat assessment when the agency receives all of the information required under the IFR, including the candidate's fingerprints (when required) and the fee. Thus, TSA will incur costs associated with performing the threat assessment immediately. For this reason, TSA will not issue any fee refunds, unless a fee was paid in error, that is, a fee was paid when it was not required.

A candidate must submit the fee each time he or she is required to undergo a security threat assessment under the IFR. For example, if TSA approves a candidate for flight training, but the flight school does not initiate the candidate's training within 180 days of receiving the TSA approval, the IFR requires the candidate to resubmit his or her information to the flight school and TSA. That candidate would be required to submit an additional fee for TSA to conduct another security threat assessment.

The fee is required of candidates in Categories 1–3. TSA notes that Section 612 of Vision 100 authorizes TSA to assess a fee for any investigation under Section 612. As discussed above, Section 612 does not mandate a security threat assessment for candidates for flight training for aircraft weighing 12,500 pounds or less. However, as discussed above, TSA believes such candidates must be subject to the security threat assessment requirements in order to carry out the intent of the statute—preventing individuals who pose a threat to aviation or national security from obtaining flight training, and thus preventing them from conducting terrorist attacks using aircraft. Thus, TSA will perform a security threat assessment on those individuals, and will assess a fee for the threat assessment under Section 612.

Section 612 authorizes TSA to set the fee to reflect the costs of the security threat assessment. As explained in greater detail below, the fee is $130 to reflect the full recurring costs to TSA for performing the security threat assessment.

1. Candidate Population

TSA estimates that there will be 70,000 annual candidate applications for flight training at FAA-approved flight schools. This estimate is comprised of the following:

(a) The number of candidate applications for training on aircraft with an MTOW greater than 12,500 pounds is estimated to be 32,000 annually, which is equivalent to 160,000 for the first five years of the program. This estimate is based on data from the DOJ that indicates the total annual candidate applications for training under the FTCCP for calendar year 2003. While the DOJ did not track the actual number of flight training candidates submitting multiple applications, TSA believes that, on average, candidates will submit two applications per year. This could be due to a candidate applying for subsequent flight training on a different type of aircraft in the same fiscal year or if the flight school does not initiate the candidate's training within 180 days of receiving the TSA approval (both scenarios require re-application under the requirements of the IFR.) Thus, TSA estimates that each year approximately 16,000 candidates will submit an average of two applications each, resulting in 32,000 annual applications for training on aircraft with an MTOW greater than 12,500 pounds.

(b) The number of candidate applications for training on aircraft with an MTOW of 12,500 pounds or less is estimated to be 38,000 annually, which is equivalent to 190,000 for the first five years of the program. This estimate is based on FAA Airman Registry data. However, the FAA does not record the number of certificates issued to foreign nationals. Instead, the FAA records the overall number of certificates issued annually to all persons and the percentage of active non-U.S. citizens holding FAA certificates. The FAA estimates that the annual average of certificates issued to all persons over the last 6 years is 106,000 certificates. The FAA estimates that 18% of these certificates were issued to non-U.S. citizens, which is equivalent to 19,000 certificates. Therefore, TSA estimates that approximately 19,000 candidates will submit requests for this type of flight training each year. TSA believes that each candidate within this population will also submit an average of two requests each year for various reasons, such as a candidate who applies for subsequent flight training in a different type of aircraft in the same fiscal year or a flight school that does not initiate the candidate's training within 180 days of receiving the TSA approval. Thus, TSA estimates the total annual number of applications for flight training on aircraft with an MTOW of 12,500 pounds or less to be 38,000 (19,000 candidates × 2 applications per year).

2. Program Costs

This section summarizes TSA's estimated costs of completing security threat assessments on candidates who apply for flight training in the U.S. The costs are divided into two main categories: Start-up costs and recurring annual costs. Start-up costs represent the cost of all resources necessary for TSA to establish the program. Recurring costs represent the resources necessary for TSA to perform ongoing security threat assessments on candidates. Recurring operations will begin during fiscal year 2005.

TSA estimates that the total start-up costs will be $3.0 million. The start-up costs include all expenses related to the transition of the program from the DOJ to DHS (specifically TSA). This includes $1.5 million for hardware and software; $471,000 for contract personnel; and $1.0 million for facilities build out. Fees will not recover the start-up costs. See the Costs Estimates table below for additional details.

TSA estimates that the total annual recurring costs will be $9.1 million. The annual recurring cost includes $375,000 for hardware and software; $4.0 million for contract and other personnel; $30,000 Federal employee travel; $250,000 for fee payment processing and $4.4 million for terrorist threat assessment costs.

COST ESTIMATES

[In dollars]

Category description	Start-up	Recurring
Hardware/Software:		
Transfer and modify Flight Training Candidate Checks Program (FTCCP) designed "front-end" Web site application system	$376,000	$0

COST ESTIMATES—Continued

[In dollars]

Category description	Start-up	Recurring
Transfer and modify FTCCP designed applicant assessment system	1,054,000	0
Transfer and modify FTCCP designed helpdesk system	70,000	
Develop automated access to the Interpol system	0	0
Maintain and refresh "front-end" Web site application system	0	94,000
Maintain and refresh applicant assessment system	0	263,500
Maintain and refresh helpdesk system	0	17,500
Total	1,500,000	375,000
Contract and Other Employees:		
Contract personnel to support transfer and modification of "front-end" Web site application system	241,800	0
Contract personnel to support transfer and modification of applicant assessment system	229,000	0
Contract personnel to maintain "front-end" Web site application system	0	336,000
Contract and other personnel to maintain applicant assessment system	0	1,900,800
Contract personnel for helpdesk	0	403,200
Contract security assessment personnel	0	1,382,400
Total	470,800	4,022,400
Federal Employee:		
Travel	0	30,000
Total	0	30,000
Rent/Build out:		
Facilities (build out)	1,000,000	0
Facilities (rent, utilities, * * *)	0	0
Total	1,000,000	0
Other Costs:		
Terrorist threat analysis	0	4,410,000
Fee payment processing	70,000	250,000
Total	70,000	4,660,000
Total Costs	3,040,800	9,087,400

Based on its population and cost assumptions, TSA has determined that total startup phase costs will be approximately $3.0 million and recurring phase costs will be approximately $9.1 million annually. As TSA will perform the same threat assessments for Category 1–3 candidates, the costs to TSA for each category of candidate are the same.

3. Fee

Section 612 authorizes TSA to adjust the fee to reflect the costs of the security threat assessment. The fee is based on the recurring cost per applicant that TSA incurs to perform the security threat assessment and does not include start-up costs. To calculate this fee, TSA uses the following equation: Annual recurring cost/estimated number of annual threat assessments = annual cost per applicant. The estimated cost per applicant is $130 ($9,087,400/70,000). As the costs for each applicant are the same, the fee will also be the same for each applicant category.

Pursuant to the Chief Financial Officers Act of 1990 and Office of Management and Budget Circular A–25, DHS/TSA will review this fee at least every two years. Upon review, if it is found that the fee is either too high or too low, the amount of the fee will be adjusted accordingly. Since this IFR newly regulates a very dynamic segment of the aviation population (foreign candidates for flight training), and TSA has no prior operating history in performing threat assessments for this population, TSA may need to review program costs earlier than the minimum two-year review period.

4. Fingerprinting Costs

There are a variety of options for fingerprint collection and transmission available to candidates. The costs and method of payment for these options will vary per location and will be separate from, and in addition to, the TSA fee. Candidates or flight schools will be required to pay this cost directly to the fingerprint collector, not to TSA. TSA estimates that the maximum cost of collecting a candidate's fingerprints will be $100.

C. Flight School Security Awareness Training

1. Scope and Definitions

This subpart applies to flight schools, as defined in this part, that provide instruction under 49 U.S.C. Subtitle VII, Part A, in the operation of aircraft or aircraft simulators, and to certain employees of such flight schools.

"Flight school employee" is defined as a flight instructor or ground instructor certificated under 14 CFR part 61, 141, or 142; a chief instructor certificated under 14 CFR part 141; a director of training certificated under 14 CFR part 142; or any other person employed by a flight school, including an independent contractor, who has direct contact with a flight school student. This definition includes an independent or solo flight instructor certificated under 14 CFR part 61. Thus, an independent or solo flight instructor, who would be considered a "flight school" under the definition of that

term in § 1552.1(b), must receive security awareness training in accordance with this subpart.

Section 612 does not provide a definition of flight school employee. However, TSA believes that Section 612 should apply only to those employees who have direct or substantial contact with students, and thus are more likely to observe suspicious behavior, rather than those employees, such as grounds maintenance staff, who may spend little time at a flight school or have no contact with students. TSA also believes that requiring security awareness training for such employees would impose a substantial burden on flight schools while providing little added security. Thus, TSA has limited the definition to employees who have direct contact with a flight school student. This definition includes administrative personnel who accept payment from a flight school student or process a student's paperwork. TSA believes that such personnel are well situated to observe any suspicious behavior or circumstances in a student's payment or identification information.

2. Security Awareness Training Programs

The IFR requires a flight school to ensure that each of its flight school employees receives both initial and recurrent security awareness training. Current flight school employees, that is those individuals who are flight school employees on September 20, 2004, must receive initial security awareness training within 90 days of the effective date of this rule. Flight school employees hired after September 20, 2004 must receive initial security awareness training within 60 days of being hired. TSA believes that these time periods provide ample time for flight schools to train both current and newly hired employees.

a. Initial Security Awareness Training

A flight school may use either the initial security awareness training program offered by TSA or an alternative initial training program offered by a third party or designed by the flight school itself. The TSA initial training program will be available electronically on the TSA General Aviation (GA) Web site at *http://www.tsa.gov/public/display?theme=180* or by contacting one of the individuals in the **FOR FURTHER INFORMATION CONTACT** section above.

If a flight school decides to use an alternative initial training program, the program must, at a minimum, meet the following criteria. First, it must require active participation by the flight school employee receiving the training. Studies have shown that individuals retain information better when they receive the information in an interactive format than when they receive the information passively (for example, by merely listening to a lecture).[22] Thus, the TSA initial training program is interactive, and TSA believes that any alternative initial training program must be as well.

Second, any alternative initial training program must provide situational scenarios that require the employee to assess specific situations and determine appropriate courses of action. For example, the program could give an employee a specific situation or set of circumstances involving behavior by a flight school student and ask the employee if the behavior is suspicious and, if so, what the employee should do in response, such as inform a supervisor, contact the TSA General Aviation Hotline (1–866–GA–SECURE),[23] or notify local law enforcement.

Third, any alternative initial training program must enable an employee to identify the proper uniforms and other identification (if any are required at the flight school) for employees at that flight school or other persons authorized to be on the grounds of that flight school. The training also must enable an employee to identify suspicious behavior.

Suspicious behavior may include: excessive or unusual interest in restricted airspace or restricted ground structures, such as repeated requests to fly over nuclear power plants; unusual questions or interest regarding aircraft capabilities; aeronautical knowledge inconsistent with the student's existing airman credentialing; sudden termination of the student's instruction; loitering on the flight school grounds for extended periods of time; and entering ''authorized access only'' areas without permission.

An alternative program also must enable an employee to identify suspicious circumstances regarding aircraft, including unusual modifications to aircraft, such as the strengthening of landing gear, changes to tail number, stripping the aircraft of seating or equipment; damage to propeller locks or other parts of an aircraft that is inconsistent with the pilot training or aircraft flight log; and dangerous or hazardous cargo loaded into an aircraft.

Fourth, an alternative program must provide an employee with appropriate responses for the employee to make in specific situations. Appropriate responses include: taking no action, if a situation does not warrant action; questioning an individual, if his or her behavior may be considered suspicious; informing a supervisor, if a situation or an individual's behavior warrants further investigation; calling the TSA General Aviation Hotline; or calling local law enforcement, if a situation or an individual's behavior could pose an immediate threat. Thus, an alternative program, in complying with these requirements and the interactive requirement discussed above, could give an employee a specific situation, ask the employee to respond, and then provide the appropriate response (or responses, if more than one response could be appropriate) and some discussion of why that response is appropriate.

Finally, an alternative training program must contain any other information relevant to security measures or procedures at the flight school, including applicable information in the TSA Information Publication ''Security Guidelines for General Aviation Airports.'' [24]; For example, if a flight school requires aircraft to have propeller locks after a certain time or has access codes for certain areas of the flight school grounds, that information must be included in the alternative training program.

TSA notes that many flight schools currently conduct some form of security awareness training for their employees. If the training used by a flight school meets the criteria for an alternative initial security awareness training program in this IFR, and the flight school has documentation that meets the recordkeeping requirements in this IFR for each employee who has received such training, TSA may consider the flight school to be in compliance with the initial security awareness training requirements of the IFR. However, the flight school still must comply with the recurrent training requirements in the

[22] *See, e.g.,* John Tagg, The Learning Paradigm College (2003); European Commission, Green Paper, *Living and Working in the Information Society: People First* (1996).

[23] TSA, in partnership with the National Response Center, launched the toll-free General Aviation (GA) Hotline on December 2, 2002. The GA Hotline serves as a centralized reporting system for GA pilots, airport operators, and maintenance technicians wishing to report suspicious activity at their airfield. The GA Hotline was developed in coordination with the Aircraft Owners and Pilots Association (AOPA) to complement the AOPA Airport Watch Program. This program will enlist the support of some 550,000 GA pilots to watch for and report suspicious activities that might have security implications.

[24] These guidelines are intended to provide GA airport owners, operators and users with a set of federally endorsed security enhancements and methods for implementation. TSA issued the guidelines on May 17, 2004, and they are available on the TSA Web site at *www.tsa.gov.*

IFR. A flight school is not required to submit its alternative initial security awareness training program to TSA for approval before the flight school uses the program to comply with the rule. Rather, TSA officials may audit a flight school's alternative training program when inspecting the flight school.

TSA notes that a flight school may have its employees receive computer-based security awareness training on an individual basis or may use an instructor to conduct the training to a group of employees. If a flight school elects to use an instructor to conduct the training for its employees, the flight school must first ensure that the instructor has successfully completed the initial flight school security awareness training program offered by TSA or an alternative initial training program that meets the criteria discussed above.

b. Recurrent Security Awareness Training

The IFR requires a flight school to ensure that each flight school employee receives recurrent security awareness training each year in the same month as the month in which the flight school employee received initial security awareness training. For example, if a flight school employee received initial security awareness training in April 2004, he or she must received recurrent security awareness training in April 2005.

TSA will not provide a recurrent security awareness training program.[25] Thus, a flight school will be required either to design its own recurrent security awareness training program or use a program designed by a third party. At a minimum, a recurrent training program must contain information regarding any new security measures or procedures implemented by the flight school, such as the installation of fencing, new uniforms or identification for employees, or the implementation of new entry procedures. A recurrent training program also must contain information regarding any security incidents at the flight school, and any lessons learned as a result of such incidents. For example, if any of the flight school's aircraft was broken into or stolen, the recurrent training program must discuss the incident and any measures the flight school has taken to address the incident or prevent such incidents in the future.

A recurrent training program also must contain any new threats posed by or incidents involving general aviation (GA) aircraft. TSA will post information regarding general threats posed by GA aircraft and major incidents involving GA aircraft on the TSA GA Web site at *http://www.tsa.gov/public/display?theme=180.* A flight school must use that information in its recurrent training program. Finally, a recurrent training program must contain any new TSA guidelines or recommendations concerning the security of GA aircraft, airports, or flight schools. This information also will be available on the TSA GA Web site.

3. Documentation, Recordkeeping, and Inspection

The IFR requires a flight school to issue a document to each flight school employee when the employee receives initial security awareness training and each time the employee receives recurrent security awareness training. This requirement will enable TSA inspectors to verify that each flight school employee has received the required security awareness training each year.

The document issued to the employee must contain the employee's name and a distinct identification number for the employee to enable both the flight school and TSA inspectors to track each employee's security awareness training. The document also must indicate the date on which the flight school employee received the security awareness training; the name of the instructor who conducted the training, if an instructor conducted the training; a statement certifying that the flight school employee received the security awareness training; the type of training received, whether initial or recurrent; and if the flight school uses an alternative initial training program, a statement certifying that the program meets the criteria in 49 CFR 1552.23 (c). Finally, the flight school employee and an authorized official of the flight school must sign the document.

The IFR also requires a flight school to establish and maintain the following records for one year after an individual no longer is a flight school employee: (1) a copy of the document issued to the employee when he or she received initial training and each time he or she received recurrent training; (2) a copy of the alternative initial security awareness training program, if the flight school used in the past or currently uses an alternative program instead of the TSA program.

Finally, the IFR requires a flight school to allow officials authorized by TSA and the FAA to inspect the records required under this section. TSA officials will be conducting inspections of flight schools to ensure that they are complying with this rule. Flight schools that are not in compliance may be subject to civil penalties under 49 U.S.C. 46301 and 49 CFR part 1503.

IV. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), a Federal agency must obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. This interim final rule contains information collection activities subject to the PRA. Accordingly, the following information requirements are being submitted to OMB for its review.

Title: Flight Training for Aliens and Other Designated Individuals; Security Awareness Training for Flight School Employees.

Summary: In response to recent statutory requirements, TSA is requiring certain flight schools to notify TSA when aliens or other individuals designated by TSA apply for flight training. TSA also is establishing standards relating to the security threat assessments TSA will conduct to determine whether such individuals are a threat to aviation or national security, and thus prohibited from receiving flight training. Finally, TSA is establishing standards relating to security awareness training for certain flight school employees, to include keeping records of all such training.

Use of: Flight schools will be required to provide TSA with identifying information and fingerprints on aliens and other designated individuals when such persons apply for flight training and then keep this information on file for the required amount of time. TSA will use this information to perform background checks in order to assess if the flight training applicant poses a security risk. In addition, flight schools will be required to provide TSA with a photograph of the applicant when the applicant arrives at the flight school for training. TSA will use the photograph to help ensure that the person who is cleared for training by TSA is the person who receives the training. Flight schools will also be required to keep applicant records as well as records of security awareness training provided to employees so that TSA may inspect those records when necessary.

Respondents (including number of): The likely respondents to this information requirement are aliens and other designated individuals who apply

[25] TSA will provide information concerning any unclassified security events or issues at flight schools or GA facilities over the previous year. Flight schools should use that information as part of their recurrent training program.

for pilot training and the flight schools they attend, which is estimated to be approximately 35,000 applicants every year and 3,000 flight schools nationwide for a total of 38,000 respondents.

Frequency: The respondents are required to provide the subject information every time an alien or other designated individual applies for pilot training as described in this rule, which is estimated to be an average of 2 times per year for a total of 70,000 responses. Records are required to be kept from the time they are created.

Annual Burden Estimate: It is estimated that it will take 45 minutes per application to provide TSA with all the information required by this rule, for a total burden of 52,500 hours per year. Records must be retained from the time they are created, and it is estimated that each of the 3,000 flight schools will carry an annual recordkeeping burden of 104 hours, for a total of 312,000 hours. Thus, the combined hour burden associated with this collection is estimated to be 364,500 hours annually. In regard to costs, it is estimated that there will be an annual cost burden of $205 per application, which includes the TSA fee of $130 and an estimated average cost of collecting, transmitting, and processing fingerprints of $75, for a total annual burden of $14.35 million. The yearly record keeping costs for each of the estimated 3,000 flight schools for retaining records on both pilot applicants and employee security training is estimated to be $1,500, for a total annual burden of $4.5 million. Thus the combined cost burden associated with this collection is estimated to be $18.85 million annually.

The agency is soliciting comments to—

(1) Evaluate whether the information requirement is necessary for theproper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may submit comments on the information collection requirement by November 19, 2004, and should direct them via fax to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: DHS–TSA Desk Officer, at (202) 395–5806. Comments to OMB are most useful if received within 30 days of publication.

As protection provided by the Paperwork Reduction Act, as amended, 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 number for this information collection is 1652–0021.

Rulemaking Analyses and Notices

Economic Analyses

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to OMB review and to the requirements of the Executive Order. This rulemaking is not an economically significant regulatory action as defined by Executive Order 12866. The rulemaking does not meet the threshold of the $100 million effect on the economy annually. However, the action may be considered significant because there is significant public interest in security since the events of September 11, 2001.

This rulemaking does not constitute a barrier to international trade, and does not impose an unfunded mandate on state, local, or tribal governments, or the private sector. These analyses, which are summarized below, are discussed in greater detail in the regulatory evaluation, which will be placed in the docket of this rulemaking. TSA welcomes comments on the costs analyzed or any additional costs that could be considered.

Costs

The IFR will impose costs on flight training providers for collecting and transmitting identifying information for flight training candidates, providing security awareness training for employees, and retaining and maintaining information on flight training candidates and records on security awareness training. The IFR also will impose a fee on flight training candidates to defray the costs of security threat assessments that TSA will perform. In addition, flight school candidates will incur the cost of fingerprinting and opportunity costs in providing the required information. TSA will incur costs for transferring and modifying the DOJ's FTCCP system, and for conducting security threat assessments.

The IFR does not impose any new costs for requirements that already exist under the DOJ rule. Because candidates for flight training in the operation of aircraft with MTOW of 12,500 pounds or greater were subject to the DOJ rule, the IFR will only impose costs (other than the cost of the TSA fee) on candidates who were not subject to the DOJ rule, that is candidates for flight training in the operation of aircraft with an MTOW of less than 12,500 pounds.

TSA does not expect a significant impact on the overall demand for U.S. flight school training as a result of the IFR. The IFR only impacts alien candidates for U.S. flight training, and the population of alien candidates is small relative to the total number of U.S. flight students. Costs will increase for alien flight school candidates. However, TSA assumes that the impact on demand will not be significant because U.S. flight training is considered to be the global standard, and it is comparatively less expensive to obtain a pilot's certificate in the U.S. than in most foreign countries. This assumption is discussed further in the full regulatory evaluation.

TSA estimates the total quantified costs at $180.2 million undiscounted over a 10-year period and an average of $18.0 million annually. When discounted at 7 percent, the total quantified cost impact is $134.0 million over a 10-year period, and $13.4 million annually. The total costs of compliance are summarized in the table below.

TOTAL COSTS OF COMPLIANCE

[In thousands of dollars]

Year	Collection & transmission of information	Fingerprinting	Opportunity costs	Photo transmission	Data retention	Security awareness training	Government	Total annual costs	7% Discount factor	Present value
2005	$388.2	$2,850	$769.5	$370	$4,500.0	$900	$3,040.8	$ 9,855.0	1.0000	$12,800.0
2006	388.2	2,850	769.5	100	4,500.0	900	9,087.4	18,495.0	0.9346	17,400.0
2007	388.2	2,850	769.5	100	4,500.0	900	9,087.4	18,495.0	0.8734	16,200.0
2008	388.2	2,850	769.5	100	4,500.0	900	9,087.4	18,495.0	0.8163	15,200.0
2009	388.2	2,850	769.5	100	4,500.0	900	9,087.4	18,495.0	0.7629	14,200.0
2010	388.2	2,850	769.5	100	4,500.0	900	9,087.4	18,495.0	0.7130	13,300.0
2011	388.2	2,850	769.5	100	4,500.0	900	9,087.4	18,495.0	0.6663	12,400.0
2012	388.2	2,850	769.5	100	4,500.0	900	9,087.4	18,495.0	0.6227	11,600.0
2013	388.2	2,850	769.5	100	4,500.0	900	9,087.4	18,495.0	0.5820	10,800.0
2014	388.2	2,850	769.5	100	4,500.0	900	9,087.4	18,495.0	0.5439	10,100.0
Total	3,882.0	28,500	7,695.0	1,270	45,000.0	9,000	84,827.4	180,170.0	.....	134,000.0

Benefits

The primary benefit of the IFR will be increased protection of U.S. citizens and property from acts of terrorism. The requirements of this IFR decrease the chance that a flight school student who poses a security threat will be able to receive flight training from a U.S. flight school in the operation of aircraft that could be used in an act of terrorism. The IFR will provide greater security benefits than the DOJ rule because it applies to aliens seeking training on smaller aircraft, and it also improves security at flight schools through the requirement for security awareness training.

It is difficult to predict the probability of a terrorist attack. Even when the probability is low, the impact of such an attack can be devastating. As illustrated by the September 11, 2001 terrorist attacks, loss of life and property damage could be tremendous. Another possible impact of a terrorist attack could be an economic shock or slowdown. Although not quantified, the avoidance of such impacts is a major benefit of the enhanced security of the IFR.

Comparison of Costs and Benefits

The IFR will provide the American people with added protection from terrorist attempts to become proficient in the operation of aircraft for the purpose of attacking American persons and property. The costs to achieve the level of security protection have been measured and are estimated at $134 million over the next 10 years when discounted at 7 percent. While it is impossible to quantify the benefits of the increased security that is expected to be achieved by the requirements established in this IFR, TSA believes that the actions that this IFR prescribes will achieve the goals anticipated by the legislation that established the requirement. TSA believes reducing opportunities for terrorists to attain the ability to use aircraft as weapons against America and its allies justifies the investment that this IFR requires. Moreover, this IFR strives to achieve these goals in the least costly manner possible.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980, as amended, was enacted by Congress to ensure that small entities (small businesses, small not-for-profit organizations, and small governmental jurisdictions) are not unnecessarily or disproportionately burdened by Federal regulations. The RFA requires agencies to review rules to determine if they have ''a significant economic impact on a substantial number of small entities.'' However, Section 603(a) of the Regulatory Flexibility Act requires that agencies prepare and make available for public comment an initial regulatory flexibility analysis whenever the agency is required by law to publish a general notice of proposed rulemaking. Section 612 of Vision 100—Century of Aviation Reauthorization Act requires TSA to promulgate an interim final rule implementing the requirements of Section 612. Accordingly, TSA has not prepared an initial regulatory flexibility analysis for this rule.

Unfunded Mandates Assessment

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written assessment is needed, section 205 of the UMRA generally requires TSA 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 objective of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows TSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation of the reasons that alternative was not adopted.

The UMRA does not apply to a regulatory action in which no notice of proposed rulemaking is published, as is the case in this rulemaking action. Accordingly, TSA has not prepared a statement under the UMRA.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. TSA has assessed the potential effects of this rule and has determined that the rule will impose the same costs on domestic and

international entities, and thus has a neutral trade impact.

Executive Order 13132 (Federalism)

Executive Order 13132 requires TSA 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.''

We have analyzed this rule under the principles and criteria of Executive Order 13132. We have determined that this action 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, and therefore will not have federalism implications.

Environmental Analysis

TSA has reviewed this rule for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action would not have a significant effect on the human environment.

Energy Impact

TSA has assessed the energy impact of this rule in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362). We have determined that this rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 49 CFR Part 1552

Aircraft, Aliens, Alien pilots, Aviation safety, Education facilities, Fees, Flight schools, Flight school employees, Flight training, Reporting and recordkeeping requirements, Security awareness training, Security measures, Security threat assessment.

The Amendments

■ For the reasons set forth in the preamble, the Transportation Security Administration amends chapter XII, subchapter C, of title 49, Code of Federal Regulations, by adding a new part 1552 to read as follows:

PART 1552—FLIGHT SCHOOLS

Subpart A—Flight Training for Aliens and Other Designated Individuals

Sec.
1552.1 Scope and definitions.
1552.3 Flight training.
1552.5 Fees.

Subpart B—Flight School Security Awareness Training

1552.21 Scope and definitions.
1552.23 Security awareness training programs.
1552.25 Documentation, recordkeeping, and inspection.

Authority: 49 U.S.C. 114, 44939.

Subpart A—Flight Training for Aliens and Other Designated Individuals

§ 1552.1 Scope and definitions.

(a) *Scope.* This subpart applies to flight schools that provide instruction under 49 U.S.C. Subtitle VII, Part A, in the operation of aircraft or aircraft simulators, and individuals who apply to obtain such instruction or who receive such instruction.

(b) *Definitions.* As used in this part:

Aircraft simulator means a flight simulator or flight training device, as those terms are defined at 14 CFR 61.1.

Alien means any person not a citizen or national of the United States.

Candidate means an alien or other individual designated by TSA who applies for flight training or recurrent training. It does not include an individual endorsed by the Department of Defense for flight training.

Day means a day from Monday through Friday, including State and local holidays but not Federal holidays, for any time period less than 11 days specified in this part. For any time period greater than 11 days, day means calendar day.

Demonstration flight for marketing purposes means a flight for the purpose of demonstrating an aircraft's or aircraft simulator's capabilities or characteristics to a potential purchaser, or to an agent of a potential purchaser, of the aircraft or simulator, including an acceptance flight after an aircraft manufacturer delivers an aircraft to a purchaser.

Flight school means any pilot school, flight training center, air carrier flight training facility, or flight instructor certificated under 14 CFR part 61, 121, 135, 141, or 142; or any other person or entity that provides instruction under 49 U.S.C. Subtitle VII, Part A, in the operation of any aircraft or aircraft simulator.

Flight training means instruction received from a flight school in an aircraft or aircraft simulator. Flight training does not include recurrent training, ground training, a demonstration flight for marketing purposes, or any military training provided by the Department of Defense, the U.S. Coast Guard, or an entity under contract with the Department of Defense or U.S. Coast Guard.

Ground training means classroom or computer-based instruction in the operation of aircraft, aircraft systems, or cockpit procedures. Ground training does not include instruction in an aircraft simulator.

National of the United States means a person who, though not a citizen of the United States, owes permanent allegiance to the United States, and includes a citizen of American Samoa or Swains Island.

Recurrent training means periodic training required under 14 CFR part 61, 121,125, 135, or Subpart K of part 91. Recurrent training does not include training that would enable a candidate who has a certificate or type rating for a particular aircraft to receive a certificate or type rating for another aircraft.

§ 1552.3 Flight training.

This section describes the procedures a flight school must follow before providing flight training.

(a) *Category 1—Regular processing for flight training on aircraft more than 12,500 pounds.* A flight school may not provide flight training in the operation of any aircraft having a maximum certificated takeoff weight of more than 12,500 pounds to a candidate, except for a candidate who receives expedited processing under paragraph (b) of this section, unless—

(1) The flight school has first notified TSA that the candidate has requested such flight training.

(2) The candidate has submitted to TSA, in a form and manner acceptable to TSA, the following:

(i) The candidate's full name, including any aliases used by the candidate or variations in the spelling of the candidate's name;

(ii) A unique candidate identification number created by TSA;

(iii) A copy of the candidate's current, unexpired passport and visa;

(iv) The candidate's passport and visa information, including all current and previous passports and visas held by the candidate and all the information necessary to obtain a passport and visa;

(v) The candidate's country of birth, current country or countries of citizenship, and each previous country of citizenship, if any;

(vi) The candidate's actual date of birth or, if the candidate does not know

his or her date of birth, the approximate date of birth used consistently by the candidate for his or her passport or visa;

(vii) The candidate's requested dates of training and the location of the training;

(viii) The type of training for which the candidate is applying, including the aircraft type rating the candidate would be eligible to obtain upon completion of the training;

(ix) The candidate's current U.S. pilot certificate, certificate number, and type rating, if any;

(x) Except as provided in paragraph (k) of this section, the candidate's fingerprints, in accordance with paragraph (f) of this section;

(xi) The candidate's current address and phone number and each address for the 5 years prior to the date of the candidate's application;

(xii) The candidate's gender; and

(xiii) Any fee required under this part.

(3) The flight school has submitted to TSA, in a form and manner acceptable to TSA, a photograph of the candidate taken when the candidate arrives at the flight school for flight training.

(4) TSA has informed the flight school that the candidate does not pose a threat to aviation or national security, or more than 30 days have elapsed since TSA received all of the information specified in paragraph (a)(2) of this section.

(5) The flight school begins the candidate's flight training within 180 days of either event specified in paragraph (a)(4) of this section.

(b) *Category 2—Expedited processing for flight training on aircraft more than 12,500 pounds.* (1) A flight school may not provide flight training in the operation of any aircraft having a maximum certificated takeoff weight of more than 12,500 pounds to a candidate who meets any of the criteria of paragraph (b)(2) of this section unless—

(i) The flight school has first notified TSA that the candidate has requested such flight training.

(ii) The candidate has submitted to TSA, in a form and manner acceptable to TSA:

(A) The information and fee required under paragraph (a)(2) of this section; and

(B) The reason the candidate is eligible for expedited processing under paragraph (b)(2) of this section and information that establishes that the candidate is eligible for expedited processing.

(iii) The flight school has submitted to TSA, in a form and manner acceptable to TSA, a photograph of the candidate taken when the candidate arrives at the flight school for flight training.

(iv) TSA has informed the flight school that the candidate does not pose a threat to aviation or national security or more than 5 days have elapsed since TSA received all of the information specified in paragraph (a)(2) of this section.

(v) The flight school begins the candidate's flight training within 180 days of either event specified in paragraph (b)(1)(iv) of this section.

(2) A candidate is eligible for expedited processing if he or she—

(i) Holds an airman's certificate from a foreign country that is recognized by the Federal Aviation Administration or a military agency of the United States, and that permits the candidate to operate a multi-engine aircraft that has a certificated takeoff weight of more than 12,500 pounds;

(ii) Is employed by a foreign air carrier that operates under 14 CFR part 129 and has a security program approved under 49 CFR part 1546;

(iii) Has unescorted access authority to a secured area of an airport under 49 U.S.C. 44936(a)(1)(A)(ii), 49 CFR 1542.209, or 49 CFR 1544.229;

(iv) Is a flightcrew member who has successfully completed a criminal history records check in accordance with 49 CFR 1544.230; or

(v) Is part of a class of individuals that TSA has determined poses a minimal threat to aviation or national security because of the flight training already possessed by that class of individuals.

(c) *Category 3—Flight training on aircraft 12,500 pounds or less.* A flight school may not provide flight training in the operation of any aircraft having a maximum certificated takeoff weight of 12,500 pounds or less to a candidate unless—

(1) The flight school has first notified TSA that the candidate has requested such flight training.

(2) The candidate has submitted to TSA, in a form and manner acceptable to TSA:

(i) The information required under paragraph (a)(2) of this section; and

(ii) Any other information required by TSA.

(3) The flight school has submitted to TSA, in a form and manner acceptable to TSA, a photograph of the candidate taken when the candidate arrives at the flight school for flight training.

(4) The flight school begins the candidate's flight training within 180 days of the date the candidate submitted the information required under paragraph (a)(2) of this section to TSA.

(d) *Category 4—Recurrent training for all aircraft.* Prior to beginning recurrent training for a candidate, a flight school must—

(1) Notify TSA that the candidate has requested such recurrent training; and

(2) Submit to TSA, in a form and manner acceptable to TSA:

(i) The candidate's full name, including any aliases used by the candidate or variations in the spelling of the candidate's name;

(ii) Any unique student identification number issued to the candidate by the Department of Justice or TSA;

(iii) A copy of the candidate's current, unexpired passport and visa;

(iv) The candidate's current U.S. pilot certificate, certificate number, and type rating(s);

(v) The type of training for which the candidate is applying;

(vi) The date of the candidate's prior recurrent training, if any, and a copy of the training form documenting that recurrent training;

(vii) The candidate's requested dates of training; and

(viii) A photograph of the candidate taken when the candidate arrives at the flight school for flight training.

(e) *Interruption of flight training.* A flight school must immediately terminate or cancel a candidate's flight training if TSA notifies the flight school at any time that the candidate poses a threat to aviation or national security.

(f) *Fingerprints.* (1) Fingerprints submitted in accordance with this subpart must be collected—

(i) By United States Government personnel at a United States embassy or consulate; or

(ii) By another entity approved by TSA.

(2) A candidate must confirm his or her identity to the individual or agency collecting his or her fingerprints under paragraph (f)(1) of this section by providing the individual or agency his or her:

(i) Passport;

(ii) Resident alien card; or

(iii) U.S. driver's license.

(3) A candidate must pay any fee imposed by the agency taking his or her fingerprints.

(g) *General requirements.* (1) *False statements.* If a candidate makes a knowing and willful false statement, or omits a material fact, when submitting the information required under this part, the candidate may be—

(i) Subject to fine or imprisonment or both under 18 U.S.C. 1001;

(ii) Denied approval for flight training under this section; and

(iii) Subject to other enforcement action, as appropriate.

(2) *Preliminary approval.* For purposes of facilitating a candidate's visa process with the U.S. Department of State, TSA may inform a flight school and a candidate that the candidate has received preliminary approval for flight

training based on information submitted by the flight school or the candidate under this section. A flight school may then issue an I–20 form to the candidate to present with the candidate's visa application. Preliminary approval does not initiate the waiting period under paragraph (a)(3) or (b)(1)(iii) of this section or the period in which a flight school must initiate a candidate's training after receiving TSA approval under paragraph (a)(4) or (b)(1)(iv) of this section.

(h) *U.S. citizens and nationals and Department of Defense endorsees.* A flight school must determine whether an individual is a citizen or national of the United States, or a Department of Defense endorsee, prior to providing flight training to the individual.

(1) *U.S. citizens and nationals.* To establish U.S. citizenship or nationality an individual must present to the flight school his or her:

(i) Valid, unexpired United States passport;

(ii) Original or government-issued certified birth certificate of the United States, American Samoa, or Swains Island, together with a government-issued picture identification of the individual;

(iii) Original United States naturalization certificate with raised seal, or a Certificate of Naturalization issued by the U.S. Citizenship and Immigration Services (USCIS) or the U.S. Immigration and Naturalization Service (INS) (Form N–550 or Form N–570), together with a government-issued picture identification of the individual;

(iv) Original certification of birth abroad with raised seal, U.S. Department of State Form FS–545, or U.S. Department of State Form DS–1350, together with a government-issued picture identification of the individual;

(v) Original certificate of United States citizenship with raised seal, a Certificate of United States Citizenship issued by the USCIS or INS (Form N–560 or Form N–561), or a Certificate of Repatriation issued by the USCIS or INS (Form N–581), together with a government–issued picture identification of the individual; or

(vi) In the case of flight training provided to a Federal employee (including military personnel) pursuant to a contract between a Federal agency and a flight school, the agency's written certification as to its employee's United States citizenship or nationality, together with the employee's government-issued credentials or other Federally-issued picture identification.

(2) *Department of Defense endorsees.* To establish that an individual has been endorsed by the U.S. Department of Defense for flight training, the individual must present to the flight school a written statement acceptable to TSA from the U.S. Department of Defense attaché in the individual's country of residence together with a government-issued picture identification of the individual.

(i) *Recordkeeping requirements.* A flight school must—

(1) Maintain the following information for a minimum of 5 years:

(i) For each candidate:

(A) A copy of the photograph required under paragraph (a)(3), (b)(1)(iii), (c)(3), or (d)(2)(viii) of this section; and

(B) A copy of the approval sent by TSA confirming the candidate's eligibility for flight training.

(ii) For a Category 1, Category 2, or Category 3 candidate, a copy of the information required under paragraph (a)(2) of this section, except the information in paragraph (a)(2)(x).

(iii) For a Category 4 candidate, a copy of the information required under paragraph (d)(2) of this section.

(iv) For an individual who is a United States citizen or national, a copy of the information required under paragraph (h)(1) of this section.

(v) For an individual who has been endorsed by the U.S. Department of Defense for flight training, a copy of the information required under paragraph (h)(2) of this section.

(vi) A record of all fees paid to TSA in accordance with this part.

(2) Permit TSA and the Federal Aviation Administration to inspect the records required by paragraph (i)(1) of this section during reasonable business hours.

(j) *Candidates subject to the Department of Justice rule.* A candidate who submits a completed Flight Training Candidate Checks Program form and fingerprints to the Department of Justice in accordance with 28 CFR part 105 before September 28, 2004, or a later date specified by TSA, is processed in accordance with the requirements of that part. If TSA specifies a date later than the compliance dates identified in this part, individuals and flight schools who comply with 28 CFR part 105 up to that date will be considered to be in compliance with the requirements of this part.

(k) *Additional or missed flight training.* (1) A Category 1, 2, or 3 candidate who has been approved for flight training by TSA may take additional flight training without submitting fingerprints as specified in paragraph (a)(2)(x) of this section if the candidate:

(i) Submits all other information required in paragraph (a)(2) of this section, including the fee; and

(ii) Waits for TSA approval or until the applicable waiting period expires before initiating the additional flight training.

(2) A Category 1, 2, or 3 candidate who is approved for flight training by TSA, but does not initiate that flight training within 180 days, may reapply for flight training without submitting fingerprints as specified in paragraph (a)(2)(x) of this section if the candidate submits all other information required in paragraph (a)(2) of this section, including the fee.

§ 1552.5 Fees.

(a) *Imposition of fees.* The following fee is required for TSA to conduct a security threat assessment for a candidate for flight training subject to the requirements of § 1552.3: $130.

(b) *Remittance of fees.* (1) A candidate must remit the fee required under this subpart to TSA, in a form and manner acceptable to TSA, each time the candidate or the flight school is required to submit the information required under § 1552.3 to TSA.

(2) TSA will not issue any fee refunds, unless a fee was paid in error.

Subpart B—Flight School Security Awareness Training

§ 1552.21 Scope and definitions.

(a) *Scope.* This subpart applies to flight schools that provide instruction under 49 U.S.C. Subtitle VII, Part A, in the operation of aircraft or aircraft simulators, and to employees of such flight schools.

(b) *Definitions:* As used in this subpart:

Flight school employee means a flight instructor or ground instructor certificated under 14 CFR part 61, 141, or 142; a chief instructor certificated under 14 CFR part 141; a director of training certificated under 14 CFR part 142; or any other person employed by a flight school, including an independent contractor, who has direct contact with a flight school student. This includes an independent or solo flight instructor certificated under 14 CFR part 61.

§ 1552.23 Security awareness training programs.

(a) *General.* A flight school must ensure that—

(1) Each of its flight school employees receives initial and recurrent security awareness training in accordance with this subpart; and

(2) If an instructor is conducting the initial security awareness training

program, the instructor has first successfully completed the initial flight school security awareness training program offered by TSA or an alternative initial flight school security awareness training program that meets the criteria of paragraph (c) of this section.

(b) *Initial security awareness training program.* (1) A flight school must ensure that—

(i) Each flight school employee employed on January 18, 2005 receives initial security awareness training in accordance with this subpart by January 18, 2005; and

(ii) Each flight school employee hired after January 18, 2005 receives initial security awareness training within 60 days of being hired.

(2) In complying with paragraph (b)(2) of this section, a flight school may use either:

(i) The initial flight school security awareness training program offered by TSA; or

(ii) An alternative initial flight school security awareness training program that meets the criteria of paragraph (c) of this section.

(c) *Alternative initial security awareness training program.* At a minimum, an alternative initial security awareness training program must—

(1) Require active participation by the flight school employee receiving the training.

(2) Provide situational scenarios requiring the flight school employee receiving the training to assess specific situations and determine appropriate courses of action.

(3) Contain information that enables a flight school employee to identify—

(i) Uniforms and other identification, if any are required at the flight school, for flight school employees or other persons authorized to be on the flight school grounds.

(ii) Behavior by clients and customers that may be considered suspicious, including, but not limited to:

(A) Excessive or unusual interest in restricted airspace or restricted ground structures;

(B) Unusual questions or interest regarding aircraft capabilities;

(C) Aeronautical knowledge inconsistent with the client or customer's existing airman credentialing; and

(D) Sudden termination of the client or customer's instruction.

(iii) Behavior by other on-site persons that may be considered suspicious, including, but not limited to:

(A) Loitering on the flight school grounds for extended periods of time; and

(B) Entering ''authorized access only'' areas without permission.

(iv) Circumstances regarding aircraft that may be considered suspicious, including, but not limited to:

(A) Unusual modifications to aircraft, such as the strengthening of landing gear, changes to the tail number, or stripping of the aircraft of seating or equipment;

(B) Damage to propeller locks or other parts of an aircraft that is inconsistent with the pilot training or aircraft flight log; and

(C) Dangerous or hazardous cargo loaded into an aircraft.

(v) Appropriate responses for the employee to specific situations, including:

(A) Taking no action, if a situation does not warrant action;

(B) Questioning an individual, if his or her behavior may be considered suspicious;

(C) Informing a supervisor, if a situation or an individual's behavior warrants further investigation;

(D) Calling the TSA General Aviation Hotline; or

(E) Calling local law enforcement, if a situation or an individual's behavior could pose an immediate threat.

(vi) Any other information relevant to security measures or procedures at the flight school, including applicable information in the TSA Information Publication ''Security Guidelines for General Aviation Airports''.

(d) *Recurrent security awareness training program.* (1) A flight school must ensure that each flight school employee receives recurrent security awareness training each year in the same month as the month the flight school employee received initial security awareness training in accordance with this subpart.

(2) At a minimum, a recurrent security awareness training program must contain information regarding—

(i) Any new security measures or procedures implemented by the flight school;

(ii) Any security incidents at the flight school, and any lessons learned as a result of such incidents;

(iii) Any new threats posed by or incidents involving general aviation aircraft contained on the TSA Web site; and

(iv) Any new TSA guidelines or recommendations concerning the security of general aviation aircraft, airports, or flight schools.

§ 1552.25 Documentation, recordkeeping, and inspection.

(a) *Documentation.* A flight school must issue a document to each flight school employee each time the flight school employee receives initial or recurrent security awareness training in accordance with this subpart. The document must—

(1) Contain the flight school employee's name and a distinct identification number.

(2) Indicate the date on which the flight school employee received the security awareness training.

(3) Contain the name of the instructor who conducted the training, if any.

(4) Contain a statement certifying that the flight school employee received the security awareness training.

(5) Indicate the type of training received, initial or recurrent.

(6) Contain a statement certifying that the alternative training program used by the flight school meets the criteria in 49 CFR 1552.23(c), if the flight school uses an alternative training program to comply with this subpart.

(7) Be signed by the flight school employee and an authorized official of the flight school.

(b) *Recordkeeping requirements.* A flight school must establish and maintain the following records for one year after an individual no longer is a flight school employee:

(1) A copy of the document required by paragraph (a) of this section for the initial and each recurrent security awareness training conducted for each flight school employee in accordance with this subpart; and

(2) The alternative flight school security awareness training program used by the flight school, if the flight school uses such a program.

(c) *Inspection.* A flight school must permit TSA and the Federal Aviation Administration to inspect the records required under paragraph (b) of this section during reasonable business hours.

Issued in Arlington, Virginia, on September 16, 2004.

David M. Stone,

Assistant Secretary.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

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CFR CHECKLIST

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150–189	(869–050–00156–0)	49.00	July 1, 2003
190–259	(869–050–00157–8)	39.00	July 1, 2003
260–265	(869–050–00158–6)	50.00	July 1, 2003
266–299	(869–050–00159–4)	50.00	July 1, 2003
300–399	(869–050–00160–8)	42.00	July 1, 2003
400–424	(869–052–00163–5)	56.00	[8]July 1, 2004
425–699	(869–050–00162–4)	61.00	July 1, 2003
700–789	(869–050–00163–2)	61.00	July 1, 2003
790–End	(869–050–00164–1)	58.00	July 1, 2003
41 Chapters:			
1, 1–1 to 1–10		13.00	[3]July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3–6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
8		4.50	[3]July 1, 1984
9		13.00	[3]July 1, 1984
10–17		9.50	[3]July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3]July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3]July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3]July 1, 1984
19–100		13.00	[3]July 1, 1984
1–100	(869–052–00167–8)	24.00	July 1, 2004
101	(869–052–00168–6)	21.00	July 1, 2004
102–200	(869–050–00167–5)	50.00	July 1, 2003
201–End	(869–050–00168–3)	22.00	July 1, 2003
42 Parts:			
1–399	(869–050–00169–1)	60.00	Oct. 1, 2003
400–429	(869–050–00170–5)	62.00	Oct. 1, 2003
430–End	(869–050–00171–3)	64.00	Oct. 1, 2003
43 Parts:			
1–999	(869–050–00172–1)	55.00	Oct. 1, 2003
1000–end	(869–050–00173–0)	62.00	Oct. 1, 2003
44	(869–050–00174–8)	50.00	Oct. 1, 2003
45 Parts:			
1–199	(869–050–00175–6)	60.00	Oct. 1, 2003
200–499	(869–050–00176–4)	33.00	Oct. 1, 2003
500–1199	(869–050–00177–2)	50.00	Oct. 1, 2003
1200–End	(869–050–00178–1)	60.00	Oct. 1, 2003
46 Parts:			
1–40	(869–050–00179–9)	46.00	Oct. 1, 2003
41–69	(869–050–00180–2)	39.00	Oct. 1, 2003
70–89	(869–050–00181–1)	14.00	Oct. 1, 2003
90–139	(869–050–00182–9)	44.00	Oct. 1, 2003
140–155	(869–050–00183–7)	25.00	Oct. 1, 2003
156–165	(869–050–00184–5)	34.00	Oct. 1, 2003
166–199	(869–050–00185–3)	46.00	Oct. 1, 2003
200–499	(869–050–00186–1)	39.00	Oct. 1, 2003
500–End	(869–050–00187–0)	25.00	Oct. 1, 2003
47 Parts:			
0–19	(869–050–00188–8)	61.00	Oct. 1, 2003
20–39	(869–050–00189–6)	45.00	Oct. 1, 2003
40–69	(869–050–00190–0)	39.00	Oct. 1, 2003
70–79	(869–050–00191–8)	61.00	Oct. 1, 2003
80–End	(869–050–00192–6)	61.00	Oct. 1, 2003
48 Chapters:			
1 (Parts 1–51)	(869–050–00193–4)	63.00	Oct. 1, 2003
1 (Parts 52–99)	(869–050–00194–2)	50.00	Oct. 1, 2003
2 (Parts 201–299)	(869–050–00195–1)	55.00	Oct. 1, 2003
3–6	(869–050–00196–9)	33.00	Oct. 1, 2003
7–14	(869–050–00197–7)	61.00	Oct. 1, 2003
15–28	(869–050–00198–5)	57.00	Oct. 1, 2003
29–End	(869–050–00199–3)	38.00	[9]Oct. 1, 2003
49 Parts:			
1–99	(869–050–00200–1)	60.00	Oct. 1, 2003

Title	Stock Number	Price	Revision Date
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186–199	(869–050–00202–7)	20.00	Oct. 1, 2003
200–399	(869–050–00203–5)	64.00	Oct. 1, 2003
400–599	(869–050–00204–3)	63.00	Oct. 1, 2003
600–999	(869–050–00205–1)	22.00	Oct. 1, 2003
1000–1199	(869–050–00206–0)	26.00	Oct. 1, 2003
1200–End	(869–048–00207–8)	33.00	Oct. 1, 2003
50 Parts:			
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17.1–17.95	(869–050–00209–4)	62.00	Oct. 1, 2003
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17.99(i)–end	(869–050–00211–6)	50.00	Oct. 1, 2003
18–199	(869–050–00212–4)	42.00	Oct. 1, 2003
200–599	(869–050–00213–2)	44.00	Oct. 1, 2003
600–End	(869–050–00214–1)	61.00	Oct. 1, 2003
CFR Index and Findings Aids	(869–052–00049–3)	62.00	Jan. 1, 2004
Complete 2004 CFR set		1,342.00	2004
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Complete set (one-time mailing)		298.00	2002

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2003, through January 1, 2004. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2004. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2004. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2004. The CFR volume issued as of July 1, 2002 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2003, through July 1, 2004. The CFR volume issued as of July 1, 2003 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2003. The CFR volume issued as of October 1, 2001 should be retained.