AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Federal Register

11–23–04 Tuesday
Vol. 69 No. 225 Nov. 23, 2004

Pages 68053–68236

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.archives.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.gpoaccess.gov/nara,* available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 69 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**

General online information **202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

What's NEW!

Regulations.gov, the award-winning Federal eRulemaking Portal

Regulations.gov is the one-stop U.S. Government web site that makes it easy to participate in the regulatory process.

Try this fast and reliable resource to find all rules published in the *Federal Register* that are currently open for public comment. Submit comments to agencies by filling out a simple web form, or use available e-mail addresses and web sites.

The Regulations.gov e-democracy initiative is brought to you by NARA, GPO, EPA and their eRulemaking partners.

Visit the web site at: **http://www.regulations.gov**

Printed on recycled paper.

Contents

Federal Register

Vol. 69, No. 225

Tuesday, November 23, 2004

Agricultural Research Service
NOTICES
Committees; establishment, renewal, termination, etc.:
Biotechnology and 21st Century Agriculture Advisory Committee, 68124
Meetings:
Biotechnology and 21st Century Agriculture Advisory Committee, 68124–68125

Agriculture Department
See Agricultural Research Service

Bonneville Power Administration
NOTICES
Environmental statements; notice of intent:
Transmission Business Line; comprehensive policy; termination, 68138–68139
Environmental statements; record of decision:
Cherry Point Cogeneration Project, 68139

Children and Families Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 68152–68153

Coast Guard
RULES
Drawbridge operations:
New Jersey, 68079
New York, 68079–68080
Shipping and transportation; technical, organizational, and conforming amendments; correction, 68089–68090

Commerce Department
See Foreign-Trade Zones Board
See Industry and Security Bureau
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Postsecondary Internship Program, 68125–68126

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
China, 68133–68134
Export visa requirements; certification, waivers, etc.:
China, 68134–68135

Defense Department
NOTICES
Meetings:
Women in Services Advisory Committee, 68135

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 68135–68136

Employment and Training Administration
RULES
Alien temporary employment labor certification process:
Nonimmigrant workers (H-1B); Labor condition applications and requirments, 68221–68229
NOTICES
Adjustment assistance:
Amcor Plastube, Inc., 68175–68176
Delta Mills, 68176
General Cable, 68176–68177
Glass Group, Inc., 68177
Honeywell/Hobbs Corp., et al., 68177–68178
VF Intimates, LP, 68179

Employment Standards Administration
See Wage and Hour Division

Energy Department
See Bonneville Power Administration
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Environmental Management Site-Specific Advisory Board—
Fernald Site, OH, 68136–68137
Natural gas exportation and importation:
Boise White Paper, LLC, et al., 68137–68138
Cascade Natural Gas Corp., 68138

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania, 68080–68089
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 68140–68143
Committees; establishment, renewal, termination, etc.:
Children's Environmental Exposure Research Study Review Panel, 68143–68144

Federal Aviation Administration
RULES
Class D airspace, 68074
Class E airspace, 68074–68075
Restricted areas, 68075–68076
PROPOSED RULES
Class E airspace, 68104–68105
VOR Federal airways, 68105–68106
NOTICES
Air traffic operating and flight rules, etc.:
High density airports; takeoff and landing slots, slot exemption lottery, and slot allocation procedures—
Washington Reagan National Airport, VA, 68209

Federal Deposit Insurance Corporation
RULES
Deposit insurance coverage:
Assessments; certified statements, 68068–68073

Federal Election Commission
RULES
Political committee status, 68056–68068

NOTICES
Agency information collection activities; proposals, submissions, and approvals, 68144–68145

Federal Energy Regulatory Commission
PROPOSED RULES
Alaska Natural Gas Pipeline Act:
Conduct of open seasons for natural gas transportation projects, 68106–68110
NOTICES
Applications, hearings, determinations, etc.:
Midwest Independent Transmission System Operator, Inc., 68139–68140
PPL Brunner Island, LLC, et al., 68140

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 68146
Formations, acquisitions, and mergers, 68146–68147

Federal Trade Commission
NOTICES
Premerger notification waiting periods; early terminations, 68147–68149
Prohibited trade practices:
Petco Animal Supplies, Inc., 68149–68151
Sunbelt Lending Services, Inc., 68151–68152

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
New York, 68127

General Services Administration
PROPOSED RULES
Federal travel:
Relocation allowance, 68111–68119

Government Ethics Office
RULES
Government ethics:
Post-employment conflict of interest restrictions; departmental component designations revision, 68053–68056

Health and Human Services Department
See Children and Families Administration
See National Institutes of Health

Homeland Security Department
See Coast Guard
See U.S. Citizenship and Immigration Services

Housing and Urban Development Department
PROPOSED RULES
Practice and procedure:
Applications for grants and other financial assistance; electronic submission, 68217–68219
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 68156–68157

Indian Affairs Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 68157

Industry and Security Bureau
RULES
Export administration regulations:
License conditions; licensee's responsiblity to communicate, 68076–68077
NOTICES
Chemical Weapons Convention; impact on commercial activities involving Schedule I chemicals through 2004 CY, 68127–68128

Interior Department
See Indian Affairs Bureau
See National Park Service

Internal Revenue Service
RULES
Income taxes:
Retirement plans; required distributions; correction, 68077
PROPOSED RULES
Income taxes:
Charitable contributions, allocation and apportionment of deductions; hearing cancellation, 68110–68111

International Trade Commission
NOTICES
Antidumping:
Petroleum wax candles from—
China, 68175

Labor Department
See Employment and Training Administration
See Mine Safety and Health Administration
See Wage and Hour Division

Mine Safety and Health Administration
RULES
Coal mine safety and health:
Underground mines—
Electric motor-driven mine equipment and accessories and high-voltage longwall equipment standards; correction, 68078–68079

National Institute of Standards and Technology
NOTICES
Information processing standards, Federal:
Personal identification verification for Federal employees and contractors, 68128–68129
Meetings:
Advanced Technology Visiting Committee, 68129

National Institutes of Health
NOTICES
Meetings:
National Institute of Allergy and Infectious Diseases, 68153
Patent licenses; non-exclusive, exclusive, or partially exclusive:
N & N Scientific, 68153–68154

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Demersal shelf rockfish, 68095–68103
Atlantic highly migratory species—
Atlantic bluefin tuna, 68094–68095
Atlantic swordfish, 68090–68094

PROPOSED RULES
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Red snapper, 68119–68123
Marine mammals:
Bottlenose Dolphin Take Reduction Plan
Correction, 68215
NOTICES
Meetings:
Mid-Atlantic Fishery Management Council, 68129–68130
New England Fishery Management Council, 68130–68131
North Pacific Fishery Management Council, 68131
South Atlantic Fishery Management Council, 68131–68133

National Park Service
NOTICES
Environmental statements; availability, etc.:
Padre Island National Seashore, TX, 68157–68158
National Register of Historic Places:
Pending nominations, 68158–68159
Native American human remains, funerary objects; inventory, repatriation, etc.:
Agriculture Department—
Angeles National Forest, Arcadia, CA, 68159–68160
Archeological Research Laboratory, University of Texas, Austin, TX, 68160–68162
Colorado Historical Society, Denver, CO, 68162–68169
Interior Department—
Guadalupe Mountains National Park, Salt Flat, TX, 68169–68171
Milwaukee Public Museum, Milwaukee, WI, 68171–68172
Milwaukee Public Museum, Milwaukee, WI, 68172–68173
Peabody Museum of Archeology and Ethnology, Harvard University, Cambridge, MA, 68173–68174
University of Massachusetts, Amherst, MA, 68174–68175

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
E.I. Du Pont De Nemours & Co., Inc., 68179
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 68180–68193

Personnel Management Office
NOTICES
Excepted service:
Schedules A, B, and C; positions placed or revoked—
Consolidated list, 68193–68194

Research and Special Programs Administration
NOTICES
Hazardous materials:
Applications; exemptions, renewals, etc., 68209–68212
Safety advisories; compressed gas cylinders; unauthorized markings, 68212

Securities and Exchange Commission
RULES
Securities:
Annual and quarterly reports; acceleration of periodic filing dates and disclosure concerning web site access to reports, 68231–68236
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 68194–68195
Public Utility Holding Company Act of 1935 filings, 68196–68197
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 68197–68200
Fixed Income Clearing Corp., 68200–68201
National Association of Securities Dealers, Inc., 68202–68204
Pacific Exchange, Inc., 68205–68206
Philadelphia Stock Exchange, Inc., 68206–68209
Applications, hearings, determinations, etc.:
Aberdeen Global Income Fund, Inc., 68195–68196

Small Business Administration
NOTICES
Disaster and emergency areas:
North Carolina, 68209

Surface Transportation Board
NOTICES
Rail carriers:
Waybill data; release for use, 68212–68213
Railroad operation, acquisition, construction, etc.:
Burlington Northern & Santa Fe Railway Co., 68213

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

Transportation Department
See Federal Aviation Administration
See Research and Special Programs Administration
See Surface Transportation Board

Treasury Department
See Internal Revenue Service

U.S. Citizenship and Immigration Services
NOTICES
Immigration:
H-1B petition procedures; numerical limitation information, 68154–68156

Veterans Affairs Department
NOTICES
Meetings:
Environmental Hazards Advisory Committee, 68213
Real property; enhanced use lease:
Chicago, IL; Veterans' Affairs Lakeside property, 68214

Wage and Hour Division
RULES
Alien temporary employment labor certification process:
Nonimmigrant workers (H-1B); Labor condition applications and requirments, 68221–68229

Separate Parts In This Issue

Part II
Housing and Urban Development Department, 68217–68219

Part III
Labor Department, Employment and Training Administration; Labor Department, Wage and Hour Division, 68221–68229

Part IV
Securities and Exchange Commission, 68231–68236

Reader Aids

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

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

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

5 CFR
2641.....68053

11 CFR
100.....68056
102.....68056
104.....68056
106.....68056

12 CFR
327.....68068

14 CFR
71 (2 documents) 68074
73.....68075

Proposed Rules:
71 (2 documents) 68104, 68105

15 CFR
750.....68076

17 CFR
210.....68232
240.....68232
249.....68232

18 CFR

Proposed Rules:
157.....68106

20 CFR
655.....68222

24 CFR

Proposed Rules:
5.....68218

26 CFR
1.....68077

Proposed Rules:
1.....68110

30 CFR
18.....68078

33 CFR
117 (2 documents) 68079

40 CFR
52.....68080

41 CFR

Proposed Rules:
300-3.....68111
302-2.....68111
302-3.....68111
302-4.....68111
302-5.....68111
302-6.....68111
302-7.....68111
302-9.....68111
302-11.....68111
302-15.....68111

46 CFR
10.....68089
12.....68089
28.....68089
30.....68089

50 CFR
635 (2 documents) 68090, 68094
679.....68095

Proposed Rules:
223.....68215
229.....68215
622.....68119

Rules and Regulations

Federal Register
Vol. 69, No. 225
Tuesday, November 23, 2004

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

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

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2641

RIN 3209–AA14

Post-Employment Conflict of Interest Restrictions; Revision of Departmental Component Designations

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; amendments.

SUMMARY: The Office of Government Ethics is revising the component designations of several departments, for purposes of the one-year post-employment conflict of interest restriction for senior employees, at 18 U.S.C. 207(c). OGE is adding several new component designations, revoking several existing component designations, and changing the names of others, based upon the recommendations of the departments concerned.

EFFECTIVE DATES: This final rule is effective November 23, 2004, except for the removals of certain designated components from appendix B to part 2641, as set forth in amendatory paragraph 3 below, which are effective on February 22, 2005.

FOR FURTHER INFORMATION CONTACT: W. Gregg Burgess, Associate General Counsel, Office of Government Ethics; telephone: (202) 482–9300; TDD: (202) 482–9293; fax: (202) 482–9237.

SUPPLEMENTARY INFORMATION:

A. Substantive Discussion

18 U.S.C. 207(c) prohibits a former ''senior employee,'' for a period of one year, from knowingly making, with the intent to influence, any communication to or appearance before an employee of the department or agency in which he served in any capacity during the one-year period prior to termination from senior service, if that communication or appearance is made on behalf of any other person, except the United States. For purposes of 18 U.S.C. 207, a ''senior employee'' is any individual whose rate of basic pay is equal to or greater than 86.5 percent of the rate for level II of the Executive Schedule.

The representational bar of 18 U.S.C. 207(c) usually extends to the whole of any department or agency in which a former senior employee served in any capacity during the year prior to termination from a senior employee position. However, 18 U.S.C. 207(h) provides that whenever the Director of OGE determines that an agency or bureau within a department or agency in the executive branch exercises functions which are distinct and separate from the remaining functions of the department or agency and there exists no potential for use of undue influence or unfair advantage based on past Government service, the Director shall by rule designate such agency or bureau as a separate department or agency. As a result, a former senior employee who served in a ''parent'' department or agency is not barred by 18 U.S.C. 207(c) from making communications to or appearances before any employee of any designated component of that parent, but is barred as to employees of that parent or of other components that have not been designated. Moreover, a former senior employee who served in a designated component of a parent department or agency is barred from communicating to or making an appearance before any employee of that component, but is not barred as to any employee of the parent or of any other component.

Under 18 U.S.C. 207(h)(2), component designations do not apply to persons employed at a rate of pay specified in or fixed according to subchapter II of 5 U.S.C. chapter 53 (the Executive Schedule). Component designations are listed in appendix B of 5 CFR part 2641.

The Director of OGE regularly reviews the component designations and determinations and, in consultation with the department or agency concerned, makes such additions and deletions as are necessary. As specified in 5 CFR 2641.201(e)(3)(iii), the Director ''shall by rule make or revoke a component designation after considering the recommendation of the designated agency ethics official.'' Section 2641.201(e)(6) further provides that, before designating an agency component as distinct and separate for purposes of 18 U.S.C. 207(c), the Director must find that there exists no potential for use by former senior employees of undue influence or unfair advantage based on past Government service, and that the component is an agency or bureau within a department or agency that exercises functions which are distinct and separate from the functions of the parent department or agency and from the functions of other components of that parent.

Pursuant to the procedures prescribed in 5 CFR 2641.201(e), several departments have forwarded written requests to OGE that their department's listing in appendix B be amended. After carefully reviewing the requested changes in light of the criteria in 18 U.S.C. 207(h) as implemented in 5 CFR 2641.201(e)(6), the current Acting Director of OGE has determined to grant all the requests and amend appendix B to 5 CFR part 2641 as explained below.

Department of Commerce

The Department of Commerce (DOC) has advised that the name of one DOC component currently listed in appendix B of part 2641 has been changed. According to DOC, the ''Bureau of Export Administration'' is now the ''Bureau of Industry and Security.'' Therefore, the OGE Acting Director is amending the DOC listing in appendix B to reflect the current name of this component.

Department of Defense

The Department of Defense (DOD) has advised that the name of one DOD designated component currently listed in appendix B of part 2641 has been changed. According to DOD, the ''National Imagery and Mapping Agency'' is now the ''National Geospatial-Intelligence Agency.'' Therefore, the Acting Director is amending the DOD listing in appendix B to reflect the current name of this component.

Department of Homeland Security

The Department of Homeland Security (DHS), which was created in the Homeland Security Act of 2002, Public Law No. 107–296, 116 Stat. 2135, has requested that the Director designate seven distinct and separate components in DHS for purposes of 18 U.S.C. 207(c). DHS has requested such designations

for its Directorates of ''Emergency Preparedness and Response'' (EPR), Information Analysis and Infrastructure Protection (IAIP), and ''Science and Technology'' (S&T), as each was created by separate statutory provision under the Homeland Security Act of 2002. Largely composed of the Federal Emergency Management Agency (FEMA), the EPR was established to ensure that the nation is prepared for catastrophes, including natural disasters and terrorist assaults. The IAIP was established to merge the capability to identify and to assess a broad range of intelligence information from Federal, State, and local authorities concerning threats to the homeland. The S&T functions to serve as the primary research and development arm of DHS to organize the scientific and technological resources of the nation to prevent or mitigate the effects of catastrophic terrorism.

In addition to these Directorates, DHS has requested the following distinct and separate component designations: the ''Federal Law Enforcement Training Center'' (FLETC), the ''Transportation Security Administration'' (TSA), the ''United States Coast Guard'' (USCG), and the ''United States Secret Service'' (USSS), all four of which were previously designated as distinct and separate components at other departments. The Homeland Security Act of 2002 established that each of these four entities shall be maintained as a distinct and separate entity within DHS.

The Acting Director is granting the requests of DHS and amending appendix B to part 2641 to add a listing for DHS as a parent department and to designate the requested seven distinct and separate components in the DHS listing.

Department of Justice

The Department of Justice (DOJ) has requested revocation of the ''Immigration and Naturalization Service'' (INS) currently listed in appendix B of part 2641 as a designated component of DOJ, because the functions of INS have been transferred to the Department of Homeland Security. In addition, in accordance with the Homeland Security Act of 2002, the ''Bureau of Alcohol, Tobacco, Firearms and Explosives'' (ATF) has been established as a new distinct entity within DOJ. Therefore, DOJ has also requested that this bureau be designated a distinct and separate component of DOJ. The Acting Director is granting the DOJ requests and therefore is amending the DOJ listing in appendix B to part 2641 to revoke the component designation of INS and to designate ATF as a new component.

Department of Labor

The Department of Labor (DOL) has advised that the name of one DOL designated component currently listed in appendix B of part 2641 has been changed. According to DOL, the ''Pension and Welfare Benefits Administration'' is now the ''Employee Benefits Security Administration.'' Therefore, the Acting Director is amending the DOL listing in appendix B to part 2641 to reflect the current name of this component.

Department of Transportation

The Department of Transportation (DOT) has advised that the functions of the Transportation Security Administration (TSA) and the United States Coast Guard (USCG) have been transferred to the Department of Homeland Security in accordance with the Homeland Security Act of 2002, and has therefore requested that the component designations of TSA and USCG be revoked. The Acting Director is granting the DOT requests and is accordingly revising the DOT listing in appendix B to part 2641 to revoke the component designations of TSA and USCG.

Department of the Treasury

In connection with the changes pursuant to the Homeland Security Act of 2002, the Department of the Treasury (Treasury) has requested that the following four component designations be revoked, since these components no longer are a part of Treasury: ''Bureau of Alcohol, Tobacco and Firearms'' (BATF), ''Federal Law Enforcement Training Center'' (FLETC), ''United States Customs Service'' (USCG), and ''United States Secret Service'' (USSS). The Acting Director is granting Treasury's requests and is accordingly revising the Treasury listing in appendix B to part 2641 to revoke the component designations of BATF, FLETC, USCG and USSS.

Further, Treasury has requested that the recently-established Treasury bureau, the ''Alcohol and Tobacco Tax and Trade Bureau'' (TTB) be designated a distinct and separate component of Treasury. TTB was established under the Homeland Security Act of 2002. TTB has all the authorities related to the administration and enforcement of the provisions of the tax code relative to alcohol, tobacco, firearms and certain other excise taxes. The Acting Director is granting this additional Treasury request and is accordingly amending the Treasury listing in appendix B to part 2641 to add TTB as a designated component.

Effective Dates

As indicated in 5 CFR 2641.201(e)(4), a designation ''shall be effective as of the effective date of the rule that creates the designation, but shall not be effective as to employees who terminated senior service prior to that date.'' Initial designations were effective as of January 1, 1991. The effective date of subsequent designations is indicated by means of parenthetical entries in appendix B to part 2641. The new component designations made by this rulemaking document, as well as the component name changes being reflected herein (which do not affect their underlying component designation dates), are effective November 23, 2004.

As also provided in 5 CFR 2641.201(e)(4), a revocation is effective 90 days after the effective date of the rule that revokes the designation. Accordingly, the component designation revocations made in this rulemaking will take effect February 22, 2005. Revocations are not effective as to any individual terminating senior service prior to the expiration of the 90-day period.

B. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553, as the Acting Director of the Office of Government Ethics, I find that good cause exists for waiving the general requirements for notice of proposed rulemaking, opportunity for public comment, and, except as to the component revocations (see the preamble discussion above), a 30-day delayed effective date. It is important and in the public interest that the designation or revocation herein by OGE of the specified separate departmental components, as well as the component name changes, all of which reflect the current organization of the concerned departments and, as to the new component designations, relieve a restriction, be published in the **Federal Register** and take effect as promptly as possible.

Regulatory Flexibility Act

As Acting Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rule will not have a significant economic impact on a substantial number of small entities because it affects only Federal departments and agencies and current and former Federal employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this rule because it does not contain information collection requirements that require the approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), the final rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Congressional Review Act

The Office of Government Ethics has determined that this rulemaking involves a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and will submit a report thereon to the U.S. Senate, House of Representatives and General Accounting Office in accordance with that law at the same time this rulemaking document is sent to the Office of the Federal Register for publication in the **Federal Register**

Executive Order 12866

In promulgating this final rule, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This rule has not been reviewed by the Office of Management and Budget under that Executive order since it deals with agency organization, management, and personnel matters and is not ''significant'' under the order.

Executive Order 12988

As Acting Director of the Office of Government Ethics, I have reviewed this rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

List of Subjects in 5 CFR Part 2641

Conflict of interests, Government employees.

Approved: November 16, 2004.

Marilyn L. Glynn,

Acting Director, Office of Government Ethics.

■ Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending 5 CFR part 2641 as follows:

PART 2641—POST-EMPLOYMENT CONFLICT OF INTEREST RESTRICTIONS

■ 1. The authority citation for part 2641 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 207; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

■ 2. Effective November 23, 2004, appendix B to part 2641 is amended by revising the listings for the Department of Commerce, the Department of Defense, the Department of Justice, the Department of Labor, the Department of Transportation and the Department of the Treasury, and by adding a listing for the Department of Homeland Security, to read as follows:

Appendix B to Part 2641—Agency Components for Purposes of 18 U.S.C. 207(c)

* * * * *

Parent: Department of Commerce

Components

Bureau of the Census
Bureau of Industry and Security (formerly Bureau of Export Administration) (effective January 28, 1992)
Economic Development Administration
International Trade Administration
Minority Business Development Administration
National Oceanic and Atmospheric Administration
National Telecommunications and Information Administration
Patent and Trademark Office
Technology Administration (effective January 28, 1992)

Parent: Department of Defense

Components

Department of the Air Force
Department of the Army
Department of the Navy
Defense Information Systems Agency
Defense Intelligence Agency
Defense Logistics Agency
Defense Threat Reduction Agency (effective February 5, 1999)
National Geospatial-Intelligence Agency (formerly National Imagery and Mapping Agency) (effective May 16, 1997)
National Reconnaissance Office (effective January 30, 2003)
National Security Agency

* * * * *

Parent: Department of Homeland Security

Components

Directorate of Emergency Preparedness and Response (effective November 23, 2004.)
Directorate of Information Analysis and Infrastructure Protection (effective November 23, 2004.)
Directorate of Science and Technology (effective November 23, 2004.)
Federal Law Enforcement Training Center (effective November 23, 2004.)
Transportation Security Administration (effective November 23, 2004.)
United States Secret Service (effective November 23, 2004.)
United States Coast Guard (effective November 23, 2004.)

* * * * *

Parent: Department of Justice

Components

Antitrust Division
Bureau of Alcohol, Tobacco, Firearms and Explosives (effective November 23, 2004.)
Bureau of Prisons (including Federal Prison Industries, Inc.)
Civil Division
Civil Rights Division
Community Relations Service
Criminal Division
Drug Enforcement Administration
Environment and Natural Resources Division
Executive Office for United States Attorneys [2] (effective January 28, 1992)
Executive Office for United States Trustees [3] (effective January 28, 1992)
Federal Bureau of Investigation
Foreign Claims Settlement Commission
Immigration and Naturalization Service (expiring February 22, 2005.)
Independent Counsel appointed by the Attorney General
Office of Justice Programs
Office of the Pardon Attorney (effective January 28, 1992)
Offices of the United States Attorney (94) [4]
Offices of the United States Trustee (21) [5]
Tax Division
United States Marshals Service (effective May 16, 1997)
United States Parole Commission

Parent: Department of Labor

Components

Bureau of Labor Statistics
Employee Benefits Security Administration (formerly Pension and Welfare Benefits Administration) (effective May 16, 1997)
Employment and Training Administration
Employment Standards Administration
Mine Safety and Health Administration
Occupational Safety and Health Administration
Office of Disability Employment Policy (effective January 30, 2003)

* * * * *

[2] The Executive Office for United States Attorneys shall not be considered separate from any Office of the United States Attorney for a judicial district, but only from other designated components of the Department of Justice.

[3] The Executive Office for United States Trustees shall not be considered separate from any Office of the United States Trustee for a region, but only from other designated components of the Department of Justice.

[4] Each Office of the United States Attorney for a judicial district shall be considered a separate component from each other such office.

[5] Each Office of the United States Trustee for a region shall be considered a separate component from each other such office.

Parent: Department of Transportation

Components

Federal Aviation Administration
Federal Highway Administration
Federal Motor Carrier Safety Administration (effective January 30, 2003)
Federal Railroad Administration
Federal Transit Administration
Maritime Administration
National Highway Traffic Safety Administration
Saint Lawrence Seaway Development Corporation
Surface Transportation Board (effective May 16, 1997)
Transportation Security Administration (effective January 30, 2003, expiring February 22, 2005.)
United States Coast Guard (expiring February 22, 2005.)

Parent: Department of the Treasury

Components

Alcohol and Tobacco Tax and Trade Bureau (effective November 23, 2004.)
Bureau of Alcohol, Tobacco and Firearms (expiring February 22, 2005.)
Bureau of Engraving and Printing
Bureau of the Mint
Bureau of the Public Debt
Comptroller of the Currency
Federal Law Enforcement Training Center (expiring February 22, 2005.)
Financial Crimes Enforcement Network (FinCEN) (effective January 30, 2003)
Financial Management Service
Internal Revenue Service
Office of Thrift Supervision
United States Custom Service (expiring February 22, 2005.)
United States Secret Service (expiring February 22, 2005.)

■ 3. Effective February 22, 2005, appendix B to part 2641 is further amended by:

■ A. Removing the Immigration and Naturalization Service from the listing for the Department of Justice;

■ B. Removing the Transportation Security Agency and the United States Coast Guard from the listing for the Department of Transportation; and

■ C. Removing the Bureau of Alcohol, Tobacco and Firearms, the Federal Law Enforcement Training Center, the United States Custom Service and the United States Secret Service from the listing for the Department of the Treasury.

[FR Doc. 04–25897 Filed 11–22–04; 8:45 am]

BILLING CODE 6345–02–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 102, 104, and 106

[Notice 2004–15]

Political Committee Status, Definition of Contribution, and Allocation for Separate Segregated Funds and Nonconnected Committees

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission (''Commission'') is revising portions of its regulations regarding the definition of ''contribution'' and the allocation of certain costs and expenses by separate segregated funds (''SSFs'') and nonconnected committees. A new rule explains when funds received in response to certain communications by any person must be treated as ''contributions.'' In the allocation regulations, the final rules eliminate the previous allocation formula under which SSFs and nonconnected committees used the ''funds expended'' method to calculate a ratio for use of Federal and non-Federal funds for administrative and generic voter drive expenses, replacing it with a flat 50% minimum. These rules also spell out how SSFs and nonconnected committees must pay for voter drives and certain public communications. Other changes proposed previously regarding the definitions of ''political committee'' and ''expenditure'' are not being adopted. Further information is provided in the supplementary information that follows.

DATES: Effective January 1, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Assistant General Counsel, Mr. J. Duane Pugh Jr., Senior Attorney, Mr. Richard T. Ewell, Attorney, Mr. Robert M. Knop, Attorney, or Ms. Margaret G. Perl, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission published a Notice of Proposed Rulemaking on March 11, 2004. *See* Notice of Proposed Rulemaking on Political Committee Status, 69 FR 11736 (Mar. 11, 2004) (''NPRM''). Written comments were due by April 5, 2004 for those commenters who wished to testify at the Commission hearing on these proposed rules, and by April 9, 2004 for commenters who did not wish to testify. The NPRM addressed a number of proposed changes to 11 CFR parts 100, 102, 104, 106 and 114. The Commission received over 100,000 comments from the public with regard to the various issues raised in the NPRM. The comments are available at *http://www.fec.gov/register.htm* under ''Political Committee Status.'' The Commission held a public hearing on April 14 and 15, 2004, at which 31 witnesses testified. A transcript of the public hearing is also available at *http://www.fec.gov/register.htm* under ''Political Committee Status.'' For the purposes of this document, the terms ''comment'' and ''commenter'' apply to both written comments and oral testimony at the public hearing.

Under the Administrative Procedure Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules that follows were transmitted to Congress on November 18, 2004.

Explanation and Justification

Solicitations

The Commission is adopting one addition to the regulatory definition of ''contribution'' in 11 CFR part 100, subpart B. This addition comports with the statutory standard for ''contribution'' by reaching payments ''made * * * for the purpose of influencing any election for Federal office.'' 2 U.S.C. 431(8)(A)(i); 11 CFR 100.51 and 100.52. This addition has several exceptions to avoid sweeping too broadly.

11 CFR 100.57—Funds Received in Response to Solicitations

Section 100.57 is a new rule that explains when funds received in response to certain communications by any person must be treated as ''contributions'' under FECA. Paragraph (a) sets out the general rule, paragraphs (b) and (c) create two specific exceptions: Paragraph (b) addresses certain allocable solicitations, and paragraph (c) addresses joint fundraisers. These rules in new 11 CFR 100.57 apply to all political committees, corporations, labor organizations, partnerships, organizations and other entities that are ''persons'' under the Federal Election Campaign Act of 1971, as amended (''FECA''). *See* 2 U.S.C. 431(11). The rules apply without regard to tax status, so they reach all FECA ''persons,'' including, for example, entities described in or operating under section 501(c)(3), 501(c)(4), and 527 of the Internal Revenue Code.

1. 11 CFR 100.57(a)—Treatment as Contributions

New section 100.57(a) classifies all funds provided in response to a communication as contributions under the FECA if the communication indicates that any portion of the funds received will be used to support or oppose the election of a clearly identified Federal candidate.

Most political committees and other organizations pay careful attention to communications with potential donors. These communications are commonly the cornerstone of the relationship between a group and its donors, and their effectiveness is vital to almost all organizations. Many groups' fundraising solicitations will say nothing of an electoral objective regarding the use of funds (*i.e.*, that any funds provided in response to the solicitation will be used to support or oppose the election of clearly identified Federal candidates). Communications that do so, however, plainly seek funds ''for the purpose of influencing Federal elections.'' Thus, the new rule appropriately concludes that such funds are ''contributions'' under FECA.

The standard in new section 100.57 draws support from a 1995 decision of the United States Court of Appeals for the Second Circuit. *FEC* v. *Survival Education Fund, Inc.*, 65 F.3d 285 (2d Cir. 1995). In the Second Circuit case, the court found that a July 1984 letter from two nonprofit issue advocacy groups solicited ''contributions'' under FECA because it included a statement ''[t]hat * * * leaves no doubt that the funds contributed would be used to advocate President Reagan's defeat at the polls, not simply to criticize his policies during the election year.'' *Id.* at 295. According to the court, the critical statement from the mailing was: ''your special election-year contribution today will help us communicate your views to hundreds of thousands of members of the *voting public*, letting them know why Ronald Reagan and his anti-people policies *must* be stopped.'' *Id.* at 289 and 295 (first emphasis added by court, second in original). The mailing described in *FEC* v. *Survival Education Fund*, if used following the effective date of these rules and modified to identify clearly a current Federal candidate, would trigger new section 100.57(a) and would require the group issuing the mailing to treat all the funds received in response to the mailing as ''contributions'' under FECA.

The following are examples of solicitations based on the one that Survival Education Fund used that illustrate how a variation in the text of a solicitation would change the result of whether a solicitation is subject to new section 100.57. A solicitation might state the following:

- The President wants to cut taxes again. Our group has been fighting for lower taxes since 1960, and we will fight for the President's tax cuts. Send us money for our important work.''

Because this solicitation does not indicate that any funds received will be used to support or oppose the election of any candidates, any funds received in response are not subject to new section 100.57.

In contrast, a solicitation that would trigger the new rule might read as follows:

- The President wants to cut taxes again. Our group has been fighting for lower taxes since 1960, and we will fight to give the President four more years to fight for lower taxes. Send us money for our important work.''

Because this solicitation indicates that the funds received will be used to support the election of a Federal candidate (''give the President four more years''), any funds received in response to this solicitation are ''contributions'' under the new rule.

The rule's focus on the planned use of funds leaves the group issuing the communication with complete control over whether its communications will trigger new section 100.57. After determining that a clearly identified candidate is mentioned, new section 100.57 requires an examination of only the text of a communication. The regulation turns on the plain meaning of the words used in the communication and does not encompass implied meanings or understandings. It does not depend on reference to external events, such as the timing or targeting of a solicitation, nor is it limited to solicitations that use specific words or phrases that are similar to a list of illustrative phrases.

It is important to note that if a solicitation indicates that *any portion* of the funds received will be used to support or oppose the election of a clearly identified candidate, new section 100.57(a) applies even if the solicitation states that funds received would be used for other purposes too, subject to the exceptions in new 11 CFR 100.57(b)(2) and (c), discussed below. In addition, a disclaimer stating that any funds received that cannot be treated as contributions, or that cannot be accepted by a political committee or cannot be deposited in a committee's Federal account, will be deposited in the organization's non-Federal account does not negate the application of new section 100.57(a). Thus, an organization that sends out a solicitation that is subject to new section 100.57(a) or (b)(1) with a disclaimer similar to the one described above cannot accept any funds that are not Federal funds (funds that comply with the amount limitations, source prohibitions and reporting requirements of FECA) in response to that solicitation unless it satisfies one of the exceptions in new section 100.57(b)(2) or (c), discussed below.

Further examples of communications that solicit contributions under new section 100.57(a) are:

1. ''*Electing Joe Smith* is crucial to our efforts to preserve the environment. Please send money to us so that we can be successful in this cause.''

2. ''Our group strives to preserve Social Security, and Representative Jones has a great plan to protect this vital program. The Congressman needs *our help to stay in Washington* and implement his plan to save Social Security. Give now to help us fight to save Social Security.''

3. ''Senator Jane Doe voted against a tax package that would have helped working families. Your generous gift will enable us to *make sure Californians remember in November*.''

Because the italicized language in each of these solicitations indicates that the funds received will be used to support the election or defeat of a Federal candidate, any funds received in response to these solicitations are ''contributions'' under the new rule.

In the NPRM, the proposed regulation text for section 100.57 took a different approach. *See* NPRM at 11757. However, new section 100.57(a) is similar to an approach that the Commission sought comment on in the narrative of the NPRM. *See* NPRM at 11743. The commenters did not address the approach discussed in the NPRM's narrative, but some addressed the proposed regulation text for this provision. Those commenters raised objections to proposed section 100.57 based on some of the exemptions from the ''expenditure'' definition for certain communications, as discussed below. The exemption from the ''expenditure'' definition for the costs of internal communications by corporations, labor organizations and membership organizations in 2 U.S.C. 431(9)(B)(iii) and 11 CFR 100.134 is not affected by the Commission's promulgation of new section 100.57.

New section 100.57 does not address when the costs of communications are expenditures under FECA. Instead, it specifies when funds received in response to certain communications must be treated as contributions under

FECA. Thus, a corporation, labor organization or membership organization that issues an internal communication of the type described in new section 100.57 may consider the costs of the communication to be disbursements not subject to FECA requirements under section 100.134, but it must treat any funds received in response as FECA contributions under new section 100.57. If the corporation, labor organization, or membership organization maintains a separate segregated fund (''SSF''), treating the funds received in response to the communication as contributions to the SSF will satisfy new section 100.57.

Section 100.141 exempts from the ''expenditure'' definition any payments made by corporations or labor organizations that are permissible under 11 CFR part 114. Part 114 authorizes the use of non-Federal funds for the costs of various corporate, labor organization, and membership organization communications under certain conditions. *See, e.g.*, 11 CFR 114.3 to 114.8; 2 U.S.C. 441b(b)(2)(A), (b)(2)(B), (b)(4)(B). New section 100.57 does not make the costs of these communications expenditures; instead, it concerns the treatment of funds received in response to certain communications without regard to how the costs of those communications were paid.

One commenter argued that its status as an MCFL-type corporation (a qualified nonprofit corporation allowed to make independent expenditures pursuant to 11 CFR 114.10) means its communications that inform potential contributors of the organization's ability to advocate in connection with a Federal election must be immune from FECA consequences. The Supreme Court holding in *FEC* v. *Massachusetts Citizens for Life*, 479 U.S. 238 (1986) (''*MCFL*''), is not so broad. Indeed, the Court twice has recognized that an *MCFL*-type corporation's independent spending can have FECA consequences. *See id.* at 262 (noting: ''should MCFL's independent spending become so extensive that the organization's major purpose may be regarded as campaign activity, the corporation would be classified as a political committee''); *see also FEC* v. *Beaumont*, 539 U.S. 146, 149 (2003) (holding that the ban on corporate contributions directly to Federal candidates applies to *MCFL*-type corporations). Independent expenditures were the core of the *MCFL* holding, yet the opinion expressly notes that the independent expenditures can trigger political committee status. Nonetheless, the commenter claims that an *MCFL* corporation's ability to explain to potential contributors that it will make independent expenditures on behalf of particular Federal candidates must be immune from consequences under new section 100.57. Just as an *MCFL* corporation's independent expenditures can make it a political committee, an *MCFL* corporation's solicitations can make it the recipient of contributions under the FECA. These contributions will not transform an *MCFL* corporation into a political committee unless its expenditures and contributions become so extensive as to lead to a conclusion that the organization's major purpose is campaign activity. Therefore, new section 100.57 is not inconsistent with *MCFL*.

Some commenters addressed the interplay between this regulation and other proposed rules that the Commission is not adopting, which renders these comments moot.

New section 100.57 provides one example of communications that can generate contributions; it is not an exhaustive list. The rule addresses communications that indicate that the funds received in response will be used to support or oppose the election of a clearly identified Federal candidate. Other communications that do not include such an indication may also generate contributions under FECA. A solicitation that states that the funds received will be used to influence Federal elections will generate FECA contributions, *see* 11 CFR 102.5(a)(2)(ii), even though such a communication would not be subject to new section 100.57 because it does not mention a clearly identified Federal candidate.

Any funds that are ''contributions'' by operation of new section 100.57 are contributions for purposes of the ''political committee'' definition in 2 U.S.C. 431(4)(A) and 11 CFR 100.5(a), which defines a ''political committee'' as any group that makes $1,000 of expenditures or receives $1,000 of contributions during a calendar year. In *Buckley* v. *Valeo*, 424 U.S. 1, 79 (1976), the Supreme Court narrowed the ''political committee'' definition with a ''major purpose'' test, which is discussed further below. The ''major purpose'' test applies in the same way to groups that make or receive $1,000 of contributions and groups that make $1,000 of expenditures.

2. 11 CFR 100.57(b)—Certain Allocable Solicitations

a. 11 CFR 100.57(b)(1)

New section 100.57(b)(1) states that a solicitation that meets section 100.57(a) and refers to a political party so that its costs are allocable under 11 CFR 106.6 or 106.7 is nonetheless subject to the rule that all of its proceeds are ''contributions'' under FECA. This approach is consistent with the ''candidate-driven'' approach in the revised allocation rules, discussed below. *See, e.g., Explanation and Justification* for new 11 CFR 106.6(f)(1).

b. 11 CFR 100.57(b)(2)

New section 100.57(b)(2) provides that where the costs of a solicitation are allocable under 11 CFR 106.1, 106.6 or 106.7, if the solicitation also refers to at least one clearly identified non-Federal candidate, at least fifty percent of the proceeds of the solicitation must be treated as contributions under FECA. *See* new 11 CFR 100.57(b)(2). The funds that satisfy the requirement that fifty percent of the funds received must be contributions under the FECA under new section 100.57(b)(2) must also comply with FECA's amount limitations and source prohibitions and must be reported as contributions if the recipient is a political committee. Thus, if such a solicitation does not yield at least fifty percent in funds that meet the FECA's amount limitations and source prohibitions, then the organization must refund some of the donations to comply with new section 100.57. For example, a political committee might raise a total of $30,000 for its Federal and non-Federal accounts with a fundraising event where the invitation includes a solicitation that is subject to both new section 100.57 and allocation under section 106.6(d). Under new section 100.57(b)(2), the political committee must consider at least fifty percent of the proceeds to be contributions. If the $30,000 total receipts include only $12,000 that are in compliance with FECA's limitations and prohibitions, then the committee may retain only $12,000 in non-Federal funds. The political committee must then refund $6,000 of donations so that fifty percent of the proceeds from this solicitation are contributions.

New section 100.57 does not change the allocation of direct costs of fundraising under current 11 CFR 106.6(d) or 106.7(d)(4). These costs are subject to allocation according to the funds received method. New section 100.57, however, does affect the nature of the funds received from a solicitation and requires that either 100% or at least 50% of the funds received must be contributions. The amount of contributions received, in turn, impacts how the funds received method operates when the fundraising includes a solicitation that is subject to new section 100.57. For example, consider again the situation described above

where a political committee raised $30,000 for its Federal and non-Federal accounts and spent $2,000 in direct costs of fundraising. After the $6,000 refund, the funds received from that event were 50% Federal and 50% non-Federal, so the political committee must use at least $1,000 in Federal funds to pay for direct costs of fundraising under section 106.6(d). In accordance with 11 CFR 106.6(d)(2), the final allocation of the direct costs of fundraising must result in the Committee using at least $1,000 of Federal funds to pay those costs, and prior payments based on an estimated allocation ratio under section 106.6(d)(1) must be adjusted to match the final allocation ratio.

3. 11 CFR 100.57(c)—Joint Fundraisers

New section 100.57(c) concerns joint fundraising. It provides that funds received in response to solicitations conducted between or among the authorized committees of Federal and non-Federal candidates are excepted from being treated entirely as contributions under the new rule in section 100.57. Nevertheless, when a Federal candidate's authorized committee participates in a joint fundraiser, all funds solicited are subject to restrictions imposed on Federal candidates by BCRA. *See* 2 U.S.C. 441i(e)(1) and either 11 CFR 300.61 or 300.62. When a Federal candidate conducts a joint fundraiser with a State candidate, the candidates must divide the receipts according to the written joint fundraising agreement under 11 CFR 102.17. All funds raised for the Federal candidate are subject to 11 CFR 300.61 and all funds raised for the State candidate are subject to 11 CFR 300.62 because of the Federal candidate's participation in the joint fundraiser.

All other joint fundraising pursuant to section 102.17 is subject to new section 100.57(a) and (b). Thus, section 100.57 applies to solicitations for joint fundraisers involving unauthorized political committees or other organizations that are not political committees where the solicitations indicate that any portion of the funds received will be used to support or oppose the election of a clearly identified Federal candidate. If the communication is subject to new section 100.57(a) or (b)(1), then the entire amount of the proceeds of the joint fundraiser must be treated as contributions. Alternatively, if the solicitation is subject to new section 100.57(b)(2) (includes at least one clearly identified Federal candidate and at least one clearly identified non-Federal candidate), then at least fifty percent of the proceeds must be treated as FECA contributions, without regard to which entity receives those contributions. Any joint fundraising agreement must reflect the appropriate division of proceeds and costs in order for the joint fundraising entities to comply with new section 100.57 and in 11 CFR 102.17.

For example, two political committees, called A and B, each with a Federal and non-Federal account, sign a joint fundraising agreement stating that A will receive 75% of the proceeds and B will receive 25% of the proceeds. In accordance with the agreement, they jointly raise $100,000 with a solicitation subject to new section 100.57(b)(2), with A receiving $75,000 and B receiving $25,000. The $100,00 raised by the two committees must be distributed among their Federal and non-Federal accounts in any way that results in at least 50% of the $100,000 total proceeds being deposited in the Federal accounts. For example, A may deposit one third of its $75,000 in proceeds ($25,000) in its Federal account and the remaining two thirds ($50,000) in its non-Federal account. B would then treat all of its $25,000 in proceeds as Federal funds, deposit $25,000 in its Federal account, and nothing in its non-Federal account. All funds deposited in Federal accounts must comply with the amount limitations, source prohibitions, and reporting requirements of the Act. Furthermore, at least 50% of the direct costs of fundraising must be paid for with Federal funds.

Allocation

The Commission is adopting final rules at 11 CFR 106.6 to change the allocation regime for SSFs and nonconnected committees. These final rules establish a simpler bright-line rule providing that administrative expenses, generic voter drives, and certain public communications that refer to a political party must be paid for with at least 50% Federal funds. Under the previous regulations, SSFs and nonconnected committees applied a complex ''funds expended'' formula to arrive at a ratio of Federal funds to total Federal and non-Federal disbursements and then paid for these expenses with allocated amounts from Federal and non-Federal accounts. The previous rules were a source of confusion for some SSFs and nonconnected committees and resulted in time-consuming reporting.

These final rules also establish candidate-driven allocation rules for voter drives and public communications that refer to clearly identified Federal or non-Federal candidates regardless of whether the voter drive or public communication refers to a political party. When the voter drive or public communication refers to clearly identified Federal candidates, but no clearly identified non-Federal candidates, the costs must be paid for with 100% Federal funds. Similarly, when the voter drive or public communication refers to clearly identified non-Federal candidates, but no clearly identified Federal candidates, the costs may be paid 100% from a non-Federal account. Any voter drives or public communications that refer to both clearly identified Federal and non-Federal candidates are subject to the time/space method of allocation under 11 CFR 106.1. The final rules do not change the allocation methods in 11 CFR 106.1, which are based on the benefit reasonably expected to be derived by each candidate. Minor changes are being made in 11 CFR 102.5 and 104.10 to conform to the changes in 11 CFR 106.6.

11 CFR 102.5—Organizations Financing Political Activity in Connection With Federal and Non-Federal Elections, Other Than Through Transfers and Joint Fundraisers: Accounts and Accounting

Section 102.5(a)(1)(i) regulates how political committees, other than national committees, that finance political activity in connection with both Federal and non-Federal elections set up accounts and transfer monies between Federal and non-Federal accounts to pay for these activities. As explained below in the *Explanation and Justification* for revised 11 CFR 106.6, the Commission is revising the rules for SSFs and nonconnected committees regarding allocation of administrative and generic voter drive expenses, and adding rules regarding the payment of costs of certain voter drives and public communications. In order to conform to revised 11 CFR 106.6, the Commission is revising section 102.5(a)(1)(i) to add references to sections 106.6(c) and 106.6(f), which govern transfers from non-Federal to Federal accounts under 11 CFR 102.5(a) to pay for allocable activities.

11 CFR 104.10—Reporting by Separate Segregated Funds and Nonconnected Committees of Expenses Allocated Amount Candidates and Activities

Section 104.10 specifies how SSFs and nonconnected committees must report expenses allocated among candidates and activities pursuant to 11 CFR 106.1 and 106.6. Previously, section 104.10(b)(1) established the reporting requirements for allocation of administrative and generic voter drive expenses under the former ''funds

expended'' method in section 106.6. As explained in greater detail below (*see Explanation and Justification* for revised 11 CFR 106.6), the Commission is revising the rules for SSFs and nonconnected committees and removing the ''funds expended'' method of allocation. In order to conform to the revised 11 CFR 106.6, the Commission is deleting the requirements for reporting allocated expenditures and disbursements under the ''funds expended'' method in section 104.10(b)(1). Instead, revised paragraph (b)(1) states that in each report disclosing a disbursement for administrative expenses, generic voter drives, or public communications that refer to a political party, but do not refer to any clearly identified candidates, the committee shall state the allocation ratio used for these categories of expenses under revised 11 CFR 106.6(c). The committee must report whether it is using the 50% minimum Federal funds required under section 106.6(c) or another percentage of Federal funds (greater than 50%). Because of the simplified approach under the revised allocation provisions of section 106.6 explained below, the reporting obligations for SSFs and nonconnected committees should be easier to meet than the obligations under former section 104.10.

11 CFR 106.6—Payment for Administrative Expenses, Voter Drives and Certain Public Communications

This section specifies how SSFs and nonconnected committees must pay for certain activities that are in connection with Federal elections, non-Federal elections, or both, using Federal and non-Federal accounts established pursuant to 11 CFR 102.5. As noted in section 106.6(a), political committees required to allocate under this section do not include party committees and the authorized committees of any candidate for Federal election. The NPRM included several proposals to amend the allocation provisions in 11 CFR 106.6, which are discussed in greater detail below. NPRM at 11753–55 and 11759–60. Approximately ten commenters provided substantive comments regarding these proposals. In general, the commenters were divided as to the impact of the U.S. Supreme Court decision in *McConnell* v. *FEC*, 540 U.S. 93 (2003), on the allocation rules for SSFs and nonconnected committees. One commenter argued that *McConnell* reaffirmed that allocation between Federal and non-Federal accounts is appropriate for SSFs and nonconnected committees. Other commenters believed that *McConnell's* statements regarding the circumvention of the FECA permitted under the former party committee allocation rules could just as easily be said of the allocation regime for SSFs and nonconnected committees.

After carefully considering these public comments and examining information regarding how the allocation system under former 11 CFR 106.6 has worked over the past ten years, the Commission adopts the following amendments to 11 CFR 106.6: (1) Deleting the ''funds expended'' ratio from 11 CFR 106.6(c) and replacing it with a 50% flat minimum Federal percentage; (2) applying this new 50% Federal minimum to administrative and generic voter drive expenses, as well as to a newly added category of allocable expenses—public communications that refer to a political party but do not refer to any clearly identified Federal or non-Federal candidates; (3) providing for allocation of certain voter drives and public communications that may refer to political parties and do refer to clearly identified candidates, based upon whether the candidates are Federal, non-Federal, or both; and (4) directing SSFs and nonconnected committees to use the time/space allocation method for certain voter drives and public communications that refer to at least one clearly identified Federal candidate, and to at least one clearly identified non-Federal candidate, regardless of whether there is a reference to a political party. Through these final rules, the Commission seeks to enhance compliance with the FECA, to simplify the allocation system, and to make it easier for SSFs and nonconnected committees to comprehend and for the Commission to administer these requirements.

1. 11 CFR 106.6(b)—Payments for Administrative Expenses, Voter Drives and Certain Public Communications

Previous 11 CFR 106.6(b)(1) listed disbursements that must be allocated by SSFs, and previous 11 CFR 106.6(b)(2) listed disbursements that must be allocated by nonconnected committees. Because the allocation method is very similar for both SSFs and nonconnected committees, it is unnecessary to create separate lists for them. Rather, the distinction in the final rules concerning allocation is between the types of disbursements that are subject to allocation and the types of disbursements that are not. Thus, revised 11 CFR 106.6(b)(1) lists the disbursements that SSFs and nonconnected committees must allocate in accordance to revised 11 CFR 106.6(c). Revised 11 CFR 106.6(b)(2) lists the disbursements that are not subject to allocation but must be paid for in accordance with new 11 CFR 106.6(f).

Proposed 11 CFR 106.6(b)(1) would have applied the allocation rules to public communications that promote or support a political party or promote, support, attack or oppose a clearly identified candidate. NPRM at 11759. The final rules do not adopt this approach. Rather, revised section 106.6(b) lists public communications that refer to a political party or a clearly identified candidate. The Commission is adopting the standard in the final rules because it is an objective standard that is easy to administer.

A. 11 CFR 106.6(b)(1)—Costs To Be Allocated

The four types of disbursements in revised 11 CFR 106.6(b)(1) that are subject to allocation are: administrative expenses, direct costs of fundraising, generic voter drives and public communications that refer to a political party. The final rules retain the former descriptions of administrative expenses, direct costs of fundraising, and generic voter drives in new paragraphs (b)(1)(i), (ii) and (iii) in section 106.6, respectively. New paragraphs (b)(1)(i) and (ii) still make clear that SSFs may have the costs of administrative expenses and fundraising programs paid by their connected organization. ''Generic voter drives'' is a defined term used prior to BCRA and goes beyond the limited activities defined under ''Federal election activity.'' For example, a television ad urging the general public to vote for candidates associated with a particular issue, without mentioning a specific candidate, would be considered allocable as a generic voter drive activity under 11 CFR 106.6(b)(1)(iii). The final rules add a fourth type of disbursement that must be allocated—public communications, as defined in 11 CFR 100.26, that refer to a political party but do not refer to any Federal or non-Federal candidate. See 11 CFR 106.6(b)(1)(iv). To illustrate, public communications that use phrases such as ''the Democratic team,'' ''the Minnesota Democratic Committee,'' ''the GOP,'' ''Democrats,'' and ''Republicans in Congress,'' would fall under new paragraph (b)(1)(iv) of section 106.6 because they refer to a political party. *See also* 11 CFR 106.6.(b)(2)(iii) and (iv) discussed below.

B. 11 CFR 106.6(b)(2)—Costs Not Subject to Allocation

Revised 11 CFR 106.6(b)(2) lists the four types of disbursements that are not

subject to allocation between Federal and non-Federal accounts, but are subject to the payment requirements in new paragraph (f) of section 106.6. Two of the four types of disbursements concern voter drives and the other two types concern public communications.

The Commission recognizes that the allocation regulation for generic voter drives in new 11 CFR 106.6(b)(1)(iii) does not apply to voter drives that mention a specific Federal or non-Federal candidate. Without an additional regulatory clarification, some voter drive activity may have fallen into the gap between the regulation of generic voter drives in 11 CFR 106.6(b)(1)(iii) and the candidate-specific public communications provisions in new 11 CFR 106.6(b)(2)(iii) and (iv), discussed below. To prevent such a gap, the Commission is issuing new rules for voter drives that refer to a clearly identified Federal or non-Federal candidate.

New paragraph (b)(2)(i) of section 106.6 describes voter drives in which the printed materials or scripted messages refer to one or more clearly identified Federal candidate, or any voter drives which include written instructions that direct the committee's employee or volunteer to refer to a clearly identified Federal candidate (including voter drives that also generally refer to candidates of a particular party or those associated with a particular issue), but do not refer to any clearly identified non-Federal candidates. New paragraph (b)(2)(ii) also addresses voter drives that similarly refer to one or more clearly identified *non-Federal* candidates, including voter drives that generally refer to candidates of a particular party or candidates associated with a particular issue, but do not refer to any clearly identified Federal candidates.

In both paragraphs, the reference to the clearly identified candidate must be contained in printed materials, scripted messages, or written instructions. Only written instructions that direct the employee or volunteer to refer to a clearly identified Federal or non-Federal candidate will satisfy these paragraphs.[1] The Commission included these limitations to avoid converting an allocable generic voter drive into an unallocable candidate-specific voter drive based solely upon ''off script'' or unauthorized oral comments by an employee or volunteer. The regulation seeks to capture only authorized statements; an SSF or nonconnected committee is not required to treat an otherwise generic voter drive as a candidate-specific one based on unauthorized comments by committee employees or volunteers. SSFs and nonconnected committees should be maintaining sufficient control over their printed materials, scripts and written instructions to be on notice whether or not the voter drive would qualify as a candidate-specific voter drive in new paragraphs (b)(2)(i) or (ii) of section 106.6.

Revised 11 CFR 106.6(b)(2) also includes two types of public communications, as defined in 11 CFR 100.26. First, paragraph (b)(2)(iii) describes public communications that refer to one or more clearly identified Federal candidates, regardless of whether there is reference to a political party, but do not refer to any clearly identified non-Federal candidates. Second, paragraph (b)(2)(iv) of section 106.6 describes public communications that refer to a political party and one or more clearly identified non-Federal candidates, but do not refer to any clearly identified Federal candidates. References to clearly identified Federal or non-Federal candidates that come within new 11 CFR 106.6(b)(2)(iii) and (iv) include ''the President,'' ''your Senators,'' and ''the Republican candidate for Senate in the State of Georgia.'' *See also* 11 CFR 100.17 (definition of ''clearly identified'').

2. 11 CFR 106.6(c)—Method for Allocating Administrative Expenses, Costs of Voter Drives and Certain Public Communications

A. Proposals in the NPRM

In the NPRM, the Commission set forth several proposals to amend the allocation regulations in 11 CFR 106.6 that apply to SSFs and nonconnected committees other than state and local party committees. Those included a number of proposals where minimum Federal percentages would be added to the funds expended method. One alternative in the proposed rules would have required SSFs and nonconnected committees to use the greatest percentage applicable in any of the States in which the committee conducted its activities as the minimum Federal percentage applied to all allocations under the funds expended method. *See* NPRM at 11754. A competing alternative would have allowed committees to choose between allocating costs on a State-by-State basis according to the percentage applicable in each State, or using the highest applicable percentage across the board. *See id.*

The NPRM also discussed other possible minimums including a ''two tier'' system where SSFs and nonconnected committees that operate in fewer than 10 States would have used a lower minimum Federal percentage (such as 25%), while any committees operating in more than 10 States would have been subject to a higher percentage (such as 50%). *See id.* The NPRM also proposed the alternative of a fixed minimum Federal percentage as a replacement for the ''funds expended'' method. Finally, the NPRM also sought comment on eliminating the allocation scheme and requiring SSFs and nonconnected committees to use 100% Federal funds for partisan voter drives and public communications listed in proposed 11 CFR 106.6(b).

B. Comments on Allocation Proposals

Little attention was focused on allocation issues during the public comment period. Fewer than 10 comments provided a substantive response to the allocation issues raised in the NPRM. One commenter wanted to eliminate allocation altogether and require 100% Federal funds for almost all activities, and two commenters recommended revamping the allocation scheme by eliminating the funds expended method.

The commenters differed regarding whether it was appropriate to add a Federal minimum percentage into the ''funds expended'' method in former section 106.6(c). One commenter supported revision of the section 106.6 allocation scheme to avoid ''absurd results'' under the former system by requiring a ''significant minimum hard money share'' for allocated expenses. Another commenter noted that the new bookkeeping, reporting, and calculations required for the proposed ''funds expended method plus a minimum percentage'' approach in the NPRM would be burdensome for political committees. Some commenters supported 100% Federal funds for certain expenditures, others supported a State-by-State approach, one supported a modified ''two tier'' approach to minimums, and others expressed concern that any number chosen as a minimum would be arbitrary.

The commenters also differed with regard to the proposals for allocation of public communications and voter drives. One commenter noted that if a communication promotes, supports,

[1] For example, a written instruction to the employees or volunteers that states ''do not mention or refer to Candidate Y'' would not by itself be covered by paragraphs (b)(2)(i) or (ii) of section 106.6.

attacks, or opposes (''PASOs'')[2] a Federal candidate, then it should be paid for with 100% Federal funds. Likewise, this commenter noted that if a communication only includes non-Federal candidates, then the committee should be allowed to use 100% non-Federal funds to pay its costs. Some commenters supported a minimum Federal percentage for both PASO communications and partisan voter drives. One commenter asserted that allocation based on the PASO standard would be vague. Another commenter argued that adding PASO communications to the ''funds expended'' ratio would be unenforceable, arbitrary, and unbalanced. In addition, some commenters suggested also revising 11 CFR 106.1 to include a minimum Federal percentage under the time/space methodology of allocation. The Commission is not able to adopt this latter suggestion because the NPRM did not seek public comment on amending section 106.1.

C. Final Rules

In examining public disclosure reports filed by SSFs and nonconnected committees over the past ten years, the Commission discovered that very few committees chose to allocate their administrative and generic voter drive expenses under former section 106.6(c). Anecdotal evidence suggested that many committees, including those that allocated, were confused as to how the funds expended ratio should be calculated and adjusted throughout the two-year election cycle. Committees have consistently requested guidance on the proper application of the allocation methods under former section 106.6 at various Commission conferences, roundtables and education events. Audit experience has also shown that some committees were not properly allocating under the complicated funds expended method. *See* Final Report of the Audit Division on Volunteer PAC (Sept. 21, 2004) (improper application of flat state ballot composition ratio instead of calculating ratio under funds expended method in section 106.6) and Final Report of the Audit Division on Republicans for Choice PAC (Dec. 2, 1999) (apparent confusion between calculation of funds received ratio and funds expended ratio in section 106.6). In addition, calculating and adjusting the funds expended ratio may have posed an administrative burden to some committees, particularly those with limited resources, because compliance required committees to monitor their Federal expenditures and non-Federal disbursements, compare their current spending to the ratio reported at the start of the election cycle, and then adjust the ratio to reflect their actual behavior. The confusion and administrative burden associated with the funds expended method may at least partly explain why, historically, SSFs and nonconnected committees have not adjusted their allocation ratios during an election cycle, or from one election cycle to the next election cycle.

Given the complexity of former section 106.6(c), the confusion regarding the proper application of this rule exhibited by some SSFs and nonconnected committees, and the administrative burden of compliance, the Commission seeks to simplify, not further complicate, the allocation system. Thus, the Commission is not retaining the funds expended method in any form.

A flat minimum percentage makes the allocation scheme easier to understand and apply, while preserving the overall rationale underlying allocation. The flat minimum percentage eliminates the requirement—and, thus, the accompanying burdens—of calculating the ratio and monitoring it continuously for accuracy. Furthermore, the Commission's recent experience with State and local party allocation ratios in 11 CFR 106.7 and 300.33 indicates that flat minimum allocation ratios are easier for committees to understand and for the Commission to administer. A flat minimum Federal percentage will also result in less complex, less intrusive, and speedier enforcement actions, thereby enhancing compliance with the law. Finally, SSFs and nonconnected committees will retain the flexibility to allocate more than the flat minimum percentage of these expenses to their Federal account if they wish to do so. Accordingly, the Commission has decided to replace the funds expended method of allocation with a flat minimum allocation percentage.

Neither FECA nor any court decision dictates how the Commission should determine appropriate allocation ratios. In fact, at least one court has recognized that the Commission has the discretion to establish the Federal funds percentage it deems best for administrative and generic voter drive expenses. *See Common Cause* v. *FEC*, 692 F. Supp. 1391, 1396 (D.D.C. 1987).

A flat 50% allocation minimum recognizes that SSFs and nonconnected committees can be ''dual purpose'' in that they engage in both Federal and non-Federal election activities. These committees have registered as *Federal* political committees with the FEC; consistent with that status, political committees should not be permitted to pay for administrative expenses, generic voter drives and public communications that refer to a political party with a greater amount of non-Federal funds than Federal funds. However, the 50% figure also recognizes that some Federal SSFs and nonconnected committees conduct a significant amount of non-Federal activity in addition to their Federal spending. The Commission has concluded that this approach is preferable to importing percentages used in other contexts for dissimilar entities, such as the former national party committee ratios repealed by BCRA or the current ratios applicable to State and local party committees, as suggested in the NPRM.

Public communications that refer to a political party without referring to any clearly identified Federal or non-Federal candidates are subject to the new 50% flat minimum percentage in revised 11 CFR 106.6(c). Like the administrative expenses and generic voter drives (which may refer to a political party), which are also allocated under section 106.6(c), these references solely to a political party inherently influence both Federal and non-Federal elections. Therefore, the 50% Federal funds requirement reflects the dual nature of the communication. As with other expenses under revised section 106.6(c), an SSF or nonconnected committee may choose to allocate more than 50% of the costs of any such public communication to its Federal account, if it wishes to do so.

The past decade of reports filed with the FEC indicate that most SSFs and nonconnected committees do not allocate under section 106.6(c). In fact, fewer than 2% of all registered non-party political committees filed H1 and H4 schedules allocating administrative and generic voter drive expenses under former section 106.6(c) in each election cycle since these regulations were made effective in 1991. Any SSF or nonconnected committee that was not allocating under section 106.6 was presumably already using 100% Federal funds for these expenses, except where those expenses were paid by other entities in accordance with the Act and Commission regulations, such as an SSF's connected organization paying its administrative expenses. Thus, removing the funds expended method and replacing it with a flat minimum percentage in section 106.6 should only affect a small fraction of all SSFs and nonconnected committees.

Even for those SSFs and nonconnected committees that were

[2] ''PASO'' has emerged as a convenient acronym for ''promote, support, attack or oppose.''

allocating, the impact of the final rules should not be substantial. A review of past reports filed with the FEC shows that almost half of these committees were already paying for these expenses with at least 50% Federal funds under the former system. These committees will not need to adjust their payments under the 50% flat percentage method in revised 11 CFR 106.6(c). Moreover, the actual dollar amounts of non-Federal funds that were spent in past cycles on administrative and generic voter drive expenses under former section 106.6(c), and which will have to be partially replaced with Federal funds under the final rules, is relatively low. With the exception of one or two committees per election cycle whose spending was out of line with other SSFs and nonconnected committees, the final rules affect each committee by requiring only a minimal increase in Federal funds expended. Additionally, these amounts were not high compared to total disbursements from these committees' Federal accounts in an election cycle (and would have been even smaller if disbursements from non-Federal accounts were taken into consideration). Thus, revised 11 CFR 106.6(c) should not impose a significant fundraising burden on these committees.

3. 11 CFR 106.6(f)—Payments for Public Communications and Voter Drives That Refer to One or More Clearly Identified Federal or Non-Federal Candidates

The final rules add new paragraph (f) to 11 CFR 106.6 to address payments for voter drives that refer to clearly identified Federal or non-Federal candidates, as described in new 11 CFR 106.6(b)(2)(i) and (ii), and public communications that refer to clearly identified Federal or non-Federal candidates, with or without a reference to a political party, as described in new 11 CFR 106.6(b)(2)(iii) and (iv). The final rules also direct SSFs and nonconnected committees to use the time/space allocation method for voter drives and public communications that refer to at least one clearly identified Federal candidate and to at least one clearly identified non-Federal candidate, without regard to any references to a political party.

The Commission views voter drives and public communications that refer to a political party and either Federal or non-Federal candidates, but not both, as ''candidate-driven.'' The Federal or non-Federal nature of the political party reference is determined by whether the clearly identified candidates in the communication are Federal or non-Federal. Thus, voter drives and public communications that refer to a political party and also refer only to clearly identified Federal candidates must be paid for with 100% Federal funds from the Federal account under new 11 CFR 106.6(f)(1). Permitting these voter drives and communications to be paid for with some non-Federal funds based on a cursory reference to a political party would invite circumvention of the intent of the allocation scheme. Voter drives and public communications that refer to clearly identified Federal candidates, without any reference to political parties or non-Federal candidates, similarly must be paid for with 100% Federal funds from the Federal account.[3]

On the other hand, voter drives and public communications that refer to a political party and also refer only to clearly identified non-Federal candidates may be paid for entirely by the non-Federal account under new 11 CFR 106.6(f)(2). SSFs and nonconnected committees may pay for these communications referring to non-Federal candidates partly or entirely with Federal funds, but are not required to do so. Finally, voter drives and public communications that refer to both Federal and non-Federal candidates, regardless of whether there is also a reference to a political party are subject to a time/space allocation method in new 11 CFR 106.6(f)(3), which is similar to the method outlined in 11 CFR 106.1. *See* new 11 CFR 106.6(f)(3).[4] SSFs and nonconnected committees must comply with section 106.6(f) when allocating public communications and voter drive activities, but must comply with 11 CFR 106.1 for allocation of any other expenditures made on behalf of more than one clearly identified Federal candidate.

The final rules are simpler than the approach taken in Advisory Opinion 2003–37 and proposed in the NPRM at proposed 11 CFR 106.6(f) and (g). These required a combined application of the time/space allocation method under 11 CFR 106.1 and the funds expended method under former 11 CFR 106.6 for public communications that refer to a party and to specific Federal candidates. Advisory Opinion 2003–37 is hereby superseded. The candidate-driven approach for these voter drives and public communications, coupled with the removal of the funds expended method in favor of a flat percentage method, reduces the amount of recordkeeping, tracking, and calculating that SSFs and nonconnected committees must do to allocate properly administrative expenses, and to pay properly for voter drives, and public communication costs under 11 CFR 106.6.

The revised 11 CFR 106.6 allocation regulations should reduce the burden of compliance on SSFs and nonconnected committees. Incorporation of certain voter drives and public communications into 11 CFR 106.6 provides more specific guidance to committees that conduct such activity. The Commission believes that these final rules best resolve the problems with the former allocation scheme revealed through reviewing past FEC reports and the issues raised by the commenters on the NPRM.

Effective Date

Many commenters on the NPRM argued that any changes made effective before the general election on November 2, 2004 would cause great disruption to political committees and other organizations. Taking into account the statutorily mandated waiting period before a regulation may be effective under the Administrative Procedure Act, these regulations could not be effective until after the November 2, 2004 general election. To provide an orderly phase-in of the new rules and transition from one election cycle to the next election cycle, the Commission is establishing January 1, 2005 as the effective date for all amendments and additions to 11 CFR parts 100, 102, 104 and 106. This effective date allows affected political committees to ''close out'' the 2003–2004 election cycle by making final adjustments to their section 106.6(c) ratios and any final transfers of money between Federal, non-Federal, and allocation accounts. It also provides sufficient time for all those affected to make whatever internal changes necessary to comply with the new rules.

Other Proposals

The NPRM proposed several additional new and revised rules, including changes to the definitions of ''political committee'' and ''expenditure.'' Other than the Final Rules that follow, the Commission is not promulgating any of the proposed rules. The NPRM also raised many issues in the narrative describing the proposed rules. The Commission cautions that no

[3] Because section 106.6 of the Commission's regulations applies only to separate segregated funds and non-connected committees, the final rules do not apply to the activities of other types of political committees, including state and local party committees, which are subject to separate allocation rules. *See* 11 CFR 300.30 to 300.33 (establishing allocation rules for state and local party committees).

[4] The Commission notes that State law may also govern communications referring to non-Federal candidates.

inferences should be made as to the Commission's position on any of the issues that are not discussed in this document or on any of the proposed rules that are not adopted as final rules. Discussed below are some of the proposals from the NPRM that the Commission did not adopt. As noted above, the Commission received many comments on the NPRM. The comments related to proposed rules that the Commission did not adopt are not specifically described and addressed in this document.

Proposed 11 CFR 100.5—Political Committee (2 U.S.C. 431(4), (5), (6))

Under current law, any committee, club, association, or other group of persons that receives contributions aggregating in excess of $1,000 or which makes expenditures aggregating in excess of $1,000 during a calendar year is a political committee. *See* 2 U.S.C. 431(4)(A); 11 CFR 100.5(a). Nearly three decades ago, the Supreme Court narrowed the Act's references to ''political committee'' in order to prevent their ''reach [to] groups engaged purely in issue discussion.'' *Buckley* v. *Valeo,* 424 U.S. 1, 79 (1976). The Court concluded that ''[t]o fulfill the purpose of the Act [the words ''political committee'] need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate.'' *Id.*

The NPRM proposed four alternatives for revisions to the definition of a ''political committee'' in 11 CFR 100.5(a). NPRM at 11743–49 and 11756–57. The proposed alternatives differed mainly in whether, and if so, how, the definition of ''political committee'' should include a test to determine an organization's ''major purpose.''

The Commission received tens of thousands of comments addressing these proposals and the various individual components of the proposed ''major purpose'' tests. Many commenters supported the idea of incorporating a major purpose test into the definition of ''political committee'' and offered a variety of alternatives for what the test should be. In contrast, many other commenters opposed all of the proposals set forth in the NPRM and expressed concerns about the potential impact of the proposed rules on non-electoral speech. Several provisions in BCRA, such as those barring the use of corporate funds for electioneering communications but permitting the use of unlimited individual funds for that purpose, were cited for the proposition that an overly broad rule defining ''political committee'' would conflict with the structure Congress established in BCRA.

Many commenters questioned whether new rules were necessary or appropriate at this time and suggested that *Buckley's* ''major purpose'' language might be better addressed by Congress or the Supreme Court. A joint comment from hundreds of 501(c) organizations contended that the Commission has not obtained access to the types of comprehensive reports that Congress has at its disposal, and the Commission is therefore poorly positioned at this time to assess properly the operations of the variety of organizations that might be affected by new regulations.

Some observed that Congress did not address political committee status in BCRA even though Congress appeared to be fully aware that some groups were operating outside FECA's registration and reporting requirements as well as its limitations and prohibitions. These commenters found it significant that Congress had recently focused on 527 organizations in 2000 and 2002 when it added and revised IRS-based reporting requirements for many of these organizations. According to the commenters, Congress consciously did not require 527 organizations to register with the Commission as political committees.

There were additional concerns raised about the constitutional and practical issues relating to the ''major purpose'' test. Some commenters noted that the ''major purpose'' test is not a statutory trigger for political committee status, but rather a court-created protection to avoid over-reach of the triggers for political committee status actually contained in the FECA. Many commenters argued that a ''major purpose'' test would chill constitutionally protected speech, some expressing the view that the boundaries of the test would be inherently vague and thus force organizations to curtail permissible activities. Other commenters expressed concern about the practical difficulties they perceived in implementing a test intended to ascertain a group's ''purpose.'' For instance, a number of commenters similarly expressed concern that the ''major purpose'' test set out in the NPRM might unfairly categorize organizations as political committees based on a few statements or organizational documents where those statements and documents might not accurately convey the actual purpose of the organization. Other commenters also asserted that the Commission's determinations of an organization's purpose would often result in intrusive investigations into the private internal workings of an organization. Another commenter feared that any definition of ''political committee'' potentially encompassing nonprofit organizations would force them to choose between accepting foundation funds or corporate donations and advocating ballot questions as a part of the organization's overall activity.

In addition, arguments were made that the Commission would be in a better position to address the issue of political committee status after monitoring the behavior of various organizations during at least one election cycle following the enactment of BCRA. A number of commenters asserted that it would be improper for the Commission to add a new ''major purpose'' test without sufficient data demonstrating the existence of corruption or the appearance of corruption to justify the new regulations.

After evaluating these comments, the Commission considered two separate draft Final Rule approaches that would have revised the definition of ''political committee.'' Each of these approaches incorporated modified portions of the rules proposed in the NPRM. Each approach included a ''major purpose'' test, but the tests were different in purpose and operation. *See* draft 11 CFR 100.5(a), Agenda Document 04–75, at 37–41, and draft 11 CFR 100.5(a), Agenda Document 04–75–A, at 2–3 (Aug. 19, 2004 meeting).

The draft Final Rules in Agenda Document 04–75 would have incorporated one construction of the *Buckley* test into the definition of ''political committee'' in 11 CFR 100.5(a) by requiring an organization to have ''as its major purpose the nomination or election of one or more candidates *for Federal office.*'' *See* draft 11 CFR 100.5(a)(1)(ii) of Agenda Document 04–75 (emphasis added); *see also Buckley,* 424 U.S. at 79. Draft paragraph (a)(2) presented three ways in which any organization could have satisfied that test: (1) By publicly declaring that the purpose of the group is to influence Federal elections; (2) by spending more than 50% of its funds on certain specified activities; or (3) by receiving more than 50% of its funding through ''contributions,'' as defined in 2 U.S.C. 431(8) and 11 CFR Part 100, Subpart B. These draft Final Rules would have also established an additional test whereby 527 organizations could satisfy the ''major purpose'' test through the application of a broader 50% disbursements test.

The other set of draft Final Rules that the Commission considered, but did not

adopt, would have incorporated a different construction of *Buckley's* major purpose test into the definition of ''political committee'' in 11 CFR 100.5(a). This test would have focused on whether an organization's major purpose was the ''election of one or more *Federal or non-Federal* candidates.'' *See* draft 11 CFR 100.5(a)(1)(ii) of Agenda Document 04–75–A (emphasis added). Coupled with the Commission rule allowing a political committee to report only its Federal activity, this was designed to prevent groups from avoiding political committee status altogether because a majority of the campaign activity is non-Federal. The major purpose test would have been satisfied in one of two ways. Under draft 11 CFR 100.5(a)(2), an organization described in section 527 of the Internal Revenue Code (a ''527 organization'') would have satisfied the ''major purpose'' test just by virtue of its having registered with the Internal Revenue Service under 26 U.S.C. 527, unless covered by one of five enumerated exceptions. All other organizations would have been subject to the previously existing standards for determining their major purpose. *See* draft 11 CFR 100.5(a)(4) of Agenda Document 04–75–A.

The comments raise valid concerns that lead the Commission to conclude that incorporating a ''major purpose'' test into the definition of ''political committee'' may be inadvisable. Thus, the Commission has decided not to adopt any of the foregoing proposals to revise the definition of ''political committee.'' As a number of commenters noted, the proposed rules might have affected hundreds or thousands of groups engaged in non-profit activity in ways that were both far-reaching and difficult to predict, and would have entailed a degree of regulation that Congress did not elect to undertake itself when it increased the reporting obligations of 527 groups in 2000 and 2002 and when it substantially transformed campaign finance laws through BCRA. Furthermore, no change through regulation of the definition of ''political committee'' is mandated by BCRA or the Supreme Court's decision in *McConnell*. The ''major purpose'' test is a judicial construct that limits the reach of the statutory triggers in FECA for political committee status. The Commission has been applying this construct for many years without additional regulatory definitions, and it will continue to do so in the future.

Proposed 11 CFR 100.34, 100.115, 100.133, 100.149, 114.4—Voter Drive Provisions

The NPRM proposed to define a new term, ''partisan voter drive,'' in proposed 11 CFR 100.34, to revise the exemption from the ''expenditure'' definition for nonpartisan voter drives in proposed 11 CFR 100.133, and to specify that the costs for partisan voter drives are ''expenditures'' in proposed 11 CFR 100.115. Corresponding changes were also proposed for 11 CFR 100.149 and 114.4. *See* NPRM at 11740–41, 11757, and 11760.

In its consideration of Final Rules, the Commission considered a different version of these rules. Under this proposal, draft 11 CFR 100.115 would have specified that costs for certain Federal election activities would have been ''expenditures'' when incurred by political committees or a 527 organization. *See* draft 11 CFR 100.115, Agenda Document No. 04–75–A, at 4 (Aug. 19, 2004 meeting). The exemption from the ''expenditure'' definition for nonpartisan voter drives also would have been revised to state that voter drives that PASO a Federal candidate, a non-Federal candidate, or a political party can not be considered ''nonpartisan'' exempt voter drives. *See* draft 11 CFR 100.133, Agenda Document No. 04–75–A, at 4–5 (Aug. 19, 2004 meeting). The Commission rejected a motion to approve draft 11 CFR 100.115 and revisions to current 11 CFR 100.133. The Commission determined that the changes and additions to the allocation rules in 11 CFR 106.6 related to voter drives that are described above sufficiently address these issues at this time, and therefore the new and revised voter drive rules in proposed sections 100.34, 100.115, 100.133, 100.149, and 114.4 are not needed.

Proposed 11 CFR 100.116—Certain Public Communications

FECA defines ''expenditure'' to include a payment for a communication that is ''made * * * for the purpose of influencing any election for Federal office.'' 2 U.S.C. 431(9)(A)(i). The NPRM proposed to include in the definition of ''expenditure'' payments for communications that PASO any candidate for Federal office or that promote or oppose any political party. *See* proposed 11 CFR 100.116, NPRM at 11741–42 and 11757.

In its consideration of Final Rules, the Commission considered and rejected two different versions of this rule. One version of this rule would have applied to public communications that PASO a clearly identified candidate for Federal office or that PASO a political party, but only when made by a political committee or 527 organizations. *See* draft 11 CFR 100.116, Agenda Document No. 04–75–A, at 4 (Aug. 19, 2004 meeting). The second version of this rule would have been limited to communications that PASO a clearly identified candidate, but only when made by Federal political committees and unregistered groups that meet *Buckley's* ''major purpose'' test, which was the subject of another draft rule discussed above. *See* draft 11 CFR 100.115, Agenda Document No. 04–75, at 19–23 and 42 (Aug. 19, 2004 meeting).

The Commission did not adopt a rule addressing this subject. Without the ''major purpose'' rules, the rules addressing PASO communications could not have been adopted in the forms considered by the Commission.

Proposed 11 CFR 100.155—Allocated Amounts

The NPRM proposed a new regulation that would have specifically stated that when costs are properly allocable between a Federal account and a non-Federal account, the costs that must be paid by a Federal account are ''expenditures'' under FECA, and the costs that may and in fact are paid by a non-Federal account are not ''expenditures'' under FECA. The proposed regulation was linked to proposed 11 CFR 100.115 and 100.116 regarding PASO communications and voter drives. *See* NPRM at 11757. The Commission considered a version of this regulation that was broader than the version in the NPRM, in that it would have extended this principle to any non-Federal funds disbursed pursuant to allocation rules at 11 CFR 106.1, 106.6, 106.7, or 300.33. *See* draft 11 CFR 100.155, Agenda Document No. 04–75–A, at 5 (Aug. 19, 2004 meeting). For the reasons that the Commission did not adopt draft 11 CFR 100.115 and 100.116 in Agenda Document No. 04–75–A, it also did not adopt draft 11 CFR 100.155.

Proposed 11 CFR Part 102, Subpart A—Conversion Rules

The NPRM included proposed rules to address how organizations that become political committees after operating for some time as non-political committee organizations would demonstrate that they used Federally permissible funds to pay for expenditures made before becoming political committees. The proposed rules would have included a new subpart A in 11 CFR part 102. *See* NPRM at 11749–53, 11757–59. The

proposed rules would have required a new political committee to convert funds received during the two years prior to the time the organization became a political committee into Federal funds in an amount equal to the amount of its expenditures during the same time period. To do so, the new political committee would have been required to contact recent donors, make certain disclosures, and seek the donors' consent to use the funds for the purpose of influencing Federal elections. *See* NPRM at 11757–59.

The Commission received numerous comments in response to these proposed changes. Although one commenter supported the proposed rules, most commenters who addressed this topic expressed broad opposition to the proposals. Several commenters especially disagreed with the proposed rules that would have required political committees to look back at past activity and repay debts of Federal money for activities completed up to two years before the organizations became political committees. Some commenters also opposed the specific two-step conversion process in the proposed rules, including the requirement to contact and obtain permission from past donors and the 60-day deadline for converting funds to Federal funds.

In response to these comments and the Commission's further consideration of the issued raised by the proposed rules, the Commission has decided not to promulgate final rules establishing subpart A of 11 CFR part 102.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that the final rules do not have a significant economic impact on a substantial number of small entities.

The final rules amend the Commission's definition of ''contribution'' to include funds received in response to certain communications that are not expressly included in the Commission's prior definition of ''contribution.'' For political committees, whether a receipt qualifies as a ''contribution'' determines whether it is subject to amount limitations and source prohibitions for Federal funds imposed by FECA. For organizations that are not political committees, whether a receipt is a ''contribution'' may affect whether the organization is a political committee. New section 100.57 does not, however, limit the overall amount of money that may be raised or spent on electoral activity. The rule in new section 100.57 is carefully tailored to reach communications that seek funds ''for the purpose of influencing Federal elections,'' and includes a limited exception for communications that refer to a non-Federal candidate, and a complete exception for joint fundraising efforts between or among authorized committees of Federal and non-Federal candidates. Therefore, any economic impact on Federal and non-Federal candidate committees, some of which might qualify as small entities, is not significant.

The final rules also revise the Commission's rules regarding the allocation of certain disbursements between a political committee's Federal account and non-Federal account. Thus, these revisions affect only some political committees. As discussed in the *Explanation and Justification* for revised 11 CFR 106.6(c), a review of the past ten years of public disclosure reports filed with the FEC revealed that few current political committees allocate their administrative expenses and generic voter drives under former 11 CFR 106.6, and among those political committees, many already use 50% or more as their Federal allocation ratio. Although the new section 106.6(f) requires Federal funds be used for certain public communications and voter drive activities by political committees, the final rule does not limit the overall amount of money that political committees may raise and spend on such activity. Consequently, the final rules' changes are unlikely to have a significant economic impact on substantial number of small entities.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 102

Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 106

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, the Federal Election Commission amends subchapter A of chapter 1 of title 11 of the *Code of Federal Regulations* as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

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

Authority: 2 U.S.C. 431, 434, and 438(a)(8).

■ 2. Section 100.57 is added to subpart B to read as follows:

§ 100.57 Funds received in response to solicitations.

(a) *Treatment as contributions.* A gift, subscription, loan, advance, or deposit of money or anything of value made by any person in response to any communication is a contribution to the person making the communication if the communication indicates that any portion of the funds received will be used to support or oppose the election of a clearly identified Federal candidate.

(b) *Certain allocable solicitations.* If the costs of a solicitation described in paragraph (a) of this section are allocable under 11 CFR 106.1, 106.6 or 106.7 (consistent with 11 CFR 300.33(c)(3)) as a direct cost of fundraising, the funds received in response to the solicitation shall be contributions as follows:

(1) If the solicitation does not refer to any clearly identified non-Federal candidates, but does refer to a political party, in addition to the clearly identified Federal candidate described in paragraph (a) of this section, one hundred percent (100%) of the total funds received are contributions.

(2) If the solicitation refers to one or more clearly identified non-Federal candidates, in addition to the clearly identified Federal candidate described in paragraph (a) of this section, at least fifty percent (50%) of the total funds received are contributions, whether or not the solicitation refers to a political party.

(c) *Joint fundraisers.* Joint fundraising conducted under 11 CFR 102.17 shall comply with the requirements of paragraphs (a) and (b) of this section except that joint fundraising between or among authorized committees of Federal candidates and campaign organizations of non-Federal candidates is not subject to paragraph (a) or (b) of this section.

PART 102—REGISTRATION, ORGANIZATION AND RECORDKEEPING BY POLITICAL COMMITEES (2 U.S.C. 433)

■ 3. The authority citation for part 102 continues to read as follows:

Authority: 2 U.S.C. 432, 433, 434(a)(11), 438(a)(8), 441d.

■ 4. Section 102.5 is amended by revising paragraph (a)(1)(i) to read as follows:

§ 102.5 Organizations financing political activity in connection with Federal and non-Federal elections, other than through transfers and joint fundraisers: Accounts and Accounting.

(a) * * *

(1) * * *

(i) Establish a separate Federal account in a depository in accordance with 11 CFR part 103. Such account shall be treated as a separate Federal political committee that must comply with the requirements of the Act including the registration and reporting requirements of 11 CFR parts 102 and 104. Only funds subject to the prohibitions and limitations of the Act shall be deposited in such separate Federal account. *See* 11 CFR 103.3. All disbursements, contributions, expenditures, and transfers by the committee in connection with any Federal election shall be made from its Federal account, except as otherwise permitted for State, district and local party committees by 11 CFR part 300 and paragraph (a)(5) of this section. No transfers may be made to such Federal account from any other account(s) maintained by such organization for the purpose of financing activity in connection with non-Federal elections, except as provided by 11 CFR 300.33, 300.34, 106.6(c), 106.6(f), and 106.7(f). Administrative expenses for political committees other than party committees shall be allocated pursuant to 11 CFR 106.6(c) between such Federal account and any other account maintained by such committee for the purpose for financing activity in connection with non-Federal elections. Administrative expenses for State, district, and local party committees are subject to 11 CFR 106.7 and 11 CFR part 300; or

* * * * *

PART 104—REPORTS BY POLITICAL COMMITTEES AND OTHER PERSONS (2 U.S.C. 434)

■ 5. The authority citation for part 104 continues to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b), 439a, 441a, and 36 U.S.C. 510.

■ 6. Section 104.10 is amended by revising the introductory text in paragraph (b) and paragraph (b)(1) to read as follows:

§ 104.10 Reporting by separate segregated funds and nonconnected committees of expenses allocated among candidates and activities.

* * * * *

(b) *Expenses allocated among activities.* A political committee that is a separate segregated fund or a nonconnected committee and that has established separate Federal and non-Federal accounts under 11 CFR 102.5(a)(1)(i) shall allocate between those accounts its administrative expenses and its costs for fundraising, generic voter drives, and certain public communications according to 11 CFR 106.6, and shall report those allocations according to paragraphs (b)(1) through (5) of this section, as follows:

(1) *Reporting of allocation of administrative expenses and costs of generic voter drives and public communications that refer to any political party.* In each report disclosing a disbursement for administrative expenses, generic voter drives, or public communications that refer to any political party, but do not refer to any clearly identified candidates, as described in 11 CFR 106.6(b)(1)(i), (b)(1)(iii) and (b)(1)(iv), as applicable, the committee shall state the allocation ratio to be applied to each category of activity according to 11 CFR 106.6(c).

* * * * *

PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

■ 7. The authority citation for part 106 continues to read as follows:

Authority: 2 U.S.C. 438(a)(8), 441a(b), 441a(g).

■ 8. Section 106.6 is amended by:

■ a. Removing the words ''(c) and (d)'' from paragraph (a) and adding in their place the words ''(c), (d), and (f)'';

■ b. Removing the words ''or (b)(1)(i)'' from paragraphs (a) and (e) introductory text;

■ c. Removing the citation ''102.5(b)(1)(ii)'' from paragraph (a) and adding in its place the citation ''102.5(a)(1)(ii)''; and

■ d. Revising paragraphs (b) and (c) and adding paragraph (f) to read as follows:

§ 106.6 Allocation of expenses between federal and non-federal activities by separate segregated funds and nonconnected committees.

* * * * *

(b) *Payments for administrative expenses, voter drives and certain public communications.*

(1) *Costs to be allocated.* Separate segregated funds and nonconnected committees that make disbursements in connection with Federal and non-Federal elections shall allocate expenses for the following categories of activity in accordance with paragraphs (c) or (d) of this section:

(i) Administrative expenses including rent, utilities, office supplies, and salaries not attributable to a clearly identified candidate, except that for a separate segregated fund such expenses may be paid instead by its connected organization;

(ii) The direct costs of a fundraising program or event including disbursements for solicitation of funds and for planning and administration of actual fundraising events, where Federal and non-Federal funds are collected through such program or event, except that for a separate segregated fund such expenses may be paid instead by its connected organization;

(iii) Generic voter drives including voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate; and

(iv) Public communications that refer to a political party, but do not refer to any clearly identified Federal or non-Federal candidate;

(2) *Costs not subject to allocation.* Separate segregated funds and nonconnected committees that make disbursements for the following categories of activity shall pay for those activities in accordance with paragraph (f) of this section:

(i) Voter drives, including voter identification, voter registration, and get-out-the-vote drives, in which the printed materials or scripted messages refer to, or the written instructions direct the separate segregated fund's or nonconnected committee's employee or volunteer to refer to:

(A) One or more clearly identified Federal candidates, but do not refer to any clearly identified non-Federal candidates; or

(B) One or more clearly identified Federal candidates and also refer to candidates of a particular party or associated with a particular issue, but do not refer to any clearly identified non-Federal candidates;

(ii) Voter drives, including voter identification, voter registration, and get-out-the-vote drives, in which the printed materials or scripted messages refer to, or the written instructions direct the separate segregated fund's or nonconnected committee's employee or volunteer to refer to:

(A) One or more clearly identified non-Federal candidates, but do not refer

to any clearly identified Federal candidates; or

(B) One or more clearly identified non-Federal candidates and also refer to candidates of a particular party or associated with a particular issue, but do not refer to any clearly identified Federal candidates;

(iii) Public communications that refer to one or more clearly identified Federal candidates, regardless of whether there is reference to a political party, but do not refer to any clearly identified non-Federal candidates; and

(iv) Public communications that refer to a political party, and refer to one or more clearly identified non-Federal candidates, but do not refer to any clearly identified Federal candidates.

(c) *Method for allocating administrative expenses, costs of generic voter drives, and certain public communications.* Nonconnected committees and separate segregated funds shall pay their administrative expenses, costs of generic voter drives, and costs of public communications that refer to any political party, as described in paragraphs (b)(1)(i), (b)(1)(iii) or (b)(1)(iv) of this section, with at least 50 percent Federal funds, as defined in 11 CFR 300.2(g).

* * * * *

(f) *Payments for public communications and voter drives that refer to one or more clearly identified Federal or non-Federal candidates.* Nonconnected committees and separate segregated funds shall pay for the costs of all public communications that refer to one or more clearly identified candidates, and voter drives that refer to one or more clearly identified candidates, as described in paragraphs (b)(2)(i) and (b)(2)(ii) of this section, as follows:

(1) The following shall be paid 100 percent from the Federal account of the nonconnected committee or separate segregated fund:

(i) Public communications that refer to one or more clearly identified Federal candidates, regardless of whether there is reference to a political party, but do not refer to any clearly identified non-Federal candidates, as described in paragraph (b)(2)(iii) of this section; and

(ii) Voter drives described in paragraph (b)(2)(i) of this section.

(2) The following may be paid 100 percent from the non-Federal account of the nonconnected committee or separate segregated fund:

(i) Public communications that refer to a political party and one or more clearly identified non-Federal candidates, but do not refer to any clearly identified Federal candidates, as described in paragraph (b)(2)(iv) of this section; and

(ii) Voter drives described in paragraph (b)(2)(ii) of this section.

(3) Notwithstanding 11 CFR 106.1(a)(i), public communications and voter drives that refer to one or more clearly identified Federal candidates and one or more clearly identified non-Federal candidates, regardless of whether there is a reference to a political party, including those that are expenditures, independent expenditures or in-kind contributions, shall be allocated as follows:

(i) Public communications and voter drives, other than phone banks, shall be allocated based on the proportion of space or time devoted to each clearly identified Federal candidate as compared to the total space or time devoted to all clearly identified candidates, or

(ii) Public communications and voter drives that are conducted through phone banks shall be allocated based on the number of questions or statements devoted to each clearly identified Federal candidate as compared to the total number of questions or statements devoted to all clearly identified candidates.

Dated: November 18, 2004.

Bradley A. Smith,

Chairman, Federal Election Commission.

[FR Doc. 04–25946 Filed 11–22–04; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AC84

Deposit Insurance Assessments—Certified Statements

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is modernizing and simplifying its deposit insurance assessment regulations governing certified statements, to provide regulatory burden relief to insured depository institutions. Under the final rule, insured institutions will obtain their certified statements on the Internet via the FDIC's transaction-based e-business Web site, FDIC*connect*. Correct certified statements will no longer be signed by insured institutions or returned to the FDIC, and the semiannual certified statement process will be synchronized with the quarterly invoice process. Two quarterly certified statement invoices will comprise the semiannual certified statement and reflect the semiannual assessment amount. If an insured institution agrees with its quarterly certified statement invoice, it will simply pay the assessed amount and retain the invoice in its own files. If it disagrees with the quarterly certified statement invoice, it will either amend its report of condition or similar report (to correct data errors) or amend its quarterly certified statement invoice (to correct calculation errors). The FDIC will automatically treat either as the insured institution's request for revision of its assessment computation, eliminating the requirement of a separate filing. In addition, the FDIC will provide e-mail notification each quarter to let depository institutions know when their quarterly certified statement invoices are available on FDIC*connect*. An institution that lacks Internet access will be able request from the FDIC a one-year renewable exemption from the use of FDIC*connect*, during which it will continue to receive quarterly certified statement invoices by mail. With these amendments, the time and effort required to comply with the certified statement process will be reduced, a result of the FDIC's ongoing program under the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA) to provide regulatory burden relief to insured depository institutions.

DATES: This final rule will become effective on March 1, 2005.

FOR FURTHER INFORMATION CONTACT: Steve Wagoner, Senior Assessment Specialist, Division of Finance, (202) 416–7152; Linda A. Abood, Supervisory IT Specialist, Division of Information Resources Management, (703) 516–1202; or Christopher Bellotto, Counsel, Legal Division, (202) 898–3801, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

On June 8, 2004, the FDIC published in the **Federal Register**, for a 60-day comment period, a notice of proposed rulemaking with request for comment on the proposed amendments to section 327.2, the certified statement regulation. (69 FR 31922). The comment period closed on August 9, 2004. The FDIC received 22 comment letters, one from a trade organization (Independent Community Bankers of America) and 21 from depository institutions. Seventeen of the commenters generally supported the proposal and the remaining five generally opposed, although in varying

degrees. Eleven commenters addressed the question of e-mail notice, all of them favoring the courtesy notification suggested by the FDIC. An alternative form of delivery for institutions without Internet access was requested by four commenters. The following is a discussion of the amendments to section 327.2 and the comments received.

Under section 7(c) of the Federal Deposit Insurance Act (FDI Act or Act) (12 U.S.C. 1817(c)) insured depository institutions are required to file a certified statement with the FDIC for each semiannual deposit insurance assessment period, containing such information as the FDIC ''may require for determining the institution's semiannual assessment.'' 12 U.S.C. 1817(c)(1)(A). The FDI Act also provides that the certified statement ''shall * * * be in such form and set forth such supporting information as the Board of Directors shall prescribe * * *'' 12 U.S.C. 1817(c)(1)(B)(i). In this way, the Act vests in the FDIC discretion to prescribe the information contained in, as well as the form of, semiannual certified statements. As a result of the FDIC's exercise of this discretion over a period of years, the certified statement process has evolved in response to advances in collection procedures and data processing technology.

Prior to 1995, the FDIC mailed a blank certified statement form to every insured depository institution every semiannual period. Each institution was required to transcribe manually on this form the deposit data culled from its two prior Call Reports/Thrift Financial Reports (TFRs) and to calculate its assessment payment. The assessment was paid for the entire semiannual period one month after the beginning of the semiannual period (*i.e.*, January 31 and July 31). An officer of the institution was required to certify the accuracy of that information by signing the form, which was then returned to the FDIC along with the institution's check for the assessment amount. Under this system almost all of the certified statements were returned to the FDIC each semiannual period, but about 10 percent of the certified statements received contained mistakes, due in part to simple transpositions of figures and mathematical errors that required correction and revision.

The FDIC revised the process for collecting deposit insurance assessments—adopting the system of quarterly payments in 1994 and implementing it in March of 1995. 59 FR 67153 (Dec. 29, 1994). As part of this changeover to the automated invoicing and collection system, the FDIC assumed responsibility for ''filling out'' the certified statement and calculating each institution's deposit insurance assessment. The information used by the FDIC in completing certified statements is derived from institutions' Call Reports/TFRs, and is stored by the FDIC electronically. Because the June and December Call Report/TFR data was not available electronically until after the next semiannual payment date,[1] the FDIC instituted the practice of collecting semiannual assessments in two quarterly installments to facilitate FDIC preparation of assessment forms for insured institutions.

Accordingly, since 1995, the semiannual assessment has been collected in two quarterly installments; the sum of these installments equals an institution's semiannual assessment. Each quarterly installment is based on deposit data contained in one of the two quarterly Call Reports/TFRs submitted by the institution during the previous semiannual period. Under section 7(a)(3) of the FDI Act (12 U.S.C. 1817(a)(3)), reports of condition must contain a declaration by an officer of the institution, and a signed attestation by two other institution officers, that the information set forth is true and correct.

The FDIC computes the amount of each quarterly installment by retrieving the relevant electronic data from the Call Report/TFR for each institution. Under the present system, the FDIC sends each insured institution an invoice for the first semiannual installment, and, three months later, a certified statement for the second installment. The invoice and the certified statement[2] are each mailed about two weeks prior to the actual collection of each respective installment.[3]

The invoice and the certified statement differ in two essential respects. The invoice contains the data, assessment computation, and amount due for the first installment of the semiannual period only. The certified statement, however, contains more than just the data, assessment computation, and amount due for the second installment of the semiannual period. It also restates the first installment information and combines the two sets of information into a semiannual presentation. In addition, the second installment invoice—the certified statement—contains a signature block. Institutions are required to sign and return the certified statement to the FDIC, while the first installment invoice was subject to neither requirement.

Under the present process, if an institution agrees with the information on the first installment invoice, it takes no action other than to fund the designated assessment account sufficiently to allow the direct debit of the account. At most institutions, an officer reviews the first installment invoice before authorizing payment by comparing the deposit data on the invoice to the amounts reported by the institution on its corresponding Call Report/TAR, reconciling any adjustments from prior assessment periods as noted on the back of the invoice, verifying the rate multiplier used and the ACH account information, and spot checking mathematical calculations. If the institution disagrees with the information on the first installment invoice, the institution is required by regulation (12 CFR 327.3(h)), to file a request for revision of its assessment computation if it wished to change its assessment payment, which in practice was usually done to obtain a refund.

If an institution agrees with the second installment invoice (the certified statement), in addition to ensuring that the designated account is adequately funded and payment is authorized, an officer of the institution is required to certify the accuracy of the statement and return it to the FDIC. Generally, this process involves checking the restated first invoice data again, as well as checking the data for the second half of the semiannual period. The institution has to return its certified statement (usually by mail) signed by an officer, not later than the second quarterly payment date of the semiannual period (*i.e.*, certified statements must be returned by March 30 for the January–

[1] The June 30 Call Report/TFR data is not available electronically until after the July 31 payment date; similarly, the December 31 Call Report/TFR data is not available electronically until after the January 31 payment date.

[2] The ''invoice'' is the first quarterly installment sent each semiannual period; the ''certified statement'' is the invoice for the second quarterly installment.

[3] Collection has been and will continue to be accomplished via Automated Clearing House (ACH) direct debit of the account designated by the institution for that purpose. Like the invoice and certified statement (which were mailed about two weeks prior to the ACH payment/settlement date), quarterly certified statement invoices will be made available on FDIC*connect* approximately two weeks prior to the ACH payment/settlement date. The FDIC also collects Financing Corporation (FICO) assessments pursuant to the same statutory requirements that govern FDIC deposit insurance assessments. The FICO rate is based on the deposit data reflected on the invoice and certified statements. Under the final rule, the FICO rate will be based on the deposit data reflected on the two quarterly certified statement invoices made available each semiannual period. To ensure timely collection of adequate funds for FICO, institutions will continue to pay the original amount due; any appropriate adjustments, plus interest, will be part of a subsequent quarterly assessment collection.

June semiannual period and by September 30 for the July–December semiannual period).[4] If the institution disagrees with the certified statement, the institution has to annotate changes on the statement, certify by signing, and return the form to the FDIC. As with the first installment, the institution is also required under section 327.3(h) to file a request for revision of its assessment computation if it wishes to change its assessment payment, which in practice is usually done to obtain a refund.

Under the automated invoicing and collection system, over a period of years, the certified statement has evolved from a semiannual form used by insured institutions to report their deposit data and calculate their assessment payments, into a form designed to confirm the accuracy of information previously provided by the institution (via Call Reports/TFRs) and the accuracy of the FDIC's assessment calculations based on that information.

The existing certified statement process imposes significant and unnecessary burdens on insured institutions and the FDIC. The FDIC mails out over 9,000 first installment invoices and an equal number of certified statements each semiannual period. Institution officials must review and accept the first installment assessment calculation twice: once in reviewing the first installment invoice and then a second time, when reviewing the certified statement. Institutions return their certified statements to the FDIC, even if no discrepancies are found, a process prone to recurrent errors. For example, some institutions return the wrong form (the first installment invoice rather than the certified statement), or the certified statement is lost in transit. Further, the FDIC does not receive approximately 1,000 certified statements each semiannual period, necessitating significant follow-up efforts by FDIC staff through letters and telephone calls, which in turn imposes significant burdens on the insured institutions that must respond.

In addition, institutions filing corrected certified statements or invoices are required under section 327.3(h) to file a separate request for revision of that payment with the FDIC within 60 days from the date of the quarterly assessment invoice. The request for revision sets in motion the process of FDIC review of the validity of the certified statement amendment, the accuracy of the corresponding assessment payment, and the potential for a refund or additional charges based on the FDIC's determination.

Finally, the return of certified statements to the FDIC was important when institutions themselves filled out the certified statement and computed the assessment owed to the FDIC. Since 1995, however, the information used to complete the certified statement is drawn from Call Reports/TFRs previously attested to by officers of the insured depository institutions and stored electronically by the FDIC. In effect, the information on the certified statements that institutions are required to certify and return is already certified and transmitted to the FDIC when the Call Reports/TFRs are filed. Unlike the certified statement, however, institutions are not required to return the completed Call Report/TFR signature and attestation page to the appropriate Federal banking agency. Instead, the attestation page is signed and attached to the hard-copy record of the completed Call Report/TFR, which the institution retains in its own files.

For these reasons, return of certified statements to the FDIC has been identified under the FDIC's ongoing EGRPRA program as an outdated, redundant, and burdensome process, both for the industry and for the FDIC.

II. The Final Rule

Under the final rule, the two quarterly assessment invoices issued during a semiannual period will each be a component of the required semiannual certified statement. The two quarterly certified statement invoices combined will reflect an institution's total assessment payment for each semiannual period, just as the invoice and certified statement do now. The FDIC, however, will no longer mail out paper copies of certified statement invoices to insured institutions. Instead, insured institutions will access their quarterly certified statement invoices each quarter via the FDIC's transaction-based e-business website, FDIC*connect*. In addition, Notices of Assessment Risk Classification, formerly mailed with the first quarterly invoice each semiannual period (*see* 12 CFR 327.4(a)), will be provided with the first quarterly certified statement invoice each semiannual period on FDIC*connect*.

FDIC*connect* access to quarterly certified statement invoices was expressly supported by a majority (12) of the commenters. One bank stated its desire to ''eliminate as many paper processes as possible.'' Another appreciated ''the regulatory effort under the Economic Recovery and Regulatory Paperwork Reduction Act (EGRPRA) to reduce our filing and compliance burdens.'' A third pronounced Internet access to quarterly certified statement invoices ''an excellent move.'' Others expressed ''favor'' for the proposal, saw ''no problem'' with it, agreed in principle with the FDIC's goal, and were ''supportive'' of the amendments. This group of twelve commenters included institutions of various sizes, plus the Independent Community Bankers of America.

In addition, two other institutions supported the amendments by inference, asking for e-mail notification of the availability of the quarterly certified statement invoices on FDIC*connect*. A third did not have Internet access yet and inquired about alternative notice; a fourth favored the proposal albeit incorrectly describing FDIC*connect* as receipt of quarterly certified statement invoices ''via e-mail''; and one other commenter opposed downloading of the quarterly certified statement invoices, for security reasons, but favored e-mailing them. Overall, 17 of the 22 comment letters were generally supportive of the change to FDIC*connect*.

Five of the comment letters expressed an overall negative opinion, but in varying degrees. The five negative comments were based largely on opposition to the requirement that institutions retrieve their invoices electronically through FDIC*connect*. However, none of these comments opposed the concepts of quarterly certified statement invoices, eliminating return of correct quarterly certified statement invoices to the FDIC, or treating amendments as automatic requests for review of the corresponding assessment payments. One commenter favored the prior system of mailed certified statements, arguing that it was uncomplicated and required only a pen and a 37 cent stamp. Another objected that the FDIC should not ''force'' institutions to access their own quarterly certified statement invoices on FDIC*connect*. A third observed: ''It would be just as efficient, if not more efficient, to e-mail the certification to a bank's president with a 2nd copy to be e-mailed to the individual responsible for compiling the Call Reports.'' Two commenters, however, based their opposition on the fear that institutions

[4] An institution's assessment for the first semiannual period of each year (January 1 through June 30) is calculated on the deposits reported on the previous September and December Call Report/TFR. The first installment (due January 2) is based on the September deposits and the second installment (due March 30) is based on the December deposits. The assessment for the second semiannual period (July 1 through December 31) is calculated on the deposits reported on the previous March and June Call Report/TFR. The first installment (due June 30) is based on the March deposits, and the second installment (due September 30) is based on the June Deposits. *See* 12 CFR 327.3.

would forget to download the invoice every quarter. One of these complained that electronic retrieval ''Makes it really easy to overlook, the receiving of the assessment prompts us to reply.'' The other urged that ''Your proposal adds another level of burden on the banks by way of them having one more thing they have to remember to do, without the benefit of receiving a notice, statement or bill.'' The FDIC's courtesy e-mail notification of quarterly certified statement invoice availability each quarter may substantially relieve these two commenters' concerns.

The FDIC believes that the benefits of Internet access to quarterly certified statements inure to insured institutions and the FDIC. FDIC*connect* access to quarterly certified statement invoices is another step toward providing business processes between insured institutions and the FDIC electronically. With the advent of electronic business practices, the effort and expense inherent in mailing out and returning over 9,000 paper certified statement invoices each quarter can be eliminated. Further, most insured institutions already have Internet service and regard access to quarterly certified statements as another favorable step in the direction of increasing electronic business practices. As one bank noted ''We have already researched FDIC*connect* and plan to sign up.'' A bank CFO was ''pleased that the FDIC continues to progress towards providing regulatory burden relief to insured depository institutions under the EGRPRA. I believe that these changes * * * will reduce time and effort by my institution and others required to comply with the assessment and certified statement process.'' [5]

Two of the commenters requested that quarterly certified statement invoices be e-mailed to institutions rather than downloaded from FDIC*connect*. The FDIC, however, believes that the security infrastructure built into FDIC*connect* makes retrieval by insured institutions superior to e-mailing invoices directly to institutions. For this reason, the FDIC has determined that FDIC*connect* is the better approach to electronic dissemination of insured institutions' quarterly certified statement invoices.[6] In addition, quarterly certified statement invoices will be provided as PDF files, as one commenter requested, a secure format less vulnerable to manipulation.

Eleven comment letters specifically requested that the FDIC remind institutions each quarter to download the invoices and pay the assessment amounts. Several of the comments supporting the amendments specifically requested that the FDIC include a notification element in the final rule. One commenter (a small bank—assets less than $100 million) suggested that ''an e-mail be sent to [the] registered recipient for each bank. It should be sent when the assessments are available on the FDIC*connect* site.'' A medium-size thrift ($500 million assets) urged: ''e-mail notification is the first thing I thought of when I began reading the proposed changes. Thus, I find the considered e-mail notification desirable and would be most appreciative of such a service.'' Another commenter, a very large institution (assets greater than $10 billion) said: ''Notification would serve as a reminder, making daily searches around notice time unnecessary. It would also ensure timely payments of assessment amounts.'' The Independent Community Bankers of America also advocated for e-mail notification: ''Such email notification would ensure that banks do not neglect to check their certified statements online or overlook funding their account in a timely manner for the FDIC's direct debit.''

The FDIC agrees that it would be beneficial to remind institutions to retrieve their assessment invoices each quarter. The final rule states that the FDIC will send e-mail notification to all individuals at insured institutions who have FDIC*connect* access to quarterly certified statement invoices each quarter when the invoices are available to download (no less that 15 days prior to the ACH payment date). In addition, the final rule also provides that the FDIC may communicate with insured institutions by e-mail regarding quarterly certified statement invoices and other assessment-related matters as well.

Four commenters requested that the FDIC provide an alternative invoice delivery method. One commenter indicated that it would be a burden for institutions to get Internet access and maintain the hardware necessary to retrieve invoices electronically. Another commenter—a small thrift (assets less than $100 million)—observed: ''As we do not have internet access, we are concerned whether these proposals will include some sort of alternative method to obtain our assessments and invoices.'' In addition, the Independent Community Bankers of America commented that ''some banks may not have ready access to the Internet'' and urged the FDIC to offer an alternative delivery method for those banks, suggesting either fax or mail. The FDIC recognizes that some institutions may not yet have Internet access. Accordingly, the final rule includes a process for institutions without Internet access to request a renewable exemption for up to one year, during which they will continue to receive their quarterly certified statement invoices through the mail. Any quarterly certified statement invoice mailed to an insured institution will be treated in all respects as if it had been downloaded from FDIC*connect*. Under this provision, exemptions may be requested in writing from the Chief of the Assessments Section, FDIC Division of Finance.

Once institutions have obtained their quarterly certified statement invoices via FDIC*connect*, return of those statements to the FDIC—if the institution believes the invoice is correct—will no longer be required. If an institution agrees with its quarterly certified statement invoice, an officer of the institution will simply retain it in the institution's files for the five-year record retention period established in the FDI Act. *See* 12 U.S.C. 1817(b)(5).[7] Because the data used to complete the quarterly certified statement invoice has been previously attested to on the institution's Call Report/TFR, signing the quarterly certified statement invoice will no longer be required. Instead, the institution will simply pay the assessment indicated on the quarterly certified statement invoice—by funding its designated account and permitting the FDIC's direct debit—and the invoice data will be deemed certified by the institution in conformity with both the final rule and the FDI Act.

If an institution disagrees with the Call Report/TFR data used to compute the assessment amount listed on a quarterly certified statement invoice, the institution will simply amend its Call Report/TFR data (as it has in the past), return it to the FDIC, and the FDIC will automatically treat the amendment as a request for revision of assessment computation under 12 CFR 327.3(h). Similarly, if an institution disagrees with the calculation of the assessment amount (with no change required to Call Report/TFR data), the institution will simply annotate the quarterly certified statement invoice with the correct information, certify its accuracy by

[5] Accessing quarterly certified statement invoices via FDIC*connect* is consistent with the provisions of the Government Paperwork Elimination Act, under which agencies offer on-line alternatives to paper-based processes.

[6] Access to FDIC*connect* as provided under the final rule requires that each institution register an employee (or employees) as FDIC*connect* Designated Coordinator(s). The Designated Coordinator(s) will then be able to access the quarterly certified statement invoice or grant access for that purpose to other individuals.

[7] The quarterly certified statement invoice will also remain accessible on FDIC*connect* for that same five-year period.

signing, and return it to the FDIC within the specified timeframe. The FDIC will automatically treat the amended invoice as a request for revision of assessment computation under section 327.3(h). In either case, no separately filed request for revision will be needed.[8] In the event of an assessment dispute, the FDIC can request from an insured institution the quarterly certified statement invoice retained in the institution's files.

Under the final rule, quarterly certified statement invoices from prior semiannual periods will still be subject to change should an institution discover errors and seek to amend its Call Report/TFR. The FDIC considers such requests for assessment changes for the full five-year statute of limitations period for assessments. Institutions, however, must in every case ensure that the debit to the institution's designated ACH account is adequately funded and authorized.

The final rule provides several benefits to the industry and the FDIC. By accessing FDIC*connect*, institutions will obtain their assessment invoice data more quickly, more reliably, and at less cost to the FDIC. Lowered costs to the FDIC will ultimately benefit financial institutions because the FDIC is funded by assessments from the industry. The official(s) delegated with the responsibility for an institution's FDIC assessments will retrieve quarterly certified statement invoices at his or her convenience 24 hours a day (allowing limited downtime for maintenance during off hours) without mail or internal routing delays. Institutions may facilitate internal distribution by authorizing more than one person to access FDIC*connect*. Signing and returning correct quarterly certified statement invoices will be eliminated. Because each quarterly certified statement invoice is a component of the institution's semiannual certified statement, the payment and certification processes become synchronized, and the confusion caused by the prior requirement that institutions return every other invoice will be eliminated. In addition, insured institutions' officers will benefit from fewer steps in their review process. Under the prior system, institutions were required to review their first invoice data twice—once on the first invoice and again when it was reiterated on the certified statement. This needless repetition will be eliminated, reducing the regulatory burden imposed by the certified statement process. Finally, the amendment will simplify and streamline the FDIC's review process for assessment payment changes; when an amended quarterly certified statement invoice is returned to the FDIC, a separately filed request for revision of assessment computation will not be required.

[8] The requirements for filing a request for review of an institution's assessment risk classification under 12 CFR 327.4(d) are unaffected by this change.

III. Effective Date

The final rule will become effective on March 1, 2005. Quarterly certified statement invoices for the quarter beginning April 1, 2005, will be available on FDIC*connect* on or about March 15, 2005. The delayed effective date will allow time for insured institutions that have not already registered with FDIC*connect* to do so.

IV. Paperwork Reduction Act

This final rule results in a reduction in burden for a collection of information entitled ''Certified Statement for Semi-annual Deposit Insurance Assessment,'' subject to the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* No person is required to respond to, nor shall any person be subject to a penalty for a failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. The FDIC solicited public comment on the change in burden for the information collection in accordance with 44 U.S.C. 3506(c)(2)(B). No comments were received. The FDIC also submitted the change in burden resulting from this final rule to OMB for review in accordance with 44 U.S.C. 3507(d). The OMB has approved the change in burden to the collection of information under control number 3064–0057.

V. Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605(b) the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small businesses within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The final rule affects all insured depository institutions (there are approximately 9,700 at present). Of the total number of insured institutions, approximately 60% are small business entities (assets of $150 million or less). The final rule slightly reduces the regulatory burden (from an estimated 30 minutes per response to an estimated 20 minutes per response) imposed by the certified statement process, and therefore does not have a significant economic impact on any insured depository institution.

The final rule changes the manner in which insured institutions file certified statements. Under the final rule, institutions will access their quarterly certified statement invoices via the FDIC's e-business Web site, FDIC*connect*, rather than by mail. No significant burden is anticipated in this requirement because the FDIC believes that very few institutions do not already have Internet access or cannot readily obtain it (the final rule provides for an exemption for up to one year). Return of correct invoices is eliminated. An insured institution reviews each quarterly certified statement invoice only once, unlike the prior system. Only quarterly certified statement invoices that the institution believes are not correct are returned to the FDIC, amended to show corrections. The FDIC will treat amended certified statement invoices as requests for review, eliminating the need for institutions to make a separate filing under 12 CFR 327.3(h). The final rule requires that institutions retain a copy of the quarterly certified statement invoice for their records, but no significant burden is anticipated in this requirement because insured institutions already retain copies of their certified statements and invoices. Access to quarterly certified statement invoices via FDIC*connect* will be more secure than the mail, will eliminate much internal routing of statements within institutions, will permit 24-hour access to quarterly certified statement invoices (with minimal maintenance downtime), and will eliminate significant FDIC tracking and processing. In short, the final rule will reduce the regulatory burden on insured institutions.

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

The FDIC has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Public Law 105–277, 112 Stat. 2681).

VII. Plain Language Requirement

Section 722 of the Gramm-Leach-Bliley Act (GLBA), 15 U.S.C. 6801 *et seq.*, requires banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The proposed rule requested comments

on how the rule might be changed to reflect the requirements of GLBA. No GLBA comments were received.

VIII. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the final rule is not a ''major rule'' within the meaning of the relevant sections of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 801 *et seq.*). As required by SBREFA, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the final rule may be reviewed.

List of Subjects in 12 CFR Part 327

Assessments, Bank deposit insurance, Banks, Banking, Financing Corporation, Freedom of information, Hearing and appeal procedures, Record retention, Reporting and record keeping requirements, Savings associations.

■ For the reasons stated in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation hereby amends part 327 of Title 12 of the Code of Federal Regulations as follows:

PART 327—ASSESSMENTS

■ 1. The authority citation for part 327 continues to read as follows:

Authority: 12 U.S.C. 1441, 1441b, 1813, 1815, 1817–1819; Pub. L. 104–208, 110 Stat. 3009–479 (12 U.S.C. 1821).

■ 2. Section 327.2 of subpart A is revised to read as follows:

§ 327.2 Certified statements.

(a) *Required*. (1) Each insured depository institution shall file and certify its semiannual certified statement in the manner and form set forth in this section.

(2) The semiannual certified statement shall be comprised of the two quarterly assessment invoices issued during each semiannual period as prescribed in § 327.3(c) and (d). The two quarterly certified statement invoices combined shall reflect the institution's semiannual assessment base, assessment computation, and semiannual assessment amount.

(3) Any rule applicable to the certified statement shall apply to each quarterly certified statement invoice.

(b) *Availability and access*. (1) The Corporation shall make available to each insured depository institution via the FDIC's e-business website FDIC*connect* two quarterly certified statement invoices during each semiannual period.

(2) Insured depository institutions shall access their quarterly certified statement invoices via FDICconnect, unless the FDIC provides notice to insured depository institutions of a successor system. In the event of a contingency, the FDIC may employ an alternative means of delivering the quarterly certified statement invoices. A quarterly certified statement invoice delivered by any alternative means will be treated as if it had been downloaded from FDIC*connect*.

(3) Institutions that do not have Internet access may request a renewable one-year exemption from the requirement that quarterly certified statement invoices be accessed through FDIC*connect*. Any exemption request must be submitted in writing to the Chief of the Assessments Section.

(4) Each quarter, the FDIC will provide courtesy e-mail notification to insured depository institutions indicating that new quarterly certified statement invoices are available and may be accessed on FDICconnect. E-mail notification will be sent to all individuals with FDIC*connect* access to quarterly certified statement invoices.

(5) E-mail notification may be used by the FDIC to communicate with insured depository institutions regarding quarterly certified statement invoices and other assessment-related matters.

(c) *Review by institution*. The president of each insured depository institution, or such other officer as the institution's president or board of directors or trustees may designate, shall review the information shown on each quarterly certified statement invoice.

(d) *Retention by institution*. If the appropriate officer of the insured depository institution agrees that to the best of his or her knowledge and belief the information shown on the quarterly certified statement invoice is true, correct and complete and in accordance with the Federal Deposit Insurance Act and the regulations issued under it, the institution shall pay the amount specified on the invoice and shall retain the quarterly certified statement invoice in the institution's files for five years as specified in section 7(b)(5) of the Federal Deposit Insurance Act.

(e) *Amendment by institution*. If the appropriate officer of the insured depository institution determines that to the best of his or her knowledge and belief the information shown on the quarterly certified statement invoice is not true, correct and complete and in accordance with the Federal Deposit Insurance Act and the regulations issued under it, the institution shall pay the amount specified on the invoice, and may:

(1) Amend its Report of Condition, or other similar report, to correct any data believed to be inaccurate on the quarterly certified statement invoice; amendments to such reports timely filed under section 7(g) of the Federal Deposit Insurance Act but not permitted to be made by an institution's primary Federal regulator may be filed with the FDIC for consideration in determining deposit insurance assessments; or

(2) Amend and sign its quarterly certified statement invoice to correct a calculation believed to be inaccurate and return it to the FDIC by the quarterly payment date for that invoice as specified in § 327.3(c) and (d).

(f) *Certification*. Data used by the Corporation to complete the quarterly certified statement invoice has been previously attested to by the institution in its Reports of Condition, or other similar reports, filed with the institution's primary Federal regulator. When an insured institution pays the amount shown on the quarterly certified statement invoice and does not correct that invoice as provided in paragraph (e) of this section, the information on that invoice shall be deemed true, correct, complete, and certified for purposes of paragraph (a) of this section and section 7(c) of the Federal Deposit Insurance Act.

(g) *Requests for revision of assessment computation*. (1) The timely filing of an amended Report of Condition or other similar report, or an amended quarterly certified statement invoice, that will result in a change to deposit insurance assessments owed or paid by an insured depository institution shall be treated as a timely filed request for revision of computation of quarterly assessment payment under § 327.3(h).

(2) The rate multiplier shown on the quarterly certified statement invoice shall be amended only if it is inconsistent with the assessment risk classification assigned to the institution in writing by the Corporation for the current semiannual period pursuant to § 327.4(a). Agreement with the rate multiplier shall not be deemed to constitute agreement with the assessment risk classification assigned.

By order of the Board of Directors.

Dated in Washington, DC, this 15th day of November, 2004.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 04–25804 Filed 11–22–04; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket FAA 2003–16805; Airspace Docket 03–ANM–22]

Establish Class D Airspace; Provo, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule will establish Class D airspace at Provo, UT. An Airport Traffic Control Tower (ATCT) is under construction at Provo Municipal Airport, Provo, UT, which will meet criteria for Class D airspace. A Class D surface area is necessary when the ATCT is open.

EFFECTIVE DATE: 0901 UTC, January 20, 2005.

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Federal Aviation Administration, Western Terminal Operations, 15000 Aviation Boulevard, Lawndale, CA 90261; telephone (310) 725–6613.

SUPPLEMENTARY INFORMATION:

History

On June 28, 2004, the FAA proposed to amend Title 14 Code of Federal Regulations part 71 (CFR part 71) to establish Class D airspace at Provo, UT, (69 FR 36030). An Airport Traffic Control Tower (ATCT) is under construction at Provo Municipal Airport, Provo, UT, which will meet criteria for Class D airspace. The current Class E2 surface area airspace will be revoked in a separate rulemaking action. The Class D airspace area will be effective during periods that the ATCT is open.

Interested parties were invited to participate in this rule making proceeding by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9M dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR part 71.1. The Class D airspace designation listed in this document will be published subsequently in that Order.

The Rule: This amendment to 14 CFR part 71 establishes Class D airspace at Provo Municipal Airport, Provo, UT. An Airport Traffic Control Tower (ATCT) is under construction at Provo Municipal Airport, Provo, UT, which will meet criteria for Class D airspace.

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. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference Navigation (air)

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR part 71.1 of the Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 5000 Class D Airspace area extending upward from the surface of the earth.

* * * * *

ANM UT D Provo, UT [New]

Provo Municipal Airport, UT
(Lat. 40°13′09″ N., long. 111°42′42″ W.)
Spanish Fork-Springville, UT
(Lat. 40°08′30″ N., long. 111°39′41″ W.)

That airspace extending upward from the surface to and including 7,000 feet MSL within a 4.3-mile radius of Provo Municipal Airport, excluding that airspace within 2.4 mile radius of the Spanish Fork-Springville Airport. This Class D airspace is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on November 8, 2004.

Leonard A. Mobley,

Acting Area Director, Terminal Operations, Western Service Area.

[FR Doc. 04–25883 Filed 11–22–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket FAA 2003–16567; Airspace Docket 03–ANM–14]

Revision of Class E Airspace; Sunriver, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule will revise Class E airspace at Sunriver, OR. A new Area Navigation (RNAV) Global Position System (GPS) Standard Instrument Approach Procedure (SIAP) at Sunriver airport, Sunriver, OR, makes it necessary to increase the Class E airspace. This additional controlled airspace extending upward from 700 feet or more above the surface of the earth is necessary for the containment and safety of Instrument Flight Rules (IFR) aircraft transitioning to/from the en route environment and executing this SIAP procedure.

EFFECTIVE DATE: 0901 UTC, January 20, 2005.

FOR FURTHER INFORMATION CONTACT: Ed Haeseker, Federal Aviation Administration, Air Traffic Organization, 1601 Lind Avenue SW., Renton, WA, 98055–4056; telephone (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On October 21, 2003, the FAA proposed to amend Title 14 Code of Federal Regulations part 71 (CFR part 71) to modify Class E airspace at Sunriver, OR, (69 FR 19317). A new RNAV GPS SIAP at Sunriver Airport, Sunriver, OR, makes it necessary to increase the Class E airspace. This additional controlled airspace is necessary for the containment and safety of IFR aircraft transitioning to/from the en route environment and executing this SIAP procedure.

Interested parties were invited to participate in this rule making

proceeding by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9M dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule: This amendment to 14 CFR part 71 revises Class E airspace at Sunriver Airport, Sunriver, OR. A new RNAV GPS SIAP at Sunriver Airport makes it necessary to increase the Class E airspace. This additional controlled airspace extending upward from 700 feet or more above the surface of the earth is for the containment and safety of IFR aircraft transitioning to/from the en route environment and executing this SIAP procedure.

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. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air)

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR part 71.1 of the Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

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

* * * * *

ANM OR E5 Sunriver, OR (Revised)

Sunriver Airport, Sunriver, OR
(Lat. 43°52′35″ N., long. 121°27′11″ W.)
Deschutes VORTAC
(Lat. 43°15′10″ N., long. 121°18′13″ W.)

That airspace extending upward from 700 feet above the surface of the earth within a 6.1 mile radius of the Sunriver Airport and within 3.5 miles each side of the Deschutes VORTAC 196° radial extending from the 6.1 mile radius to 14 miles north of the airport excluding that airspace within Federal Airways.

* * * * *

Issued in Seattle, Washington, on November 8, 2004.

Raul C. Treviño,

Area Director, Western En Route and Oceanic Operations.

[FR Doc. 04–25884 Filed 11–22–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2004–19438; Airspace Docket No. 04–ASO–9]

RIN 2120–AA66

Amendment to Restricted Areas 2932, 2933, 2934, and 2935; Cape Canaveral, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Restricted Areas 2932, 2933, 2934, 2935 (R–2932, R–2933, R–2934, and R–2935), Cape Canaveral Air Force Station (AFS), FL. Specifically, this action changes the name of the using agency for these areas from ''U.S. Air Force, Eastern Space and Missile Center/RRS, Cape Canaveral AFS, FL,'' to ''Commander, 1st Range Operations Squadron, Cape Canaveral AFS, FL.'' This action is being taken to reflect the current organizational structure at Cape Canaveral AFS, FL, but does not change the boundaries, altitudes, time of designation, or use of the restricted areas.

EFFECTIVE DATE: 0901 UTC, January 20, 2004.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules, Office of System Operations and Safety, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION

Background

On February 25, 2004, the airspace manager for the 45th Space Wing, Cape Canaveral AFS, FL, requested a change to the using agency information for R–2932, R–2933, R–2934, and R–2935 to reflect the current organizational structure. This action responds to this request.

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 73 (part 73) by modifying R–2932, R–2933, R–2934, and R–2935, Cape Canaveral AFS, FL. Specifically, this action changes the using agency name from ''U.S. Air Force, Eastern Space and Missile Center/RRS, Cape Canaveral AFS, FL,'' to ''Commander, 1st Range Operations Squadron, Cape Canaveral AFS, FL.'' This action is an administrative change to reflect the current organization name of the using agency. This action does not alter the boundaries, altitudes, time of designation, or activities conducted within the restricted areas. Therefore, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Section 73.29 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8L, dated October 7, 2003.

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

Environmental Review

This action is a minor administrative change to update the using agency name

for existing restricted areas. There are no changes to air traffic procedures or routes as a result of this action. Therefore, the FAA determined that this action qualifies for a categorical exclusion from further environmental analysis under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311d.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—SPECIAL USE AIRSPACE

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

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

§ 73.29 [Amended]

■ 2. § 73.29 is amended as follows:

* * * * *

R–2932 Cape Canaveral, FL [Amended]

By removing the words ''Using agency. U.S. Air Force, Eastern Space and Missile Center/RRS, Cape Canaveral AFS, FL,'' and substituting ''Using agency. Commander, 1st Range Operations Squadron, Cape Canaveral AFS, FL.''

R–2933 Cape Canaveral, FL [Amended]

By removing the words ''Using agency. U.S. Air Force, Eastern Space and Missile Center/RRS, Cape Canaveral AFS, FL,'' and substituting ''Using agency. Commander, 1st Range Operations Squadron, Cape Canaveral AFS, FL.''

R–2934 Cape Canaveral, FL [Amended]

By removing the words ''Using agency. U.S. Air Force, Eastern Space and Missile Center/RRS, Cape Canaveral AFS, FL,'' and substituting ''Using agency. Commander, 1st Range Operations Squadron, Cape Canaveral AFS, FL.''

R–2935 Cape Canaveral, FL [Amended]

By removing the words ''Using agency. U.S. Air Force, Eastern Space and Missile Center/RRS, Cape Canaveral AFS, FL,'' and substituting ''Using agency. Commander, 1st Range Operations Squadron, Cape Canaveral AFS, FL.''

* * * * *

Issued in Washington, DC, on November 16, 2004.

Reginald C. Matthews,

Manager, Airspace and Rules.

[FR Doc. 04–25882 Filed 11–22–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 750

[Docket No. 041001275–4275–01]

RIN 0694–AD05

Revision of Licensee's Responsibility To Communicate License Conditions

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Interim rule.

SUMMARY: This interim rule revises the Export Administration Regulations (EAR) to require licensees to communicate in writing specific license conditions to the parties to whom the license conditions apply. This rule also makes a technical correction to the title of part 750 of the EAR.

DATES: This rule is effective: December 23, 2004.

FOR FURTHER INFORMATION CONTACT: Jeffery Lynch, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security; e-mail: *jlynch@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

Background

In July 2000, BIS published a regulation (65 FR 42565) that required the licensee to communicate specific license conditions to applicable parties. The Export Administration Regulations (EAR) state, in § 750.7(d), that ''it is the licensee's responsibility to communicate the specific license conditions to the parties to whom those conditions apply. In addition, when required by the license condition, the licensee is responsible for obtaining written acknowledgment(s) of receipt of the conditions from the party(ies) to whom those conditions apply.''

The purpose of this rule is to ensure that license conditions are communicated to the parties to whom they apply, and to clarify the manner in which the conditions should be communicated. Such communication must be in writing (which includes recorded and retrievable media, such as e-mail). This revision is in accordance with the Government Accountability Office's (GAO) post-shipment verification recommendations to the Bureau of Industry and Security (BIS) (found in GAO–04–357). This revision will not increase the burden to the public, as license conditions generally are typically communicated in writing, (*e.g.*, via e-mail or facsimile).

The written communication of the text of license conditions (not the manner in which the writing is formatted) is the most important aspect of this requirement. For example, if a licensee communicates the conditions via a sales contract, then the sales contract must specifically state that the conditions continue beyond any stated validity period of the contract.

Export licenses may include several different types of conditions, including restrictions on end-use, requirements to keep records or submit reports, or requirements to return certain items to the United States. Some licenses may be subject to several conditions, each of which may affect a different party to the export transaction. Pursuant to the requirements set forth in this rule, the licensee bears the responsibility of ensuring that the terms and text of the conditions are clearly conveyed to the appropriate involved parties.

In addition to the above provisions, this rule also makes a technical correction to the title of Part 750 of the EAR. Currently, that part is entitled ''Application Processing, Issuance or and Denial.'' The ''or and'' in the title is in reverse order. This rule changes the title to read ''Application Processing, Issuance and Denial.''

Although the Export Administration Act expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), as extended by the Notice of August 6, 2004, 69 FR 48763 (August 10, 2004) continues the EAR in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This interim rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves a collection of information subject to the PRA. This collection has been approved by OMB under control number 0694–0122, ''Multi-Purpose Application,'' which carries a burden hour estimate of 10 minutes for a manual or electronic submission. Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to

David_Rostker@omb.eop.gov, or by fax to (202) 395–7285; and to the Office of Administration, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 6883, Washington, DC 20230.

3. This rule does not contain policies with federalism implications as that term is defined under E.O. 13132.

4. The Department finds under 5 U.S.C. 553(b)(B) that good cause exists to waive prior notice and opportunity for public comment. This rule revises the EAR to require licensees to communicate in writing specific license conditions to the parties to whom they apply. By requiring such notice to be in writing, BIS merely clarifies the form in which the notice must be provided. The previously existing EAR requirement to provide such notice is unchanged by this rule. Because this revision is not a substantive change to the EAR, it is unnecessary to provide prior notice and opportunity for public comment. Therefore, this rule is being issued in interim form.

Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Jeffrey Lynch, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, P.O. Box 273, Washington, DC 20044, e-mailed to: *jlynch@bis.doc.gov*, or faxed to (202) 482–3355.

The public record concerning this regulation will be maintained in the Bureau of Industry and Security Freedom of Information Records Inspection Facility, Room 6881, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility may be inspected and copied in accordance with regulations published in part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from the Bureau of Industry and Security Freedom of Information Officer, at the above address or by calling (202) 482–0500.

List of Subjects for 15 CFR Part 750

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

■ Accordingly, part 750 of the Export Administration Regulations (15 CFR parts 730–799) is amended as follows:

PART 750—[AMENDED]

■ 1. The authority citation for 15 CFR part 750 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

■ 2. Revise the title of part 750 to read as follows: ''PART 750—APPLICATION PROCESSING, ISSUANCE, AND DENIAL''.

§ 750.7 [Amended]

■ 3. Revise the sixth sentence in § 750.7(d) to read as follows: ''It is the licensee's responsibility to communicate in writing the specific license conditions.''

Dated: November 16, 2004.

Peter Lichtenbaum,

Assistant Secretary for Export Administration.

[FR Doc. 04–25951 Filed 11–22–04; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9130]

RIN 1545–BA60

Required Distributions From Retirement Plans; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations (TD 9130) which were published in the **Federal Register** on Tuesday, June 15, 2004 (69 FR 33288). These final regulations relate to the required minimum distributions under section 401(a)(9) for defined benefit plans and annuity contracts providing benefits under qualified plans, individual retirement plans, and section 403(b) contracts.

DATES: This correction is effective June 15, 2004.

FOR FURTHER INFORMATION CONTACT: Cathy Vohs at (202) 622–6090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9130) that are the subject of these corrections are under sections 401 and 403 of the Internal Revenue Code.

Need for Correction

As published, TD 9130 contains errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.401(a)(9)–6 [Corrected]

■ 1. Section 1.401(a)(9)–6(c)(3) of A–2, in the *Example.*, fifth sentence, the language, ''In this case, Z is 30 years older than Y and is commencing benefit 5 years before attaining age 70 so the adjusted employee-beneficiary age difference is 25 years.'' is removed and the language ''In this case, Z is 30 years older than Y and is commencing benefit 4 years before attaining age 70 so the adjusted employee-beneficiary age difference is 26 years.'' is added in its place.

■ 2. Section 1.401(a)(9)–6(c)(3) of A–2, in the *Example.*, sixth sentence, the language, ''Under the table in paragraph (c)(2) of this A–2, the applicable percentage for a 25-year adjusted employee/beneficiary age difference is 66 percent.'' is removed and the language ''Under the table in the paragraph (c)(2) of this A–2, the applicable percentage for a 26-year adjusted employee/beneficiary age difference is 64 percent.'' is added in its place.

■ 3. Section 1.401(a)(9)–6(c)(2) of A–12 is amended by removing ''A–14'' and adding ''A–12'' in its place.

■ 4. Section 1.401(a)(9)–6(d) *Example 1.* (vii) of A–13 is amended by removing the language ''under paragraph (c)(1)''.

■ 5. Section 1.401(a)(9)–6(d) *Example 3.* (i) of A–13, is amended by adding a new second sentence ''E was born in 1935.''.

■ 6. Section 1.401(a)(9)–6(f) *Example 8.* (ii) of A–14, last sentence of the paragraph the word ''be'' is removed.

Cynthia E. Grigsby,

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

[FR Doc. 04–25963 Filed 11–22–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 18

RIN 1219–AA75

Electric Motor-Driven Mine Equipment and Accessories and High-Voltage Longwall Equipment Standards for Underground Coal Mines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule, corrections.

SUMMARY: This document contains two technical corrections to the final rule published in the **Federal Register** on March 11, 2002 (67 FR 10972). The final rule mandated electrical safety standards for the installation, use, and maintenance of high-voltage longwall mining systems used in underground coal mines. The final rule also included design approval requirements for high-voltage equipment operated in longwall face areas of underground mines. These provisions allow the use of high-voltage longwall face equipment with enhanced safety protection from fire, explosion, and shock hazards. The formula in paragraph 18.53(o)(1) contained two typographical errors. This document corrects those errors.

EFFECTIVE DATE: These corrections are effective November 23, 2004.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939. Mr. Nichols can be reached at *nichols.marvin@dol.gov* (Internet E-mail), (202) 693–9440 (voice), or (202) 693–9441 (facsimile). You may obtain copies of this correction notice in a large print format by calling (202) 693–9440. The document also is available on the Internet at *http://www.msha.gov/REGSFINL.HTM.*

SUPPLEMENTARY INFORMATION: MSHA published a final rule in the **Federal Register** on March 11, 2002 (67 FR 10972) that mandated electrical safety standards for the installation, use, and maintenance of high-voltage longwall mining systems used in underground coal mines. The final rule also included design approval requirements for high-voltage equipment operated in longwall face areas of underground mines. These provisions allow the use of high-voltage longwall face equipment with enhanced safety protection from fire, explosion, and shock hazards.

These technical corrections are to two typographical errors contained in the formula in paragraphs 18.53(o)(1)(i) and (ii) found at the top of page 11001 (67 FR). The second closed parenthesis should be placed after the (C) and not the (t) in the numerator of paragraphs (o)(1)(i) and (o)(1)(ii). Discussion of the formula requirements can be found in the final rule for Electric Motor-Driven Mine Equipment and Accessories and High-Voltage Longwall Equipment Standards for Underground Coal Mines; Final Rule (67 FR 10972, 10979). That rule can be found on MSHA's Web site at: *http://www.msha.gov/REGS/FEDREG/FINAL/2002finl/02-4863.pdf.*

Procedural Requirements

Correcting these inadvertent errors in the final rule is not an action to which the procedural requirements of 5 U.S.C. 553, or the various statutes and executive orders relating to rulemaking, apply. However, if these corrections were deemed a rule, 5 U.S.C. 553(b)(B) permits an agency to issue a final rule without notice and comment procedures when it finds that notice and comment procedures would be impracticable, unnecessary, and contrary to the public interest. MSHA finds that providing notice and comment procedures on this action is unnecessary and contrary to the public interest. MSHA is merely correcting typographical errors to a formula. Without these corrections, the formula is unusable as codified. Further, the public was advised of MSHA's intention regarding the formula in paragraph 18.53(o)(1) in the preamble to the final rule and this action does not change that intention. Consequently, MSHA finds good cause not to provide notice and comment procedures for this action.

In addition, 5 U.S.C. 553(d)(3) allows an agency, upon a finding of good cause, to make a rule effective immediately. Because MSHA is only correcting typographical errors in the formula and these changes do not add any requirements necessitating additional time for compliance, MSHA finds good cause to make this action effective immediately.

The final rule published on March 11, 2002, contained information collection provisions that require an OMB Control Number. OMB has approved the information collection requirements and assigned OMB Control Number 1219–0065 to the information collection requirements of the final rule. This notice does not change these requirements. These corrections contain no additional information collection requirements.

In addition, this action is not a ''significant regulatory action'' within the meaning of Executive Order 12866. Furthermore, this action is not a ''major rule'' within the meaning of the Small Business Regulatory Enforcement Act, or an ''unfunded mandate'' within the meaning of Title II of the Unfunded Mandates Reform Act of 1995. Finally, the action will not have Federalism implications within the meaning of Executive Order 13132, and a regulatory flexibility analysis is not required by the Regulatory Flexibility Act.

List of Subjects in 30 CFR Part 18

Electric Motor Driven Mine Equipment and Accessories.

■ For the reasons set out in the preamble, chapter I of title 30 of the Code of Federal Regulations is amended as follows:

PART 18—ELECTRIC MOTOR DRIVEN MINE EQUIPMENT AND ACCESSORIES

■ 1. The authority citation for Part 18 continues to read as follows:

Authority: 30 U.S.C. 957 and 961.

■ 2. Section 18.53 is amended by revising the formulas in paragraphs (o)(1)(i) and (o)(1)(ii) to read as follows:

§ 18.53 High-voltage longwall mining systems.

* * * * *

(o) * * *

(1)(i) Steel Wall/Cover:

$$\mathrm{MFD} = 2.296 \times 10^{-6} \frac{(35 + 105\,(C))\,(I_{sc})\,(t)}{(C)\,(d)} - \frac{d}{2}$$

$$\mathrm{MFD} = 1.032 \times 10^{-5} \frac{(35 + 105\,(C))\,(I_{sc})\,(t)}{(C)\,(d)} - \frac{d}{2}$$

* * * * *

Signed at Arlington, VA, this 17th day of November 2004.

David D. Lauriski,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 04–25891 Filed 11–22–04; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–144]

Drawbridge Operation Regulations: Hackensack River, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations and request for comment.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations to test an alternate drawbridge operation regulation for the AMTRAK Portal Bridge, mile 5.0, across the Hackensack River at Little Snake Hill, New Jersey. Under this temporary 90-day deviation the two time periods in the morning and afternoon, Monday through Friday, when the bridge may remain closed to vessel traffic, will be expanded. The purpose of this temporary deviation is to test an alternate drawbridge operation schedule for 90 days and solicit comment from the public.

DATES: This deviation is effective from December 13, 2004 through March 12, 2005. Comments must reach the Coast Guard on or before April 12, 2005.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District Bridge Branch, One South Street, Battery Park Building, New York, New York, 10004, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except, Federal holidays. The telephone number is (212) 668–7165. The First Coast Guard District, Bridge Branch, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–04–144), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

FOR FURTHER INFORMATION CONTACT: Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The AMTRAK Portal Bridge has a vertical clearance in the closed position of 23 feet at mean high water and 28 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR § 117.723(c).

The bridge owner, National Railroad Passenger Corporation (AMTRAK) requested a temporary deviation from the drawbridge operation regulations to test for a period of 90 days, an alternate drawbridge operation schedule. This temporary 90-day deviation will expand the two time periods in the morning and afternoon Monday through Friday when the bridge may remain closed to vessel traffic.

Rail traffic during the morning and afternoon commuter periods have increased. Additionally, bridge openings during the two commuter time periods have caused delays to rail traffic prompting the bridge owner to request the expansion of the bridge closure periods during week days.

The existing drawbridge operation regulations allow the bridge to remain closed to vessel traffic, Monday through Friday, from 7:20 a.m. to 9:20 a.m. and from 4:30 p.m. to 6:50 p.m., daily.

Under this 90-day temporary deviation, effective from December 13, 2004 through March 12, 2005, the AMTRAK Portal Bridge need not open for vessel traffic, Monday through Friday, from 6 a.m. to 10 a.m. and from 4 p.m. to 8 p.m., daily.

Additional bridge openings shall be provided for commercial vessels from 6 a.m. to 7:20 a.m., from 9:20 a.m. to 10 a.m., from 4 p.m. to 4:30 p.m. and from 6:50 p.m. to 8 p.m., if at least a one-hour advance notice is given by calling the number posted at the bridge.

This deviation from the operating regulations is authorized under 33 CFR 117.43.

Dated: November 9, 2004.

John L. Grenier,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 04–25966 Filed 11–22–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–145]

Drawbridge Operation Regulations: Newtown Creek, Dutch Kills, English Kills, and Their Tributaries, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Metropolitan Avenue Bridge, mile 3.4, across English Kills at New York City, New York. Under this temporary deviation the bridge may remain closed from 6 a.m. to midnight on the following days: December 6 through December 8; December 15 through December 17; and December 20 through December 22, 2004. The temporary deviation is necessary to facilitate bridge maintenance.

DATES: This deviation is effective from December 6, 2004 through December 22, 2004.

FOR FURTHER INFORMATION CONTACT: Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668–7195.

SUPPLEMENTARY INFORMATION: The Metropolitan Avenue Bridge has a vertical clearance in the closed position of 10 feet at mean high water and 15 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.801(e).

The owner of the bridge, New York City Department of Transportation (NYCDOT), requested a temporary deviation from the drawbridge operation regulations to facilitate rehabilitation repairs at the bridge. The bridge must remain in the closed position to perform these repairs.

Under this temporary deviation the NYCDOT Metropolitan Avenue Bridge may remain in the closed position from 6 a.m. through midnight on the following days: December 6 through December 8; December 15 through

December 17; and December 20 through December 22, 2004.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: November 9, 2004.

John L. Grenier,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 04–25965 Filed 11–22–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA211–4231; FRL–7835–4]

Approval and Promulgation of Air Quality Implementation Plans, Pennsylvania; Control of Volatile Organic Compound Emissions From AIM Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision pertains to the control of volatile organic compounds (VOC) emissions from architectural and industrial maintenance (AIM) coatings. EPA is approving this SIP revision in accordance with the Clean Air Act (CAA or the Act).

EFFECTIVE DATE: This final rule is effective on December 23, 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 Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On March 11, 2004 (69 FR 11580), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of a Pennsylvania regulation pertaining to the control of VOC from AIM coatings. The formal SIP revision was submitted by the Pennsylvania Department of Environmental Protection (PADEP) on December 3, 2003. The specific requirements of Pennsylvania's SIP revision for AIM coatings and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. On April 12, 2004, EPA received timely comments from two parties on the March 11, 2004 NPR. Some of the timely comments were adverse to EPA's March 11, 2004 proposed rulemaking. EPA also received late comments from one party. While EPA is not obligated to consider late comments, EPA has elected to do so in this instance. A summary of the comments submitted and EPA's responses are provided in Section II of this document.

On October 19, 2004, the PADEP submitted a supplement to its December 3, 2003 SIP revision. The supplement includes a nonsubstantive correction notice published in the Pennsylvania Bulletin, 33 Pa. B. 5618 (November 15, 2003) which corrects numbering and typographical errors that appeared at 33 Pa. B. 5297 (October 25, 2003) in the adoption of Chapter 130, Subchapter C. (relating to architectural and maintenance coatings). The subsections in Subchapter C. Architectural and Industrial Maintenance Coatings have been corrected to number as subsections 130.601—130.611. The supplement also includes the codified version of the Pennsylvania AIM coating regulation, 25 Pa. Code, Subchapter C. Subsections 130.601–130.611, effective October 25, 2003.

EPA is aware that concerns have been raised about the achievability of VOC content limits of some of the product categories under the Pennsylvania AIM coatings rule. EPA understands that under the Commonwealth's rule these concerns may be addressed through a variance process, which we support, that may result in changes to the limits for certain categories. Although we are approving this rule today, the Agency is concerned that if the rule's limits make it impossible for manufacturers to produce coatings that are desirable to consumers, there is a possibility that users may misuse the products by adding additional solvent, thereby circumventing the rule's intended VOC emission reductions. We intend to work with the Commonwealth and manufacturers to explore ways to ensure that the rule achieves the intended VOC emission reductions, and we intend to address this issue in evaluating the amount of VOC emission reduction credit attributable to the rule.

II. Public Comments and EPA Responses

A. Comment: Request for Clarification—One commenter, the Department of the Navy on behalf of the Department of Defense (DOD), compliments PADEP and EPA for their effort to ensure that Pennsylvania attains and maintains compliance with the National Ambient Air Quality Standards (NAAQS). The DOD requests clarification of the Applicability subsection of Pennsylvania's rule (citing to 25 Pa. Code subsection 130.601). The DOD states that in response to the difficulty military installations have had with managing hazardous materials, the military services adopted and implemented an innovative approach to managing hazardous materials, including AIM coatings that are used in the military installations. The DOD explains that this approach establishes a single point of control and accountability over the purchase, receipt and distribution of hazardous materials to the various organizations around a military installation. This ''single point of control'' receives, approves, and processes all requests for hazardous materials submitted by the various organizations on an installation. The DOD goes on to state that once the materials are ordered, purchased and obtained by this ''single point of control,'' this unit ''supplies'' the various organizations with requested amounts of particular hazardous material for use. The DOD requests that a definition be added to Pennsylvania's regulation that would state that the term ''Supply'' or ''Supplied'' does not include internal transactions within a business or government entity, and that the term only applies to transactions between manufacturers/commercial distributors that sell, or otherwise provide AIM coating products to businesses/governmental entities/individuals. Alternatively, the DOD requests that either PADEP provide a written reply clarifying whether the terms ''supply or ''supplied'' apply to ''the single point of contact'' at military installations, or that EPA clarify this issue in its response to comments.

Response: Throughout its comments to EPA, the DOD refers to the Pennsylvania AIM coatings rule as a proposed regulation. In fact, this AIM coatings regulation has been fully adopted by the Commonwealth of Pennsylvania (*see* 33 Pa. B. 5297, October 25, 2003, 33 Pa. B. 5618,

November 15, 2003 and 25 Pa. Code Subsections 130.601–130.611) and was submitted to EPA for approval as revision to the Pennsylvania SIP on December 3, 2003. EPA's March 11, 2004 NPR proposed approval of Pennsylvania's request that its fully adopted AIM coatings regulation be made part of the SIP. EPA can only take action on a SIP revision as it is submitted by a state, and cannot, through its rulemaking action, alter the state's submission. EPA, however, does hereby clarify that it interprets that the ''single point of control'' system that the military services have developed to manage hazardous materials does not subject military installations to the rule in as much as they do not sell, offer for sale or manufacture architectural coating products. The DOD does have the obligation under section 130.601 of the rule to ensure that the products a person ''applies or solicits'' meet the requirements of the rule.

B. Comment: Paperwork Requirements for End Users—The DOD comments that a few scattered references to the ''end user'' in Pennsylvania's AIM coatings rule subject the end user of AIM coatings to additional reporting and monitoring requirements (e.g., prove that every time a coating is used, it is not thinned beyond allowable limits). The DOD goes on to state that as it is DOD's practice to use coatings as specified by the manufacturer, as an end user it will be subjected to additional burdensome paperwork requirements without any demonstrable reductions in VOC emissions. The DOD, therefore request that 25 Pa. Code subsection 130.603 (c) Thinning and (d) Rust Preventative Coatings be deleted from Pennsylvania's AIM coatings rule. (From its context, it is clear that the DOD's comment is in reference to 130.603(d) Thinning and (e) Rust Preventative Coatings in Pennsylvania's AIM coatings regulation.)

Response: Pennsylvania's AIM coatings rule does not use the term ''end user'' but rather the term ''the person who solicits and applies.'' As indicated in EPA's response to Comment A, EPA's March 11, 2004 NPR proposed approval of Pennsylvania's request that its fully adopted AIM coatings rule be made part of the SIP. EPA can only take action on a SIP revision as it is submitted by a state, and cannot, through its rulemaking action, alter the state's submission. EPA, cannot, therefore, delete paragraphs (d) Thinning and (e) Rust Preventative Coatings from section 130.603 of the Pennsylvania AIM coatings rule by its rulemaking on the SIP revision submission. EPA, however, does hereby clarify that it does not interpret 130.603 (d) and (e) to require the person who solicits and applies to keep records ''to prove that every time a coating is used, it is not thinned beyond allowable limits.'' Rather each *manufacturer* is to comply with subsection 130.604(a)(2) Thinning Recommendations, and indicate on the label or lid its recommendations regarding thinning of the coating or specify that the coating is to be applied without thinning. So long as the person who solicits and applies coatings (or end user) does so in accordance with the VOC limits found in Table 1 of Pennsylvania's AIM coatings rule, that person would be in compliance.

C. *Comment: Container Labeling Requirements*—In its final comment, the DOD states that while manufacturers of any architectural coatings are required to display certain information, such as VOC content, on the container, they are not required to identify the applicable coating category on the container. The DOD comments that for easy verification of VOC compliance by the user, 25 Pa. Code subsection 130.604 should be amended to require the coating category be listed next to VOC content.

Response: For the purposes satisfying the requirements for approval as a SIP revision, EPA has determined that the container labeling requirements found at section 130.604 of Pennsylvania's AIM coatings rule are adequate.

D. *Comment: The Pennsylvania AIM Coatings Rule is Based on Flawed Data*—Additional comments on EPA's March 11, 2004 NPR proposing approval of Pennsylvania's AIM coatings rule have been submitted on behalf of the Sherwin Williams Company and from the National Paint and Coatings Association (NPCA), hereafter referred to as the commenters. The comments from NPCA reference and endorse the comments submitted on behalf of the Sherwin Williams Company and reiterate the comments made to the Commonwealth by NPCA during Pennsylvania's rule adoption process. The commenters assert that the Pennsylvania AIM coatings rule is based on flawed data and that the use of this data violates the Data Quality Objectives Act (''DQOA'') (Section 515(a) of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554; H.R. 5658)). The data at issue is contained in what the commenters characterize as a ''study prepared by E.H. Pechan & Associates'' (''Pechan Study'') in 2001. The alleged flaws relate to emissions reductions calculated in the Pechan Study; certain of the underlying data and data analyses are allegedly ''unreproduceable.'' Further, the commenters assert that if better data were used, the OTC model AIM coatings rule would achieve greater VOC emissions reductions, relative to the Federal AIM coatings rule, than was calculated in the Pechan Study (51 percent reduction versus 31 percent reduction), even if certain source categories were omitted from regulation under the OTC rule. For these reasons, the commenters state that EPA must not approve the proposed Pennsylvania AIM coatings rule as a revision to the SIP.[1]

Response: EPA disagrees with this comment. What the commenters characterize as the Pechan Study is not at issue in this rulemaking. The Pechan Study was not submitted to EPA by the Commonwealth in support of its AIM coatings rule. Further, even if the Pechan Study had been submitted by the Commonwealth the validity of that data would not be at issue because, at this time, Pennsylvania is not asking for approval of any quantified amount of VOC emission reduction from the enactment of its regulation. Rather, this regulation has been submitted by the Commonwealth, and is being considered by EPA, on the basis that it strengthens the existing Pennsylvania SIP. The commenters do not dispute that the Pennsylvania AIM coatings rule will, in fact, reduce VOC emissions.

Section 110 of the Act provides the statutory framework for approval/disapproval of SIP revisions. Under the Act, EPA establishes NAAQS for certain pollutants. The Act establishes a joint Federal and state program to control air pollution and to protect public health. States are required to prepare SIPs for each designated ''air quality control region'' within their borders. The SIP must specify emission limitations and other measures necessary for that area to meet and maintain the required NAAQS. Each SIP must be submitted to EPA for its review and approval. EPA will review and *must approve* the SIP revision if it is found to meet the minimum requirements of the Act. *See* Section 110(k)(3) of the Act; *see also Union Elec. Co.* v. *EPA*, 427 U.S. 246, 265, 96 S.Ct. 2518, 49 L.Ed.2d 474 (1976). The Act expressly provides that the states may adopt more stringent air pollution control measures than the Act requires with or without EPA approval. *See* Section 116 of the Act. EPA only has power to disapprove state plans,

[1] One of the commenters has submitted a ''Request for Correction of Information'' (RFC) dated June 2, 2004, to EPA's Information Quality Guidelines Office in Washington, DC. EPA is evaluating and will respond separately to the RFC, which raises substantively similar issues to those raised by this comment.

and revisions thereto, that are less stringent than a standard or limitation provided by Federal law. See Section 110(k) of the Act; *see also Duquesne Light* v. *EPA*, 166 F.3d 609 (3d Cir. 1999).

The Pechan Study is not part of the Commonwealth's submission in support of its AIM coatings rule. Because the Commonwealth's December 3, 2003 submission is not claiming a specific amount of emissions reductions, the level of emissions reductions that might be calculable using data contained in the Pechan Study is irrelevant to whether EPA can approve this SIP revision.[2] The only relevant inquiry at this time is whether this SIP revision meets the minimum criteria for approval under the Act, including the requirement that the Commonwealth's AIM coatings rule be at least as stringent as the Federal AIM coatings rule set forth at 40 CFR 59.400, subpart D.

As set forth herein, EPA has concluded that the Pennsylvania AIM coatings rule meets the criteria for approvability. It is worth noting that EPA agrees with the commenters' conclusion that the Pennsylvania AIM coatings rule is more stringent than the Federal AIM coatings rule, though not for the reasons given by the commenters, i.e., that the commenters' ''better'' data demonstrates that OTC Model AIM coatings Rule achieves a 51 percent, as opposed to the Pechan Study's 31 percent reduction in VOC emissions beyond that required by the Federal AIM coatings rule. Rather, the Pennsylvania AIM coatings rule is, on its face, more stringent than the Federal AIM coatings rule. The preamble of the Pennsylvania AIM coatings rule states: ''This final-form rulemaking sets specific VOC content limits, in grams per liter, for 48 AIM coating categories and requires more stringent VOC content limits than the Federal rule.'' 33 Pa. B. 5297 (October 25, 2003). Examples of where Pennsylvania's AIM coatings rule is facially more stringent than the Federal AIM coatings rule include, but are not limited to, the VOC content limit for non-flat high gloss coatings and antifouling coatings. The Federal AIM coatings rule VOC content limit for non-flat high gloss coatings is 380 grams/liter while the Pennsylvania AIM coatings rule's limit is 250 grams/liter, and the Federal AIM coatings rule's VOC content limit for anti-fouling coatings is 450 grams/liter while the Pennsylvania AIM coatings rule's is 400 grams/liter. Examples of where Pennsylvania AIM coatings rule is as stringent, but not more stringent, than the Federal AIM coatings rule include, but are not limited to, the VOC content limit for antenna coatings and low-solids coatings. In both rules the VOC content limits for these categories are 530 grams/liter and 120 grams/liter, respectively. Thus, on a category by category basis, the Pennsylvania AIM coatings rule is as stringent or more stringent than the Federal AIM coatings rule. Further, EPA has received no comments that the Pennsylvania AIM coatings rule is less stringent than the Federal rule.

E. *Comment: Approval of the Pennsylvania AIM Coatings rule as a SIP Revision Violates Clean Air Act Sections 110(a)(2)(A) and 110(a)(2)(E)*—With respect to Sections 110(a)(2)(A) and 110(a)(2)(E) of the Act, the commenters assert that Pennsylvania cannot give the assurances required by these provisions of the Act since each provision requires that a state be able to assure that SIP revisions ''meet applicable requirements'' of the Act, and that no ''Federal or State law'' prohibits the state from ''carrying out such implementation plan or portion thereof.'' Such assurance cannot be given, the commenters allege, because the Pennsylvania AIM coatings rule violates the DQOA, Sections 183(e)(9) and 184(c) of the Act, and Sections 4004.2 and 4005 of the Pennsylvania Air Pollution Control Act (PAPCA).

Response: For the reasons set forth herein and in responses to comments D. and F.–J., EPA disagrees that the Pennsylvania AIM coatings rule violates the DQOA, the provisions of the CAA or the PAPCA. Therefore, nothing prevents Pennsylvania from giving the assurances contemplated by Sections 110(a)(2)(A) and (a)(2)(E) of the Act.

Section C. of the preamble of Pennsylvania's rule states: ''The final form rulemaking is being made under section 5 of the Air Pollution Control Act (35 P.S. subsection 4005), which grants the [Pennsylvania Environmental Quality Board (the EQB)] the authority to adopt regulations for the prevention, control, reduction and abatement of air pollution.'' *See* C. Statutory Authority, 33 Pa. B. 5297 (October 25, 2003). The EQB made the Finding that ''This rulemaking is necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this preamble.'' *See* J. Findings, paragraph (4), 33 Pa. B. 5306 (October 25, 2003).

Under 4004.2 of the PAPCA, in order for the Commonwealth to adopt a rule for the State Implementation Plan that is more stringent than its comparable Federal requirement, the EQB must find that the rule is reasonably necessary to achieve and maintain the NAAQS or find the rule is necessary to avoid the impositions of sanctions under the Act. For the Pennsylvania AIM coatings rule, the EQB made those Findings. *See* J. Findings, paragraphs (5) and (6), 33 Pa. B. 5306 (October 25, 2003). The EQB, acting under the authorizing statutes, ordered that the regulations of the PADEP are amended by adding Subsections 130.601–130.611 (as correctly renumbered 33 Pa. B. 5618, November 18, 2003) as set forth in Annex A, which has been codified as 25 Pa. Code Chapter 130, Subchapter C—the Pennsylvania AIM coatings rule—that is the subject of this SIP revision. Further the EQB ordered that its Chairperson submit the Order and Annex A to the Office of the General Counsel and the Office of the Attorney General for review and approval as to legality and form, as required by law. The EQB also ordered that its Chairperson submit its Order and Annex A to the Independent Regulatory Review Committee (IRRC) and the Senate and House Environmental Resources and Energy Committees as required by Pennsylvania's Regulatory Review Act. The EQB also ordered that its Chairperson certify the Order and Annex A and deposit them with the Legislative Reference Bureau as required by law. Finally the EQB ordered that its Order shall take effect immediately upon publication in the Pennsylvania Bulletin. See K. Order, paragraphs (a)–(e), 33 Pennsylvania Bulletin 5306 (October 25, 2003). The Order was adopted by the Board at its July 15, 2003 meeting. Between the July 15, 2003 adoption date of the Order and the October 25, 2003 date of its publication in the Pennsylvania Bulletin, the reviews as to legality and form of 25 Pa. Code Chapter 130, Subchapter C—the Pennsylvania AIM coatings rule were performed. The PADEP Office of General Counsel approved 25 Pa. Code, Chapter 130, Subchapter C as to its legality and form on July 24, 2003. The IRRC approved 25 Pa. Code, Chapter 130, Subchapter C as to its legality and form on September 12, 2003. The Office of the Attorney General for the Commonwealth of Pennsylvania approved 25 Pa. Code, Chapter 130, Subchapter C as to its legality and form on October 3, 2003. EPA, in its review of the SIP revision submission of the Pennsylvania AIM coatings rule, has

[2] After submission of a request for approval of a quantified amount of emissions reductions credit due to the AIM coatings rule, EPA will evaluate the credit attributable to the rule. Whatever methodology and data the State uses in such a request, the issue of proper credit will become ripe for public comment and any comments received will be responded to at that time.

found no reason to indicate that the review performed by PADEP's Office of the General Counsel, the IRRC and the Office of the Attorney General for the Commonwealth of Pennsylvania as to the legality of its AIM coatings rule under State law, is insufficient. (Documentation of the approvals by the Office of General Counsel, the IRRC and the Office of the Attorney General have been made part of the administrative record of this final rulemaking).

F. *Comment: The PA AIM Coatings Rule Was Adopted in Violation of Clean Air Act Section 183(e)(9)*—The commenters state that in 1998, after a seven-year rule development process, EPA promulgated its nationwide regulations for AIM coatings pursuant to Section183(e) of the Act. The commenters note that Pennsylvania's AIM coatings rule imposes numerous VOC emission limits that will be more stringent than the corresponding limits in EPA's regulation. The commenters assert that Section 183(e)(9) of the Act requires that any state which proposes regulations to establish emission standards other than the Federal standards for products regulated under Federal rules shall first consult with the EPA Administrator. The commenters believe that Pennsylvania failed to engage in that required consultation, and, therefore (1) Pennsylvania violated Section 183(e)(9) in its adoption of the Pennsylvania AIM coatings rule, and (2) approval of the AIM coatings rule by EPA would violate, and is, therefore, prohibited by Sections 110(a)(2)(A) and (a)(2)(E) of the Act.

Response: EPA disagrees with this comment. Contrary to the implication of the commenters, Section 183(3)(9) does not require states to seek EPA's permission to regulate consumer products. By its explicit terms, the statute contemplates consultation with EPA only with respect to ''whether any other state or local subdivision has promulgated or is promulgating regulations or any products covered under [section 183(e)].'' The commenters erroneously construe this as a requirement for permission rather than informational consultation. Further, the final Federal architectural coatings regulations at 40 CFR 59.410 explicitly provides that States and their political subdivisions retain authority to adopt and enforce their own additional regulations affecting these products. *See also,* 63 FR 48848, 48884. In addition, as stated in the preamble to the final rule for architectural coatings, Congress did not intend Section 183(e) to preempt any existing or future State rules governing VOC emissions from consumer and commercial products. *See* 63 FR 48848, 48857. Accordingly, PADEP retains authority to impose more stringent limits for architectural coatings as part of its SIP, and its election to do so is not a basis for EPA to disapprove the SIP. *See, Union Elec Co.* v. *EPA*, 427 U.S. at 265–66 (1976). Although national uniformity in consumer and commercial product regulations may have some benefit to the regulated community, EPA recognizes that some localities may need more stringent regulation to combat more serious and more intransigent ozone nonattainment problems.

Further, there was ample consultation with EPA prior to the Commonwealth's adoption of its AIM coatings rule. On March 28, 2001 the OTC adopted a Memorandum of Understanding (MOU) on regional control measures, signed by all the member states of the OTC, including Pennsylvania, which officially made available the OTC model rules, including the AIM coatings model rule. See the discussion of this MOU in the Report of the Executive Director, OTC, dated July 24, 2001, a copy of which has been included in administrative record of this final rulemaking.

That MOU includes the following text, ''WHEREAS after reviewing regulations already in place in OTC and other States, reviewing technical information, consulting with other States and Federal agencies, consulting with stakeholders, and presenting draft model rules in a special OTC meeting, OTC developed model rules for the following source categories * * * architectural and industrial maintenance coatings * * *'' (a copy of the signed March 28, 2001 MOU has been placed in the administrative record of this final rulemaking).

EPA Region III and the Commonwealth of Pennsylvania negotiated the adoption of the OTC model rules in the FY 2003 Work Plan for PADEP's annual State Assistance Grant under Section 105 of the Act. The commitment included in the Grant Work Plan (which was approved and funded by EPA under Section 105 of the Act) stated that the PADEP would continue to submit outstanding rules developed in accordance with the March 28, 2001 OTC MOU as SIP revisions by September 9, 2003. The relevant page of the FY 2003 Grant Work Plan has been placed in the administrative record of this final rulemaking.

Therefore, there is no validity to the commenters' assertion that Pennsylvania failed to consult with EPA in the adoption of its AIM coatings rule. EPA was fully cognizant of the requirements of the Pennsylvania AIM coatings rule before its formal adoption by the Commonwealth.[3] For all these reasons, EPA disagrees that Pennsylvania violated Section 183(e)(9) in its adoption of the its AIM coatings rule, and disagrees that approval of the Pennsylvania AIM coatings rule by EPA is in violation of or prohibited by Section 110(a)(2)(A) and (a)(2)(E) of the Act.

G. *Comment: The PA AIM Coatings Rule Was Adopted in Violation of Clean Air Act Section 184(c), and Approval of the SIP Revision Would, Itself, Violate That Section*—The commenters believe the OTC violated Section 184(c)(l) of the Act by failing to ''transmit'' its recommendations to the Administrator, and that the OTC's violation was compounded by the Administrator's failure to review the Model Rule through the notice, comment and approval process required by CAA Sections 184(c)(2)–(4). These alleged violations of the Act should have prevented Pennsylvania from adopting the Pennsylvania AIM coatings Rules, and now prevent EPA from validly approving them as a revision to the Pennsylvania SIP.

Response: EPA disagrees with this comment. Section 184(c)(1) of the Act states that ''the [OTC] may, after notice and opportunity for public comment, develop recommendations for additional control measures to be applied within all or a part of such transport region if the commission determines such measures are necessary to bring any area in such region into attainment by the dates provided by this subpart.'' It is important to note that the OTC model AIM coatings rule was not developed pursuant to Section 184(c)(1), which provision is only triggered ''[u]pon petition of any State within a transport region established for ozone * * *.'' No such petition preceded the development of the model AIM coatings rule. Nor, for that matter, was development of a rule upon State petition under Section 184(e)(1) meant to be the exclusive mechanism for development of model rules within the OTC. Nothing in Section 184 prevents the voluntary development of model rules without the prerequisite of a state petition. This provision of the Act was not intended to prevent OTC's

[3] While EPA reviewed the model AIM coatings rule and the draft Pennsylvania version of that rule, EPA had no authority conferred under the Clean Air Act to dictate the exact language or requirements of the rule beyond the general requirement that the Pennsylvania rule, in order to be approvable as a SIP revision, must be at least as stringent as its Federal counterpart.

development of model rules which states may individually choose to adapt and adopt on their own, as Pennsylvania did, basing its AIM coatings rule on the model developed within the context of the OTC. In developing its State rule from the OTC model, Pennsylvania was free to adapt that rule as it saw fit (or to leave the OTC model rule essentially unchanged), so long as its rule remained at least as stringent as the Federal AIM coatings rule.

As previously stated, on March 28, 2001, the OTC member states signed a MOU on regional control measures, including the AIM coatings model rule. The OTC did not develop recommendations to the Administrator for additional control measures. The MOU stated that implementing these rules will help attain and maintain the 1-hour standard for ozone and were therefore made available to the states for use in developing their own regulations.

Even though the OTC did not develop the model AIM coatings rule pursuant to Section 184(c)(1) of the Act, nevertheless it provided ample opportunity for OTC member and stakeholder comment by holding several public meetings concerning the model rules including the AIM coatings model rule. The sign-in sheets or agenda for four meetings held in 2000 and 2001 at which the OTC AIM coatings model was discussed (some of which reflect the attendance of a representative of the EPA and/or the commenters), have been placed in the administrative record for this final rulemaking.

H. Comment: The PA AIM Coatings Rule Was Adopted in Violation of the Pennsylvania Air Pollution Control Act (PAPCA)—The commenters assert that the General Assembly of the Commonwealth of Pennsylvania, when it amended the PAPCA in 1992, addressed the issue of consumer product regulation, not by delegating rulemaking authority to the EQB, but by conferring limited enforcement authority upon PADEP. The commenters state that the Legislature authorized PADEP to enforce the Federal standards, not to promulgate its own more stringent standards. The commenters cite to a provision of the PAPCA which confers upon the PADEP the power and duty to develop and submit to EPA procedures to implement and enforce the regulations which EPA adopts under Section 183(e) of the Act to reduce emissions from consumer and commercial products, provided the PADEP will receive the credits attributed to the Federal consumer and commercial products regulations under Section 182 of the CAA regulations, and that the PADEP has the resources to implement and enforce the program. 35 P.S. subsection 4004. The commenters also cite to the PAPCA subsection 4005 for the proposition that the EQB's rulemaking authority powers are specifically enumerated in thirteen explicit subsections, none of which mention consumer products (with a footnote to an exception in 4005(a)(13) related to aerospace coatings). The commenters also point to PAPCA subsection 4004.2 to note that it is the Legislature's expressed intent that delegated rulemaking authority not be broadly construed but is limited by a requirement that any rule adopted by the EQB under the PAPCA be no more stringent than a specific Federal rule. The commenters conclude, therefore, that if Pennsylvania chooses to regulate AIM coatings beyond the levels set by EPA, that choice must be made by the Pennsylvania General Assembly in the form of a specific statute or by delegating additional specific rulemaking authority to the EQB, and as such delegation is absent, the Pennsylvania AIM coatings rule is unlawful as a matter of Pennsylvania law.

Response: EPA disagrees with this comment. The commenters' citations to the PAPCA are incomplete with regard to the ability of the Commonwealth to adopt air pollution control regulations that are more stringent than comparable Federal requirements. The commenters fail to note the provisions under PAPCA subsection 4004.2(b) whereby the Commonwealth may adopt a rule for the State Implementation Plan that is more stringent than its comparable Federal requirement, if the EQB finds that the rule is reasonably necessary to achieve and maintain the NAAQS or necessary to avoid the impositions of sanctions under the Act. Pennsylvania adopted its AIM coatings rule to achieve additional VOC reductions from AIM coatings. The Pennsylvania AIM coatings rule is a part of the Commonwealth's strategy to achieve and maintain the ozone standard throughout the Commonwealth. The Federal AIM coatings rule was promulgated in 1998. To capture additional VOC emission reductions, the Commonwealth adopted its more stringent AIM coatings rule in October of 2003. As EPA notes in its response to Comment B., the Pennsylvania AIM coatings rule sets specific VOC content limits, in grams per liter, for 48 AIM coating categories and requires, for certain categories, more stringent VOC content limits than the Federal Rule. As indicated in EPA's response to Comment D., EPA acknowledges that under the PAPCA, in order for the EQB to adopt a rule for the State Implementation Plan that is more stringent than its comparable Federal requirement, the EQB must find that the rule is reasonably necessary to achieve and maintain the NAAQS or to avoid the imposition of sanctions. For the Pennsylvania AIM coatings rule, the EQB made those Findings. *See* J. Findings, paragraphs (5) and (6), 33 Pennsylvania Bulletin 5306 (October 25, 2003). Consequently, EPA believes that the EQB has made the requisite findings for the adoption of rules and regulations more stringent than those required by the Act. Moreover, the Office of General Counsel for PADEP, the Commonwealth's IRRC, and the Office of the Attorney General for the Commonwealth of Pennsylvania have each approved the Pennsylvania AIM coatings rule with regard to its legality and form under Pennsylvania law. See EPA's response to Comment E. EPA, in its review of the SIP revision submission of the Pennsylvania AIM coatings rule, has found no reason to indicate that the review performed by PADEP's Office of the General Counsel, the IRRC and the Office of the Attorney General for the Commonwealth of Pennsylvania as to the legality of its AIM coatings rule under State law, is insufficient. EPA has, therefore, determined pursuant to Section 110(a)(2)(E) of the Clean Air Act and 40 CFR section 51, appendix V, that Pennsylvania has provided the necessary assurances that it has adequate authority to implement the SIP revision and that it has followed all the procedural requirements of Pennsylvania's laws and constitution in adopting the SIP revision submitted to EPA.

I. Comment: The Pennsylvania AIM Coatings Rule Violates the Commerce Clause of the U.S. Constitution—The commenters claim that the Pennsylvania AIM coatings rule violates the Commerce Clause of Article I, Section 8, of the U.S. Constitution, because it imposes an unreasonable burden on interstate commerce. The commenters assert that because the Pennsylvania AIM coatings rule contains VOC limits and other provisions that differ from the Federal AIM coatings rule in 40 CFR 59.400, the rule causes an unreasonable restriction on coatings in interstate commerce. The commenters further assert that the burdens of the Pennsylvania AIM coatings rule are excessive and outweigh the benefits of the rule. The commenters suggest that EPA should disapprove the SIP revision on this basis.

Response: EPA agrees with this comment only to the extent that it acknowledges that AIM coatings are products in interstate commerce and that state regulations on coatings therefore have the potential to violate the Commerce Clause. EPA understands the commenters' practical concerns caused by differing state regulations, but disagrees with the commenters' view that the Pennsylvania AIM coatings rule impermissibly impinges on interstate commerce. A state law may violate the Commerce Clause in two ways: (i) By explicitly discriminating between interstate and intrastate commerce; or (ii) even in the absence of overt discrimination, by imposing an incidental burden on interstate commerce that is markedly greater than that on intrastate commerce. The Pennsylvania AIM coatings rule does not explicitly discriminate against interstate commerce because it applies evenhandedly to all coatings manufactured or sold for use within the state. At most, therefore, the Pennsylvania AIM coatings rule could have an incidental impact on interstate commerce. In the case of incidental impacts, the Supreme Court has applied a balancing test to evaluate the relative impacts of a state law on interstate and intrastate commerce. *See, Pike* v. *Bruce Church, Inc.,* 397 U.S. 137 (1970). Courts have struck down even nondiscriminatory state statutes when the burden on interstate commerce is ''clearly excessive in relation to the putative local benefits.'' *Id.* at 142.

At the outset, EPA notes that it is unquestionable that the Commonwealth has a substantial and legitimate interest in obtaining VOC emissions for the purpose of attaining the ozone NAAQS. The adverse health consequences of exposure to ozone are well known and well established and need not be repeated here. *See, e.g., National Ambient Air Quality Standards for Ozone: Final Response to Remand,* 68 FR 614, 620–25 (January 6, 2003). Thus, the objective of the Commonwealth in adopting the Pennsylvania AIM coatings rule is to protect the public health of the citizens of Pennsylvania. The courts have recognized a presumption of validity where the state statute affects matters of public health and safety. *See, e.g., Kassel* v. *Consolidated Freightways Corp. of Delaware,* 450 U.S. 662, 671 (1980). Moreover, even where the state statute in question is intended to achieve more general environmental goals, courts have upheld such statutes notwithstanding incidental impacts on out of state manufacturers of a product. *See, e.g, Minnesota* v. *Clover Leaf Creamery, et al.,* 449 U.S. 456 (1981)(upholding state law that banned sales of milk in plastic containers to conserve energy and ease solid waste problems).

The commenters assert, without reference to any facts, that the Pennsylvania AIM coatings rule imposes burdens and has impacts on consumers that are ''clearly excessive in relation to the purported benefits * * *'' By contrast, EPA believes that any burdens and impacts occasioned by the Pennsylvania AIM coatings rule are not so overwhelming as to trump the state's interest in the protection of public health. First, the Pennsylvania AIM coatings rule does not restrict the transportation of coatings in commerce itself, only the sale of nonconforming coatings within the state's own boundaries. The state's rule excludes coatings sold or manufactured for use outside the state or for shipment to others. 25 Pa. Code. 130.601(1). The Pennsylvania AIM coatings rule cannot be construed to interfere with the transportation of coatings through the state en route to other states. As such, EPA believes that the cases concerning impacts on the interstate modes of transportation themselves are inapposite. *See, e.g., Bibb* v. *Navajo Freight Lines,* 359 U.S. 520 (1938).

Second, the Pennsylvania AIM coatings rule is not constructed in such as way that it has the practical effect of requiring extraterritorial compliance with the state's VOC limits. The Pennsylvania AIM coatings rule only governs coatings manufactured or sold for use within the state's boundaries. The manufacturers of coatings in interstate commerce are not compelled to take any particular action, and they retain a range of options to comply with the rule, including, but not limited to: (1) Ceasing sales of nonconforming products in Pennsylvania; (2) reformulating nonconforming products for sale in Pennsylvania and passing the extra costs on to consumers in that state; (3) reformulating nonconforming products for sale more broadly; (4) developing new lines of conforming products; or (5) entering into production, sales or marketing agreements with companies that do manufacture conforming products. Because manufacturers or sellers of coatings in other states are not forced to meet Pennsylvania's regulatory requirements elsewhere, the rule does not impose the type of obligatory extraterritorial compliance that the courts have considered unreasonable. *See, e.g., NEMA* v. *Sorrell,* 272 F.3d 104 (2nd Cir. 2000) (state label requirement for light bulbs containing mercury sold in that state not an impermissible restriction). It may be that the Pennsylvania AIM coatings rule will have the effect of reducing the availability of coatings or increasing the cost of coatings within the State, but courts typically view it as the prerogative of the state to make regulatory decisions with such impacts upon its own citizens. *NPCA* v. *City of Chicago,* 45 F.3d 1124 (7th Cir. 1994), *cert. denied,* 515 U.S. 1143 (1995) (local restriction on sales of paints used by graffiti artists may not be the most effective means to meet objective, but that is up to the local government to decide).

Third, the burdens of the Pennsylvania AIM coatings rule typically do not appear to fall more heavily on interstate commerce than upon intrastate commerce. The effect on manufacturers and retailers will fall on all manufacturers and retailers regardless of location if they intend their products for sale within Pennsylvania, and does not appear to have the effect of unfairly benefitting in-state manufacturers and retailers. The mere fact that there is a burden on some companies in other states does not alone establish impermissible interference with interstate commerce. *See, Exxon Corp.* v. *Maryland,* 437 U.S. 117, 126 (1978).

In addition, EPA notes that courts do not typically find violations of the Commerce Clause in situations where states have enacted state laws with the authorization of Congress. *See, e.g., Oxygenated Fuels Assoc., Inc.* v. *Davis,* 63 F. Supp. 1182 (E.D. Cal. 2001) (state ban on MTBE authorized by Congress); *NEMA* v. *Sorell,* 272 F.3d 104 (2nd Cir. 2000) (RCRA's authorization of more stringent state regulations confers a ''sturdy buffer'' against Commerce Clause challenges). Section 183(e) of the Act governs the Federal regulation of VOCs from consumer and commercial products, such as coatings covered by the Pennsylvania AIM coatings rule. EPA has issued a Federal regulation that provides national standards, including VOC content limits, for such coatings. *See* 40 CF 59.400 *et seq.* Congress did not, however, intend Section 183(e) to pre-empt additional state regulation of coatings, as is evident in Section 183(e)(9) which indicates explicitly that states may regulate such products. EPA's regulations promulgated pursuant to the Act recognized that states might issue their own regulations, so long as they meet or exceed the requirements of the Federal regulations. *See, e.g.,* the National Volatile Organic Compound Emission Standards for Architectural Coatings, 40 CFR 59.410, and the

Federal Register which published the standards, 63 FR 48848, 48857 (September 11, 1998). Thus, EPA believes that Congress has clearly provided that a state may regulate coatings more stringently than other states.

In Section 116 of the Act, Congress has also explicitly reserved to states and their political subdivisions the right to adopt local rules and regulations to impose emissions limits or otherwise abate air pollution, unless there is a specific Federal preemption of that authority. When Congress intended to create such Federal preemption, it does so through explicit provisions. *See, e.g.,* Section 209(a) of the Act, which pertains to state or local emissions standards for motor vehicles; and Section 211 of the Act which pertains to fuel standards. Moreover, the very structure of the Act is based upon ''cooperative federalism,'' which contemplates that each state will develop its own state implementation plan, and that states retain a large degree of flexibility in choosing which sources to control and to what degree in order to attain the NAAQS by the applicable attainment date. *Union Electric Co.* v. *EPA*, 427 U.S. 246 (1976). Given the structure of the Act, the mere fact that one state might choose to regulate sources differently than another state is not, in and of itself, contrary to the Commerce Clause.

Finally, EPA understands that there may be a practical concern that a plethora of state regulations could create a checkerboard of differing requirements would not be the best approach to regulating VOCs from AIM coatings or other consumer products. Greater uniformity of standards does have beneficial effects in terms of more cost effective and efficient regulations. As EPA noted in its own AIM coatings rule, national uniformity in regulations is also an important goal because it will facilitate more effective regulation and enforcement, and minimize the opportunities for undermining the intended VOC emission reductions. 63 FR 48856–48857. However, EPA also recognizes that Pennsylvania and other states with longstanding ozone nonattainment problems have local needs for VOC reductions that may necessitate more stringent coatings regulations. Under Section 116 of the Act, states have the authority to do so, and significantly, many states in the Northeast have joined together to prepare and promulgate regulations more restrictive than the Federal AIM coatings rule to apply uniformly across that region. This regional collaboration provides regional uniformity of standards. Pennsylvania may have additional burdens to insure compliance with its rule, but for purposes of this action EPA presumes that the Commonwealth take appropriate actions to enforce it as necessary. The EPA has no grounds for disapproval of the SIP revision based upon the commenters' Commerce Clause comment.

J. *Comment: The Emission Limits and Compliance Schedule in the Pennsylvania AIM Coatings Rule are Neither Necessary nor Appropriate to Meet Applicable Requirements of the Clean Air Act*—The commenters claim that the Pennsylvania AIM coatings rule is not ''necessary or appropriate'' for inclusion in the Pennsylvania SIP, because EPA did not direct Pennsylvania to achieve VOC reductions through the AIM coatings rule, but left it to the State to decide how such reduction can be achieved. The commenters further assert that the Pennsylvania AIM coatings rule is not necessary or appropriate for inclusion in the Pennsylvania SIP because of the numerous procedural and substantive failings on the part of PADEP in promulgating the rule.

Response: EPA disagrees with this comment. If fulfillment of the ''necessary or appropriate'' condition of Section 110(a)(2)(A) required EPA to determine that a measure was necessary or appropriate and require a state to adopt that measure, this condition would present a ''catch 22'' situation. EPA does not generally have the authority to require the State to enact and include in its SIP any particular control measure, even a ''necessary'' one.[4] However, under Section 110(a)(2)(a) a control measure must be either ''necessary *or* appropriate'' (emphasis added); the use of the disjunctive ''or'' does not provide that a state must find that *only* a certain control measure *and no other measure* will achieve the required reduction. Rather, a state may adopt and propose for inclusion in its SIP any measure that meets the other requirements for approvability so long as that measure is at least as appropriate, though not exclusive, means of achieving emissions reduction. *See also, Union Elec. Co.* v. *EPA*, 427 U.S. 246, 264–266 (1976) (holding that ''necessary'' measures are those that meet the ''minimum conditions'' of the Act, and that a state ''may select whatever mix of control devices it desires,'' even ones more stringent than Federal standard, to achieve compliance with a NAAQS, and that ''the Administrator must approve such plans if they meet the minimum requirements'' of Section 110(a)(2) of the Act). Clearly, in light of the Act and the case law, EPA's failure to specify the state adoption of a specific control measure cannot dictate whether a measure is necessary or appropriate.

In this particular instance, EPA identified an emission reduction shortfall associated with Pennsylvania's 1-hour ozone attainment demonstration SIP, and required Pennsylvania to address the shortfall (*See*, 64 FR 70428 and 66 FR 54143). It is the Commonwealth's prerogative to develop whatever rule or set of rules it deems necessary or appropriate such that the rule or rules will collectively achieve the additional emission reductions for attainment of the 1-hour ozone standard as identified by EPA.

As stated previously, the Commonwealth's December 3, 2003 SIP revision submittal, supplemented by further documentation added to the administrative record by EPA to respond to comments submitted on its March 11, 2004 NPR, provides evidence that it that it has the legal authority to adopt its AIM rule and that it has followed all of the requirements in the Commonwealth law and constitution that are related to adoption of the plan.

K. *Comment: The Written Comments Submitted by the Commenters to the Pennsylvania EQB, the Pennsylvania IRRC and the PADEP on Pennsylvania's Proposed Version of its AIM Coatings Rule Are Incorporated by Reference into the Comments Submitted to EPA on its March 11, 2004 NPR Proposing Approval of the Final, Adopted Pennsylvania AIM Coatings Rule*—In their letters submitted to EPA as comment to EPA's proposed approval of the Pennsylvania AIM coatings rule, the commenters incorporate by reference a letter from Madelyn K. Harding, Sherwin Williams Company to the Pennsylvania EQB dated February 20, 2002 and its attachments; a letter from W. Lance H. Hernsarth, Sherwin Williams Company to Kathleen McGinty, Secretary of the Pennsylvania DEP, dated April 21, 2003 and its attachment; a letter from Harvey P. Sass, Sherwin Williams Company to Commissioner John R. McGinley, Jr., IRRC, dated September 5, 2003 and its attachment; and NPCA's Statement Before Pennsylvania Independent

[4] As noted in *Virginia* v. *EPA*, 108 F.3d 1397 (DC Cir. 1997), EPA does have the authority within the mechanism created by Section 184 of the Act to order states to adopt control measures recommended by the OTC, if EPA agrees with and approves that recommendation. 108 F.3d, n.3 at 1402. As we have previously stated, the OTC model AIM coatings rule was not developed pursuant to the Section 184 mechanism; EPA therefore has no authority to order that Pennsylvania or any other state adopt this measure in order to reduce VOC emissions.

Regulatory Review Commission, dated September 12, 2003. The following summarizes the comments presented to Pennsylvania and incorporated by reference by the commenters:

(1) The commenters have significant concerns with the proposed standards for certain paints and coatings, e.g., interior wood clear and semi-transparent stains, interior wood vanishes, interior wood sanding sealers, exterior wood primers, and floor coatings. The commenters assert that Pennsylvania's proposed AIM coatings regulation is based upon the inaccurate assumption that compliant coatings are available or can be developed which will satisfy customer requirements and meet all of the performance requirements of these categories. The commenters contend that such coatings are not effectively within the limits of current technology and that this inaccurate assumption will result in increased and earlier repainting which can damage floors in Pennsylvania due to seasonal variations in temperature and humidity.

(2) The commenters contend that PADEP has not considered the increase in emissions resulting from the performance issues and consequential repainting.

(3) The commenters suggest changes to the VOC standards for only a few of the product categories proposed by Pennsylvania in its AIM coatings regulation, and claim that the version of the AIM coatings rule it counter-proposes will achieve significant reductions beyond the Federal AIM coatings rule (26.5 tons/day) which is very close to the amount of emission reductions determined by PADEP for the Pennsylvania proposed regulation.

(4) The commenters state that Pennsylvania's proposed AIM coatings rule is unreasonably stringent and unnecessary for the protection of public health, welfare and safety, and it is arbitrary and capricious as the record does not support the emission reduction claims.

(5) The commenters contend that Pennsylvania's proposed AIM coatings rule will have a significant adverse impact on the commenters, and that the PADEP can issue a regulation that achieves substantial VOC reductions beyond the Federal AIM coatings rule without causing serious adverse impact on potential sales of certain products. A further comment contends that due to Pennsylvania's climate, the added costs of heating trucks and warehouses to transport and store coatings will adversely impact manufacturers, shippers, end users and on society in the form of more energy consumption.

(6) The commenters assert that the economic analysis of Pennsylvania's proposed AIM coatings rule is inaccurate because it uses a cost figure of $6400 per ton of emissions reduced based upon an economic analysis done for California. The commenters contend that the cost figure is inappropriate given the differences in the stringency of the current requirements for AIM coatings in Pennsylvania versus California, and therefore, Pennsylvania needs to make an independent determination of the cost of VOC reductions from its proposed AIM coatings regulation.

(7) The commenters indicate that both the Consumer Products regulation and AIM coatings rule proposed by Pennsylvania are based on rule developments in California. However, Pennsylvania's proposal includes the California averaging provision for consumer products but does not do so for AIM. The commenters assert that the failure to include the California averaging provision in the Pennsylvania AIM coatings rule is arbitrary and capricious, and places an unequal burden on the architectural coating industry.

(8) The commenters also submitted comments to the Commonwealth of Pennsylvania regarding its proposed AIM coatings rule asserting that the EQB and PADEP do not have authority under the Commerce Clause and the Pennsylvania Air Pollution Control Act (PAPCA) to adopt the proposed AIM coatings rule.

Response: As previously stated in this document, EPA disagrees with the commenter's assertion that the adoption of the AIM coatings regulation by the Commonwealth is in violation of the PAPCA. Please see EPA's response to Comment H. With regard to the comments regarding the Commerce Clause, please see EPA's response to Comment I.

With regard to the other comments submitted by the commenters to the Commonwealth on its proposed AIM coatings rule that they have incorporated by reference in their comments to EPA on EPA's March 11, 2004 proposed approval, EPA's response is that it is important to understand EPA's role and responsibilities with regard to the review and approval, or disapproval, of rules submitted as SIP revisions. Prior to approving a SIP revision request submitted by a state, EPA reviews the submission to ensure that the state provided the opportunity for comment and held a hearing(s) on the proposed state regulation that is at issue in the SIP revision pursuant to Section 110(a) of the Act. In this case, the Commonwealth of Pennsylvania's December 3, 2003 submission of its AIM coatings rule to EPA includes the necessary documentation to demonstrate that it met these requirements. The Commonwealth's December 3, 2003 SIP revision submission is included in docket of this rulemaking. A complete SIP revision submission from a state includes copies of timely comments properly submitted to the state on the proposed SIP revision and the state's responses to those comments. The Commonwealth of Pennsylvania's December 3, 2003 submission of its AIM coatings rule as a SIP revision to EPA properly includes both the comments submitted on its proposed AIM coatings rule and the Commonwealth's responses to those comments. (See both the document entitled, Architectural and Industrial Maintenance (AIM) Coatings, Comment and Response Document prepared by the DEP, dated February 27, 2003 and 33 Pennsylvania Bulletin 5297 (October 25, 2003)).

The Commonwealth of Pennsylvania's SIP revision submission of its AIM coatings rule does not request that EPA approve a specific amount of VOC emission reduction credit. As such, the comments regarding the Commonwealth's emission reduction calculations are not germane to EPA's rulemaking to approve Pennsylvania's requested SIP revision. The Commonwealth's responses to the timely comments on the proposed Pennsylvania AIM coatings rule made by the commenters to Pennsylvania are included in the Commonwealth's December 3, 2003 submission to EPA for approval of the SIP revision.

The cost per ton figure determined by the Commonwealth in its economic analysis, its decision to rely upon information from California and its decision whether to include averaging provisions in its final AIM coatings rule are all decisions which fall within a state's purview, and issues regarding those decisions are rightfully raised by interested parties to the State during its regulatory adoption process. Therefore, it was appropriate that the commenters commented to the Commonwealth on these matters during the adoption of its AIM coatings rule. EPA has reviewed the SIP revision submitted and has determined that the commenters' comments on those issues they have incorporated by reference on this rulemaking, along with the Commonwealth's responses to those issues, are included therein. In the context of a SIP approval, EPA's review of these state decisions is limited to whether the SIP revision meets the

minimum criteria of the Act. Provided that the rule adopted by the state satisfies those criteria, EPA must approve such a SIP revision. *See, Union Elec Co.* v. *EPA*.

With regard to the comments concerning the availability of complying coatings and the ability to develop complying coatings that can meet customer requirements and performance requirements, EPA notes (as did the Commonwealth in its responses to such comments) that the final version of the Pennsylvania AIM coatings regulation includes variance provisions at 130.606–130.610. These provisions allow for variances from the VOC standards found in 130.603 to be granted by the PADEP to applicants which demonstrate technological infeasibility. EPA finds that the Commonwealth's approach to address demonstrated technological infeasibility in its AIM coatings rule by the variance provisions of 130.606–130.610 is both reasonable and within its purview, and therefore approvable as a SIP revision.

III. Final Action

EPA is approving the Pennsylvania SIP revision for the control of VOC emissions from AIM coatings submitted on December 3, 2003 and supplemented on October 19, 2004. The Pennsylvania AIM coatings rule is part of the Commonwealth's strategy to achieve and maintain the 1-hour ozone standard throughout the Commonwealth.

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 January 24, 2005. 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, pertaining to Pennsylvania's AIM coatings rule, 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 1, 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 NN—Pennsylvania

■ 2. Section 52.2020 is amended by adding paragraph (c)(227) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(227) Revisions pertaining to the control of volatile organic compound emissions from architectural and industrial maintenance coatings submitted on December 3, 2003 and October 19, 2004 by the Commonwealth of Pennsylvania Department of Environmental Protection:

(i) Incorporation by reference.

(A) Letters of December 3, 2003 and October 19, 2004 from the Pennsylvania Department of Environmental Protection transmitting Pennsylvania's Architectural and Industrial Maintenance Coatings regulations.

(B) 25 Pa. Code Chapter 130, Subchapter C. Architectural and Industrial Maintenance Coatings, Subsections 130.601–130.611, inclusive, effective October 25, 2003.

(ii) Additional Material.—Remainder of the Commonwealth's submittals pertaining to the revisions listed in paragraph (c)(227)(i) of this section.

[FR Doc. 04–25815 Filed 11–22–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 10, 12, 28, 30

[USCG–2004–18884]

RIN 1625–ZA03

Shipping and Transportation; Technical, Organizational and Conforming Amendments

AGENCY: Coast Guard, DHS.

ACTION: Final rule; corrections.

SUMMARY: This document contains corrections to the Shipping and Transportation; Technical, Organizational and Conforming Amendments final rule for Titles 46 and 49 of the Code of Federal Regulations (USCG–2004–18884) published on September 30, 2004, in the **Federal Register** (69 FR 58336).

DATES: These corrections are effective November 23, 2004.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the Docket Management Facility, USCG–2004–18884, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on these corrections, call Robert Spears, Project Manager, Standards Evaluation and Development Division (G–MSR–2), Coast Guard, at 202–267–1099. If you have questions on viewing, or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, Department of Transportation, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Background

Each year titles 46 and 49 of the Code of Federal Regulations are updated on October 1. That rule, which became effective September 30, 2004, corrected organization names and addresses, revised authority citations for certain parts to reflect our move to the Department of Homeland Security (DHS) in March 2003, and made other technical and editorial corrections throughout titles 46 and 49. Neither that rule nor this rule makes any substantive change to the existing regulations.

Need for Correction

The final rule that was published on September 30, 2004, contains errors which may prove to be misleading and need to be clarified. This rule makes those clarifications.

List of Subjects

46 CFR Part 10

Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 12

Reporting and recordkeeping requirements, Seamen.

46 CFR Part 28

Fire prevention, Fishing vessels, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

■ For the reasons discussed in the preamble, the Coast Guard amends 46 CFR parts 10, 12, 28, and 30 as follows:

PART 10—LICENSING OF MARITIME PERSONNEL

■ 1. The authority citation for part 10 continues to read as follows:

Authority: 14 U.S.C. 633; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, and 2110; 46 U.S.C. Chapter 71; 46 U.S.C. 7502, 7505, 7701, 8906; Department of Homeland Security Delegation No. 0170.1. Sec. 10.107 is also issued under the authority of 44 U.S.C. 3507.

§ 10.805 [Amended]

■ 2. In § 10.805(f), remove the words ''The expiration date of a certificate of registry issued without an expiration date shall be determined in accordance with § 10.811.''

PART 12—CERTIFICATION OF SEAMEN

■ 3. The authority citation for part 12 continues to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7301, 7302, 7503, 7505, 7701; Department of Homeland Security Delegation No. 0170.1.

■ 4. Revise § 12.02–3(b)(3) to read as follows:

§ 12.02–3 Where documents are issued.

(a) * * *

(b) * * *

(3) The written examinations are forwarded to the Commanding Officer, National Maritime Center by Merchant Marine Details. Any Marine Inspection Office at which an applicant with a temporary permit appears may request and obtain the examination in the case from the Commanding Officer, National Maritime Center. Any Marine Inspection Office which doubts the propriety of issuing a permanent certificate in lieu of a temporary permit which has been issued by a foreign Merchant Marine Detail shall inform the Commanding Officer, National Maritime Center fully as to the circumstances.

§ 12.15–5 [Amended]

■ 5. In § 12.15–5(c), remove the word ''therefore'' and add, in its place, the word ''therefor''.

PART 28—REQUIREMENTS FOR COMMERCIAL FISHING INDUSTRY VESSELS

■ 6. The authority citation for part 28 continues to read as follows:

Authority: 46 U.S.C. 3316, 4502, 4505, 4506, 6104, 10603; Department of Homeland Security Delegation No. 0170.1.

§ 28.30 [Amended]

■ 7. In § 28.30(a), after the words ''subchapter S'', remove the words ''of this chapter''; and before the words ''subchapter S'', add the words ''33 CFR''.

PART 30—GENERAL PROVISIONS

■ 8. The authority citation for part 30 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. 5103, 5106; Department of Homeland Security Delegation No. 0170.1; Section 30.01–2 also issued under the authority of 44 U.S.C. 3507; Section 30.01–05 also issued under the authority of Sec. 4109, Pub. L. 101–380, 104 Stat. 515.

§ 30.15–1 [Amended]

■ 9. In § 30.15–1(a) remove the word ''therefore'' and add, in its place, the word ''therefor''.

§ 30.30–11 [Amended]

■ 10. In § 30.30–11(b) remove the word ''therefore'' and add, in its place, the word ''therefor''.

Dated: November 17, 2004.

Stefan G. Venckus,

Chief, Office of Regulations and Administrative Law, United States Coast Guard.

[FR Doc. 04–25967 Filed 11–22–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 030604143–4309–02; I.D. 030403C]

RIN 0648–AQ90

Atlantic Highly Migratory Species; Atlantic Swordfish Quotas

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

ACTION: Final rule.

SUMMARY: NMFS amends the regulations governing the North and South Atlantic swordfish fisheries to implement recommendations adopted at the 2002 meeting of the International Commission for the Conservation of Atlantic Tunas (ICCAT). Specifically, NMFS: increases the North Atlantic swordfish quota to 3,877 metric tons (mt) whole weight (ww) in 2003 and to 3,907 mt ww in 2004 and 2005; establishes a dead discard allowance of 80 mt ww for 2003; transfers 25 mt ww of North Atlantic swordfish quota to Canada in 2003, 2004, and 2005; allows up to 200 mt ww of North Atlantic swordfish quota to be caught between 5 degrees North latitude and 5 degrees South latitude; and establishes a South Atlantic swordfish quota of 100 mt ww in 2003, 2004, and 2005 and 120 mt ww in 2006. In addition, NMFS adjusts the 2003 and 2004 directed and reserve quotas based on underharvests from the 2002 and 2003 fishing years, respectively.

DATES: This final rule is effective December 23, 2004.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) may be obtained from Christopher Rogers, Chief, Highly Migratory Species Management Division F/SF1, 1315 East-West Highway, Silver Spring, MD 20910. These documents are also available from the Highly Migratory Species Management Division website at *www.nmfs.noaa.gov/sfa/hms/*.

FOR FURTHER INFORMATION CONTACT: Chris Rilling, by phone: 301–713–2347 or by fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: The United States Atlantic swordfish and tuna fisheries are managed under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP). Implementing regulations at 50 CFR part 635 are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* and the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* Regulations issued under the authority of ATCA carry out the recommendations of ICCAT. The June 20, 2003, proposed rule (68 FR 36967) contains the background information for the management measures in this final rule; the background information is not repeated in this final rule.

Comments and Responses

NMFS held three public hearings in July and August 2003 in Gloucester, MA; Madeira Beach, FL; and Silver Spring, MD. Comments were received from fishery participants and other members of the public regarding the proposed regulations. In addition, written comments were submitted to NMFS during the 45-day comment period. Written and oral comments are summarized below with NMFS' responses.

North Atlantic Swordfish Quota

Comment 1: One commenter supports opportunities for U.S. fishermen to land more swordfish as long as it is done in a manner that does not compromise the full rebuilding of the population and long-term sustainability of the resource.

Response: NMFS agrees that ensuring sustainability and rebuilding the population are important aspects of providing long term opportunities for fishermen to harvest the resource. The selected alternatives are consistent with the objectives of the ICCAT rebuilding program, Magnuson-Stevens Act, ATCA, and the HMS FMP and will ensure the sustainability of the stock.

Comment 2: To facilitate harvest of the United States allocated quota, the United States should make a limited number of new handgear permits available for distribution.

Response: Making a limited number of new handgear permits available is one option for addressing the underharvest occurring in recent years. Since this would require a plan amendment, NMFS solicited comments regarding this and other options during the scoping process for Amendment 2 to the HMS FMP and may consider those options in Amendment 2 or other future rulemaking.

Comment 3: If the United States is unable to catch its quota, there will be efforts by other ICCAT countries to permanently reduce the U.S. quota share and allocate that quota to other fishing nations. This will have conservation ramifications given that U.S. fisheries are better managed than fisheries in other ICCAT nations.

Response: This rule implements recommendations agreed to at the 2002 meeting of ICCAT. The North Atlantic swordfish quota levels are established through 2005. ICCAT will reevaluate the current quotas and recommend new ones at that time. NMFS will continue to evaluate the need for all current regulations with regard to the effect on harvest rates and will work with fishermen to preserve the U.S. quota share while ensuring consistency with the Magnuson-Stevens Act, the Endangered Species Act (ESA), and other domestic laws.

Comment 4: U.S. underharvests are primarily a result of the premature closures of the directed fishery in 1997 and 1998 and the overly restrictive time/area closures currently in place. Scientific data shows swordfish recovering before implementation of the time/area closures. Because of current management, this once thriving domestic fishery has exhibited reduced effort and profitability.

Response: NMFS implemented the current time and area closures and other restrictions to reduce bycatch in the pelagic longline fishery. This bycatch included juvenile swordfish, billfish, sharks, and sea turtles. NMFS will evaluate the impact and effectiveness of the closures in Amendment 2 to the HMS FMP or other future rulemaking and will modify them if necessary to meet management objectives and legislative requirements.

Comment 5: One commenter opposed an increase in the North Atlantic swordfish quota. Even though the stock assessment indicates improvement, the stock is still overfished. Any increase in quota will slow down or reverse the improvement and lead to an increase in dead discards of juvenile swordfish, marlin, and sharks. Increasing the quota goes against NMFS' stated goal of risk-averse management. The increase is hard to understand given the United States has not landed the quota since 1995.

Response: At its 2002 meeting, ICCAT conducted a North Atlantic swordfish stock assessment and determined that the population had nearly recovered to a level that will support maximum sustainable yield and that an increase

will still allow the stock to rebuild by 2009, the established goal for rebuilding Atlantic swordfish. Based on this finding, ICCAT recommended an increase in swordfish quota and will hold another stock assessment in 2005 to monitor its results. NMFS does not expect the increase in U.S. quota to result in an increase in dead discards. Further, based on current regulations and the level of effort in the U.S. fishery, it is unlikely that catch rates of target and bycatch species will increase.

Comment 6: The United States should force ICCAT to reduce the overall quota and refuse to accept increases in quota for overfished stocks.

Response: ICCAT is currently comprised of 38 contracting parties that cooperate to formulate management recommendations. The United States is not in a position to force ICCAT to adopt a particular quota because the organization works primarily by consensus. In this case, the stock assessment demonstrated that the swordfish population has nearly recovered to a level that will support maximum sustainable yield and that an increase in allowable harvest would not prevent rebuilding within the originally agreed timeframe. The North Atlantic swordfish quota was increased based on this scientific advice.

South Atlantic Swordfish Quota

Comment 7: One commenter asked NMFS to explain why the United States lost South Atlantic swordfish quota despite quota increases for other nations fishing in that area.

Response: The United States South Atlantic swordfish quota was reduced due to its lower catches in that area in recent years. However, up to 200 mt ww of swordfish landed between 5 degrees North and 5 degrees South latitude may be applied against the North Atlantic swordfish quota. Because most of the historical U.S. catch of South Atlantic swordfish has been harvested from that area, this should mitigate most impacts from the reduction of the South Atlantic swordfish quota.

Comment 8: One commenter opposed the proposed increase in South Atlantic quota to over 100 mt because it would increase pressure on a stock for which data are incomplete.

Response: The Standing Committee on Research and Statistics (SCRS) conducted a stock assessment of South Atlantic swordfish in 2002. Due to discrepancies between several of the data sets, reliable stock assessment results could not be produced. In general, the SCRS noted that the total catches have decreased since 1995, as recommended. As a result, ICCAT increased the total allowable catch (TAC) for South Atlantic swordfish from 14,620 mt ww to 15,631 mt ww. The new ICCAT recommendation lowered the U.S. quota for South Atlantic swordfish from 384 mt ww in 2002 to 100 mt ww in 2003–2005. ICCAT further recommended that up to 200 mt ww of swordfish landed between 5 degrees North and 5 degrees South latitude be applied against the North Atlantic swordfish quota.

Quota Transfer

Comment 9: One commenter stated that the transfer of 25 mt ww of North Atlantic swordfish quota to Canada is an industry initiative to keep from losing part of the U.S. quota allocation if it is not likely to be harvested in the near future. Another commenter stated that the United States should keep control of this quota and not transfer it to Canada because any uncaught quota will help the stock rebuild faster and reduce bycatch.

Response: If the quota transfer to Canada did not transpire and there was a 25 mt ww underharvest, the remaining quota would be incorporated into the next year's U.S. North Atlantic swordfish quota. While keeping the 25 mt ww may help the stock rebuild in the short term (because neither the United States nor Canada would catch it), the quota would likely be harvested in the future. Transferring the quota to Canada may help maintain the U.S. allocation, but due to the current level of underharvests, more measures may be necessary to facilitate harvest of the full U.S. allocation.

Comment 10: Quota transfers and rulemaking concerning ICCAT recommendations should be conducted in a more timely manner. The start of the fishing year was changed to June 1 to give NMFS the opportunity to propose and finalize any actions needed as a result of ICCAT recommendations. Untimely actions can negatively impact U.S. fishermen with respect to foreign competitors.

Response: NMFS attempts to conduct rulemaking in as timely a manner as possible. However, compliance with other applicable laws, such as the Endangered Species Act, may require the preparation of additional analyses and consultations, which can cause delays.

Dead Discard Allowance

Comment 11: Because the dead discard allowance is slated to be phased out in 2004, NMFS should develop a rule to eliminate the waste resulting from the strict implementation of the minimum size. U.S. pelagic longline vessels should not be required to discard undersized swordfish that cannot be returned to the sea alive and that are caught outside the closed areas. The minimum size should be enforced for other gear types within the closed areas.

Response: Currently, the minimum size restriction is a component of an ICCAT management recommendation. The U.S. adoption of the alternative minimum size with no tolerance is designed to reduce dead discards while still avoiding excess mortality of juvenile fish. Until ICCAT changes the minimum size, and NMFS implements the changes via a rulemaking process, NMFS will continue to enforce it for all gear types in all areas.

Comment 12: Commenters oppose the 80 mt ww dead discard allowance over and above the increase in quota. Dead discards should be counted against the existing quota.

Response: Previously, ICCAT recommended that the dead discard allowance for North Atlantic swordfish be phased out by 2004. At that time, a dead discard target was not provided for the 2003 fishing year. ICCAT corrected this omission in the 2002 recommendation and maintained the established schedule for the elimination of the dead discard allowance. Starting in 2004, dead discards will be counted against the applicable quotas for the harvesting nations.

North Atlantic Swordfish Quotas

The adjusted 2002 fishing year landings quota was 3,363.5 mt dressed weight (dw). Directed and incidental fishery landings of North Atlantic swordfish during the 2002 fishing year were reported to be 1747.2 mt dw, with a total underharvest of 1,616.3 mt dw. In addition to the landings quota, ICCAT allocated to the United States a 2002 dead discard allowance of 120.3 mt dw, of which an estimated 261.6 mt dw were discarded. The 141.3 mt dw excess dead discards are required to be deducted from quota available to be harvested in the subsequent fishing year. Thus, from the 2002 fishing year 1,475.0 mt dw is available as carryover (1,616.3 - 141.3).

In addition, the dead discards from 2001 were not accounted for at the beginning of the 2002 fishing year because the estimates were not available at that time. The total dead discard allowance in 2001 was 180.4 mt dw, and the United States discarded an estimated 306.8 mt dw. The 126.4 mt dw excess dead discards are required to be deducted from quota available to be harvested in the subsequent fishing year. However, due to the fact that the

2002–2003 fishing years have been completed, it is necessary to deduct this amount from 2004.

The 2003 fishing year base landings quota established by ICCAT was 2,915 mt dw, not adjusted for underharvests. NMFS is adjusting this quota by the carryover available from 2002 and the excess dead discards in 2001. Thus, the adjusted total landings quota for 2003 is 4,263.6 mt dw (2,915 + 1,475 - 126.4).

Although the 2003 fishing year for North and South Atlantic swordfish ended on May 31, 2004, NMFS is including the ICCAT established quotas and landings for 2003 in this rule in order to provide a complete accounting of underharvests in 2003 which were used to establish the 2004 adjusted quotas. Thus, the directed and incidental fishery landings of North Atlantic swordfish during the 2003 fishing year were reported to be 1,509 mt dw. Under this rule, NMFS is also transferring 18.8 mt dw out of the reserve category to Canada. In 2003, 2,735.8 mt dw of the available quota was not harvested (4,263.6 - 1,509 - 18.8). In addition to the landings quota, ICCAT allocated to the United States a 2003 dead discard allowance of 60.0 mt dw, of which an estimated 278 mt dw were discarded. The 218 mt dw excess dead discards are required to be deducted from quota available to be harvested in the subsequent fishing year. Therefore, a net total of 2,517.8 mt dw (2,735.8 - 218) of unharvested swordfish quota may be carried over to 2004 from the 2003 fishing year.

For 2004, the fishing year base landings quota established by ICCAT is 2,937.6 mt dw, not adjusted for underharvests. NMFS is adjusting this quota based on underharvest from 2003, and the excess discards from 2002. Thus, the new adjusted quota for 2004 is 5,455.4 mt dw (2,937.6 + 2,517.8), of which 5,035.1 mt dw is for the directed category, 300 mt dw is for the incidental category, and 120.3 mt dw is for the reserve category. In addition, 18.8 mt dw of the reserve category quota will be transferred to Canada for the 2004 fishing year.

South Atlantic Swordfish

Beginning June 1, 2003, through May 31, 2005, the annual ICCAT established quota for the South Atlantic swordfish stock is 75.2 mt dw. Beginning June 1, 2006, the annual directed fishery quota for the South Atlantic swordfish stock is 90.2 mt dw. ICCAT recommended that the U.S. underharvest from 2000 be carried over to 2003. Underharvests from 2001 and 2002 were ineligible for carryover because individual country quota levels for those years were not agreed to by ICCAT, but established autonomously.

For 2000, the landings quota was set at 289 mt dw of which 93.8 mt dw were landed, leaving an underharvest of 195.2 mt dw. This underharvest is added to the base 2003 fishing year quota for an adjusted 2003 fishing year quota of 270.4 mt dw (75.2 + 195.2). In 2003, only 11.3 mt dw was harvested during the fishing year, leaving 259.1 mt dw available for carryover to the subsequent fishing year (270.4 - 11.3).

For 2004, the base fishing year landings quota established by ICCAT was 75.2 mt dw. NMFS is adjusting this base quota to account for the underharvest from 2003. Thus, the new adjusted quota for 2004 is 334.3 mt dw (75.2 + 259.1).

Changes from the Proposed Rule

The final rule contains no significant changes from the proposed rule published on June 20, 2003 (68 FR 36967).

Classification

This final rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and ATCA, 16 U.S.C. 971 *et seq.* The Assistant Administrator (AA) for Fisheries, NOAA, has determined that the regulations contained in this rule are necessary to implement the recommendations of ICCAT and to manage the domestic Atlantic highly migratory species fisheries.

NMFS prepared an Environmental Assessment (EA) for this final rule, and the AA has concluded that there would be no significant impact on the human environment. The EA presents analyses of the anticipated impacts of these final actions and the alternatives considered. A copy of the EA, and other analytical documents prepared for this rule, are available from NMFS (see **ADDRESSES**).

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

Based on the management measures in several proposed rules, including the proposed rule for these regulations, a new Biological Opinion (BiOp) on the Atlantic pelagic longline (PLL) fishery was issued on June 1, 2004. The 2004 BiOp found that the continued operation of the fishery was not likely to jeopardize the continued existence of loggerhead, green, hawksbill, Kemp's ridley, or olive ridley sea turtles, but was likely to jeopardize the continued existence of leatherback sea turtles. The 2004 BiOp identified Reasonable and Prudent Alternatives (RPAs) necessary to avoid jeopardizing leatherbacks, and listed the Reasonable and Prudent Measures (RPMs) and terms and conditions necessary to authorize continued take as part of the revised incidental take statement. On July 6, 2004, NMFS published a final rule (69 FR 40734) implementing additional sea turtle bycatch and bycatch mortality mitigation measures for all Atlantic vessels with PLL gear onboard. NMFS is implementing the other RPMs in compliance with the BiOp. On August 12, 2004, NMFS published an Advance Notice of Proposed Rulemaking (69 FR 49858) to request comments on potential regulatory changes to further reduce bycatch and bycatch mortality of sea turtles, as well as comments on the feasibility of framework mechanisms to address unanticipated increases in sea turtle interactions and mortalities, should they occur. NMFS will undertake additional rulemaking and non-regulatory actions, as required, to implement any management measures that are required under the 2004 BiOp. The majority of the measures that will be implemented by this current rule are not expected to have adverse impacts. The annual swordfish quota is being increased to 3,877 mt ww from 2,951 mt ww which, if effort increases, could potentially increase the number of protected species interactions. However, since 2000, U.S. fishermen have not caught either the North or South Atlantic swordfish quotas. For example, in 2003, there was a 1,348.6 mt dw underharvest of North Atlantic swordfish and a 195.2 mt dw underharvest of South Atlantic swordfish. Based on existing regulations, including time/area closures, minimum size, and permit restrictions, NMFS feels it is unlikely that there will be an increase in effort in the fishery. Thus, interactions with sea turtles should remain stable. Accordingly, no irreversible or irretrievable commitments of resources are expected from this action as the measures to be implemented by this final rule are not expected to adversely affect endangered species.

In examining the potential impact of these regulations, NMFS has determined that the only measure that could adversely affect stocks of protected species is the increase in the base North Atlantic swordfish quota from 2,951 mt ww to 3,877 mt ww and then to 3,907 mt ww in the upcoming fishing years. The increase in available quota could trigger an increase in fishing effort which could then increase the incidental catch of protected species. However, an increase in the incidental take of protected species by the PLL fleet due to an increase in effort is

unlikely. For the past several years, the level of effort in the PLL fishery has been steadily declining and a number of restrictions such as limited access and time/area closures have been placed on the PLL fleet. This declining effort has led to underharvests of 1,025.4 mt dw in the 2001 fishing year (68 FR 14167 March 24, 2003, correction 68 FR 16216, April 3, 2003), 1,475 mt dw in 2002, and 2,517.8 mt dw in 2003 (the latter two estimates include dead discard overharvests from 2002 and 2003).

In addition, NMFS has implemented regulations requiring PLL vessels to use only 18/0 hooks with whole mackerel and/or squid in the Northeast Distant (NED) Statistical Reporting Area, and 16/0 hooks and/or 18/0 hooks everywhere outside the NED using whole finfish or squid, and to possess and use sea turtle release equipment with specified sea turtle handling and release protocols. Handling and release guidelines are also required to be posted in the wheelhouse. Because this final rule does not relieve any of these restrictions, the level of effort in the fleet is unlikely to increase despite the change in quota level. Thus, the current level of incidental takes of protected species will remain at current levels or will decrease.

NMFS determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the enforceable policies of the approved coastal zone management programs of coastal states in the Atlantic, Gulf of Mexico, and Caribbean. All of the states that replied to the letter regarding compliance of the proposed rule with the Coastal Zone Management Act found NMFS' proposed actions to be consistent with their coastal zone management programs. NMFS presumes that the states that did not respond also concur.

At the proposed rule stage, NMFS conducted an Initial Regulatory Flexibility Analysis (IRFA) as required by the Regulatory Flexibility Act (RFA). NMFS received no comments regarding the potential economic impact of the proposed rule or on the IRFA. In preparing this final rule, NMFS has conducted a final EA and a final regulatory impact review that examines the impacts of the selected alternatives, discussed previously in this rulemaking. These analyses indicate that this rule would have negligible economic impacts on small entities. Therefore, in compliance with the RFA, the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is stated below.

As required by ATCA, this rule implements the recommendations of the 2002 meeting of the International Commission for the Conservation of Atlantic Tunas (ICCAT) regarding swordfish. The final rule adjusts the quota for North and South Atlantic swordfish, establishes the 2003 dead discard allowance, transfers 25 mt ww of North Atlantic swordfish quota to Canada, and allows up to 200 mt ww of swordfish caught in the area between 5 degrees North and 5 degrees South to be applied to the North Atlantic swordfish quota. These actions are necessary to ensure continued progress toward the conservation goals of ICCAT, the Magnuson-Stevens Act, ATCA, and the FMP for all tunas, swordfish, and sharks.

There are currently 397 commercial permit holders of which fewer than 200 have reported swordfish landings; most commercial permit holders use pelagic longline gear. There are also approximately 20,000 permit holders who could land swordfish recreationally (i.e., not for profit). Other sectors of highly migratory species fisheries such as dealers, processors, bait houses, and gear manufacturers might be affected by the final regulations, however, the final rule does not apply directly to them.

The overall result of the final rule would be to increase the 2004 North Atlantic swordfish quota by approximately 2,500 mt dw and the 2004 South Atlantic swordfish quota by 259.1 mt dw. These increases could potentially result in revenue increases, however, U.S. fishermen have not met either the North or South Atlantic swordfish quotas since 2000. For example, in 2003, there was a 1,348.6 mt dw underharvest of North Atlantic swordfish and a 195.2 mt dw underharvest of South Atlantic swordfish. The net impact of the of the final actions results in a quota level that is greater than current catches. Thus, NMFS does not believe that the net benefits and costs will change significantly as a result of the implementation of the selected alternatives compared to the baseline of no action.

Criteria used to evaluate potential impacts include analysis of gross revenues in recent years from pelagic longline logbook data. In future fishing years, the present value of gross and net revenues for the swordfish fishery at the ex-vessel level could be increased, but that would depend on the extent to which fishermen can expand their effort to catch the quota. For example, increasing the North Atlantic swordfish quotas could increase ex-vessel grows revenues by $4.9 million if the entire quota is caught. Currently, based on existing regulations, including time/area closures, minimum size, and permit restrictions, NMFS feels it is unlikely that there will be an increase in effort in the fishery. Thus, the economic impacts of the rule should be negligible. If effort is increased, U.S. fishermen would likely experience positive benefits as a result of this final rule. As a result, a FRFA was not prepared.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: November 17, 2004.

Rebecca J. Lent,

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

■ For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

■ 2. In § 635.27, paragraph (c)(1) is revised to read as follows:

§ 635.27 Quotas.

* * * * *

(c) *Swordfish*—(1) *Categories.* Consistent with ICCAT recommendations, the fishing year's total amount of swordfish that may be caught, retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction is divided into quotas for the North Atlantic swordfish stock and the South Atlantic swordfish stock. The quota for the North Atlantic swordfish stock is further divided into equal semi-annual directed fishery quotas, an annual incidental catch quota for fishermen targeting other species or taking swordfish recreationally, and a reserve category.

(i) *North Atlantic swordfish.* (A) A swordfish from the North Atlantic swordfish stock caught prior to the directed fishery closure by a vessel for which a directed fishery permit, or a handgear permit for swordfish, has been issued is counted against the directed fishery quota. The annual fishery quota, not adjusted for over- or underharvests, is 2,937.6 mt dw for 2004 and 2,937.6 mt dw for 2005. In 2004 and 2005, the

annual quota is subdivided into two equal semiannual quotas of 1,468.8 mt dw: one for June 1 through November 30, and the other for December 1 through May 31 of the following year.

(B) A swordfish from the North Atlantic swordfish stock landed by a vessel for which an incidental catch permit for swordfish or an HMS Angling or Charter/Headboat permit has been issued, or caught after the effective date of a closure of the directed fishery from a vessel for which a directed fishery permit or a handgear permit for swordfish has been issued, is counted against the incidental catch quota.

(C) A dead discard allowance of 60.2 mt dw is established for North Atlantic swordfish in 2003, but the allowance is reduced to zero in 2004 and beyond. All swordfish discarded dead from U.S. fishing vessels in 2004 and beyond, regardless of whether such vessels are permitted under this part, shall be counted against the annual directed fishing quota.

(D) A portion of the total allowable catch of North Atlantic swordfish shall be held in reserve for inseason adjustments to fishing categories, to compensate for projected or actual overharvest in any category, for fishery independent research, or for other purposes consistent with management objectives.

(E) In the event of an overharvest of South Atlantic swordfish, up to 150.4 mt dw of swordfish landed between 5 degrees North and 5 degrees South latitude may be applied against the North Atlantic swordfish quota. Otherwise, swordfish landed from this area shall be applied against the South Atlantic swordfish quota. For example, if the South Atlantic swordfish quota were 100 mt dw, and 50 mt dw were landed between 5 degrees North and 5 degrees South latitude, and 75 mt dw were caught south of 5 degrees South latitude, then 25 mt dw of the swordfish caught between 5 degrees North and 5 degrees South latitude would be applied against the North Atlantic swordfish quota. If only 25 mt dw of swordfish were caught between 5 degrees North and 5 degrees South latitude, and 150 mt dw of swordfish were caught south of 5 degrees South latitude, 25 mt dw would be applied against the North Atlantic swordfish quota. The remaining 50 mt dw overharvest would be counted against the following year's South Atlantic swordfish quota.

(ii) *South Atlantic swordfish.* From June 1, 2003, to May 31, 2006, the annual directed fishery quota for the South Atlantic swordfish stock is 75.2 mt dw. Beginning June 1, 2006, the annual directed fishery quota for the South Atlantic swordfish stock is 90.2 mt dw. The entire quota for the South Atlantic swordfish stock is reserved for vessels with pelagic longline gear onboard and for which a directed fishery permit for swordfish has been issued; retention of swordfish caught incidental to other fishing activities or with other fishing gear is prohibited in the Atlantic Ocean south of 5 degrees North latitude.

* * * * *

[FR Doc. 04–25958 Filed 11–18–04; 3:44 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 111804A]

Atlantic Highly Migratory Species; Bluefin Tuna Fisheries

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

ACTION: Closure.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (BFT) General category and Angling category fisheries will close in all areas. This action is being taken to ensure that U.S. BFT harvest is consistent with recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), pursuant to the Atlantic Tunas Convention Act (ATCA), to meet domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks (HMS FMP), and to prevent overharvest of the 2002 ICCAT recommended quota.

DATES: Effective 11:30 p.m., local time November 19, 2004, through 11:30 p.m., local time May 31, 2005.

FOR FURTHER INFORMATION CONTACT: Highly Migratory Species (HMS) Management Division at 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the ATCA (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by ICCAT among the various domestic fishing categories, and together with General category effort controls are specified annually under 50 CFR 635.23(a) and 635.27(a). The proposed initial 2004 BFT Quota and General category effort controls will be published in the **Federal Register** in the near future.

General and Angling Category Closure

Based on anticipated quotas and concern over potential overharvest, the most recent General category and Angling category BFT landing estimates, previous fishing years landing estimates, availability of BFT on the fishing grounds, physical oceanographic conditions, and social and economic aspects of these two fishing categories, NMFS has determined that a closure in both the General and Angling quota categories is warranted at this time. Therefore, fishing for, retaining, possessing, or landing BFT by persons aboard vessels permitted in the Atlantic tunas General, HMS Angling, and HMS Charter/Headboat categories, must cease at 11:30 p.m. local time November 19, 2004, in all areas. The intent of these closures is to ensure that the overall U.S. BFT harvest is consistent with ICCAT recommendations.

When more precise quota and landings estimates are available these fisheries may be reopened to provide Angling, General and Charter/Headboat category fishermen fishing opportunities off south Atlantic states during the December/January time frame when BFT are expected to be available as in recent prior years. NMFS will announce any re-openings and/or quota transfers in separate **Federal Register** notices. Atlantic tunas General, HMS Angling, and HMS Charter/Headboat category permit holders may tag and release BFT of all sizes while the General and Angling quota categories are closed, subject to the requirements of the tag-and-release program at § 635.26.

NMFS is required, under § 635.28(a)(1), to file with the Office of the **Federal Register** for publication, notification of closure when a BFT quota is reached, or is projected to be reached. On and after the effective date and time of such closure notification, for the remainder of the fishing year, or for a specified period as indicated in the notification, fishing for, retaining, possessing, or landing BFT under that quota category is prohibited until the opening of the subsequent quota period, or until such date as specified in the notification.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that it is impracticable and contrary to the public

interest to provide prior notice of, and an opportunity for public comment on, this action. Based on anticipated BFT quotas, recent landings reports, availability of BFT on the fishing grounds, and current fishing effort, these closures are necessary to ensure sufficient quota remains available to ensure overall 2004 fishing year landings are consistent with ICCAT recommendations and the HMS FMP. NMFS provides notification of closures by publishing the closure notice in the **Federal Register**, faxing notification to individuals on the HMS FAX Network and know fishery representatives, announcing the notice on the Atlantic Tunas Information Lines, and posting the closure notice on the internet at *http://www.nmfspermits.com*.

These fisheries are currently underway and delaying this action would be contrary to the public interest as it could result in excessive BFT landings that would preclude planned recreational and commercial fishing opportunities off south Atlantic states later in the season. To provide sufficient quota for this late season fishery and to remain within ICCAT recommended quotas, NMFS must close these fisheries before additional landings accumulate. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the delay in effectiveness of this action.

This action is being taken under 50 CFR 635.23(a)(4) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: November 18, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–25959 Filed 11–18–04; 3:44 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 040106005–4316–02; I.D. 121603C]

RIN 0648 AP73

Fisheries of the Exclusive Economic Zone Off Alaska; Full Retention of Demersal Shelf Rockfish in the Southeast Outside District of the Gulf of Alaska

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule that requires the operator of a federally permitted catcher vessel using hook-and-line or jig gear in the Southeast Outside District (SEO) of the Gulf of Alaska (GOA) to retain and land all demersal shelf rockfish (DSR) caught while fishing for groundfish or for Pacific halibut under the Individual Fishing Quota (IFQ) program. This action is necessary to improve estimates of fishing mortality of DSR. This final rule is intended to further the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

DATES: Effective December 23, 2004.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) and the Final Regulatory Flexibility Analysis (FRFA) prepared for this action may be obtained from the Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Durall, by calling the Alaska Region, NMFS, at 907–586–7228, or from the Alaska Region, NMFS website at *www.fakr.noaa.gov*.

Send comments on collection-of-information requirements to NMFS, Alaska Region, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington D.C. 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Tom Pearson, 907–481–1780 or *tom.pearson@noaa.gov*.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the exclusive economic zone (EEZ) of the GOA are managed under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

Background

One of the species groups managed under the FMP is DSR, an assemblage of seven rockfish species: Canary rockfish (*Sebastes pinniger*), China rockfish (*S. nebulosus*), copper rockfish (*S. caurinus*), quillback rockfish (*S. maliger*), rosethorn rockfish (*S. helvomaculatus*), tiger rockfish (*S. nigrocinctus*), and yelloweye rockfish (*S. ruberrimus*).

The State of Alaska (State) manages all fisheries occurring within State waters, i.e., within three nautical miles of Alaska's coastline. The FMP defers to the State some management responsibility for the DSR fishery in the SEO, subject to Council and Federal oversight. The State management regime must be consistent with the goals of the FMP. Commercial harvests of DSR are managed within the total allowable catch (TAC) specified annually by NMFS in consultation with the Council. NMFS published the DSR TAC for 2004 in the **Federal Register** on February 27, 2004 (69 FR 9261).

Existing State regulations for DSR establish fishing seasons (5 AAC 28.111(a)) and gear restrictions (5 AAC 28.130), set harvest guidelines for directed DSR fishing based on the TAC (5 AAC 28.160), and limit the amount of DSR that can be retained as bait (5 AAC 28.190). Also, the State has a full retention requirement for DSR caught in State waters (5 AAC 28.171). The Council and NMFS establish the annual TAC for DSR (see 50 CFR 679.20), regulate the catch of prohibited species in the DSR directed fishery (see 50 CFR 679.21), set recordkeeping and reporting requirements (see 50 CFR 679.5), and impose a maximum retention requirement for DSR caught incidentally in Federal fisheries (see 50 CFR 679.20(d)-(e); Table 10 to part 679).

Need for Action

The existing management background and explanation of the need for this action were described in the preamble to the proposed rule published in the **Federal Register** on January 21, 2004 (69 FR 2875). The Council and NMFS have designed this action to achieve the following four objectives:

1. Improve data collection on the incidental catch of DSR in the halibut and groundfish hook-and-line fisheries

in the SEO to more accurately estimate DSR fishing mortality, improve DSR stock assessments, and evaluate whether current maximum retainable amounts (MRAs) are the appropriate levels for DSR in the SEO;

2. Minimize waste to the extent practicable;

3. Avoid increasing incentives either to target DSR or to discard DSR that is caught in excess of the amount that can legally be sold for profit; and

4. Maintain a consistent approach within State and Federal regulations that govern the retention and disposition of DSR.

The preamble to the proposed rule (January 21, 2004, 69 FR 2875) contains additional explanation as to how this action will achieve these objectives.

Elements of this Rule

This rule has two main provisions that are added as paragraph (j) to § 679.20. The first provision addresses retention and landing requirements. The operator of a federally-permitted catcher vessel using hook-and-line or jig gear is required to retain and land all DSR that is caught while fishing for groundfish or IFQ halibut in the SEO. Landed fish must be reported under Federal and State regulations.

The second provision addresses disposal of retained amounts of DSR. Under this rule, a fisherman is limited to selling an amount of retained DSR that is no more than 10 percent of the aggregate round weight equivalent of IFQ halibut and groundfish, other than IFQ sablefish, that he or she retained onboard the vessel. For IFQ sablefish, a fisherman is limited to selling an amount of retained DSR that is no more than 1 percent of the aggregate round weight equivalent of IFQ sablefish he or she retained onboard the vessel. Fishermen could use amounts of retained DSR in excess of these sale limits for other purposes, including personal consumption or donation, but amounts of DSR in excess of the sale limits are prohibited from entering commerce through sale, barter, or trade.

Additionally, the MRA table for the GOA groundfish fisheries (Table 10 to 50 CFR part 679) is amended to remove the DSR MRA for catcher vessels in the SEO. A footnote is added to the DSR entry cross referencing the requirements specified in § 679.20(j).

Response to Comments

NMFS solicited public comments on the proposed rule (January 21, 2004, 69 FR 2875) through February 20, 2004. One letter containing six separate comments was received during this comment period. The comments are summarized and responded to below.

Comment 1: NMFS is overemphasizing the collection of fisheries information and neglecting the value of marine sanctuaries to re-establish fish populations. No marine sanctuaries have been created which should be an immediate first priority.

Response: The primary purpose of this regulatory amendment is not to re-establish DSR populations, but to improve information on the incidental catch of these rockfish species while not increasing incentives to either target or discard them. NMFS has no data that indicate DSR is overfished or that overfishing is occurring, hence, no need is apparent to re-establish DSR populations. In addition, areas of the GOA have been closed to fishing for conservation purposes, such as the Sitka Pinnacles Marine Reserve. This and other closed areas are specified in the groundfish regulations at § 679.22(b). The January 2004 draft environmental impact statement (EIS) for essential fish habitat discusses the effects of fishing on sensitive habitat features and evaluates a range of options for minimizing adverse effects, such as closing areas of rockfish habitat to bottom trawling. Further information on the draft EIS may be found at the NMFS Alaska Region website at *www.fakr.noaa.gov*.

Comment 2: Days at sea should be cut by 50 percent this year, and cut by 10 percent each year thereafter. It is time to prevent overfishing that is obviously going on.

Response: NMFS has identified no overfished stocks in the SEO District, or in the GOA as a whole, and has seen no evidence of overfishing of groundfish in this area. A reduction in days at sea is a management tool that has been used in other areas of the United States. In Alaska, however, NMFS has found that strict adherence to managing harvests at or below TAC levels makes the use of such a management tool unnecessary.

Comment 3: The use of hook-and-line gear to target Pacific halibut should be prohibited. Enforcement is practically non-existent. When fishermen are found in violation of the halibut fishery regulations, their fishing privileges should be permanently revoked.

Response: As part of an international agreement between the U.S. and Canada, hook-and-line gear is the only gear type authorized for use in the commercial harvest of halibut. Prohibiting its use would, in effect, close the commercial fishery for halibut. Enforcement of the halibut fishing regulations is conducted by NMFS Office of Enforcement and the U.S. Coast Guard, and compliance with these regulations is considered acceptable. The Office of Enforcement examines each violation of the fisheries regulations on a case by case basis. Penalties for violations can range from a written warning to the revocation of fishing privileges, forfeiture of fishing vessels, fines, and imprisonment.

Comment 4: NMFS, to the detriment of the American public, is too slow to react to problems. NMFS has taken no action to address issues raised since 1996 and nothing has been done about overfishing issues and anti-environmental actions.

Response: The groundfish fisheries in the GOA and off Alaska generally are among the best managed and most sustainable fisheries in the world. None of the groundfish stocks off Alaska are overfished or experiencing rates of harvest that are causing overfishing. Working closely with the Council since 1996, NMFS has implemented more than 25 amendments to the FMP which have led to improvements in the conservation and management of the GOA groundfish fisheries. In considering any FMP or regulatory change, the Council and NMFS carefully consider a broad range of alternatives to address biological, environmental, and economic concerns. Preparation of these analyses and receiving public comment on them may take a period of months or years, but this is done to assure that fishery management programs are well justified and in compliance with all applicable law.

Comment 5: Fishery quotas should be cut by 50 percent this year and by 10 percent each year thereafter. Too many vessels are allowed to fish; government agencies act as if fisheries resources are infinite, when they are not.

Response: Fishery quotas or TACs are based upon the best scientific information available which is reviewed annually by the Council, its committees and NMFS. The Council often sets TACs at levels below the Acceptable Biological Catch (ABC) levels in response to social, economic, and environmental concerns. The establishment of TACs on an annual basis is implicit recognition that fisheries resources are not infinite. Additionally, the Council has recommended and NMFS has implemented several programs to reduce the number of vessels participating in the groundfish fisheries of Alaska, including the groundfish and crab License Limitation Program, the pollock fishing co-operatives under the American Fisheries Act, and the IFQ program for the halibut and sablefish fisheries. Development of management

programs to rationalize fisheries or provide market-based incentives to reduce excessive fishing capital currently is underway in the Bering Sea crab fisheries and the GOA groundfish fisheries.

Comment 6: Once DSR are caught, they should be consumed. Markets could be found. The best ways to save fish stocks are to reduce quotas and to reduce fishing vessel days at sea. Fishermen found in violation of fishery regulations should have their vessels confiscated and fishing privileges permanently revoked.

Response: This final rule will require an operator of a federally permitted catcher vessel using hook-and-line or jig gear in the SEO to retain and land all DSR caught while fishing for groundfish or for Pacific halibut under the IFQ program in the SEO. Amounts of DSR species landed that are in excess of the maximum amount that may be sold may not enter commerce, but may be retained for personal consumption or donation to charity. Responses to concerns about conservation of fish stocks are given in the responses to comments 2 and 5. See the response to comment 3 regarding fisheries enforcement.

Changes from the Proposed Rule

No substantive changes are made in this final rule from the proposed rule. The headings of paragraphs at § 679.20(j)(2)(i), (j)(2)(ii), and (j)(2)(iii) are removed, however, to simplify the regulatory text.

To reflect the changes made by Amendment 63 to the FMP, Table 10 in the final rule is changed from Table 10 in the proposed rule. Amendment 63 separated skates from the ''other species'' category to the target species category to allow for management of skates as a separate target species. The final rule for Amendment 63 was published May 12, 2004 (69 FR 26313). Because the proposed rule for DSR retention (January 21, 2004, 69 FR 2875) was published before the final rule for Amendment 63, the proposed rule for DSR did not include the changes to Table 10 that became effective with the final rule for Amendment 63. To ensure this final rule for DSR reflects changes made to Table 10 by the final rule for Amendment 63, Table 10 in the DSR final rule is changed from the DSR proposed rule to include the separation of skates from the ''other species'' category.

A typographical error in Table 10 is also corrected by this final rule. A ''na9'' is added to the cell at the intersection of the sablefish column and row. This addition shows that the incidental catch of sablefish in the sablefish directed fishery is not applicable.

Classification

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

NMFS prepared a FRFA which incorporates the IRFA and a summary of the analyses completed to support the action. Copies of these analyses are available from NMFS (see **ADDRESSES**). The FRFA did not reveal any Federal rules that duplicate, overlap, or conflict with the action. The following summarizes the FRFA.

Need for and Objectives of the Rule

A description of the need for and objectives of this action is contained in the preamble to the proposed rule published in the **Federal Register** on January 21, 2004 (69 FR 2875), and in the preamble of this final rule.

Summary of Significant Issues Raised in Public Comment

No comments were received specifically on the IRFA. Several comments were received on the proposed rule that were largely irrelevant to the action, and none focused on the potential economic impacts of the action.

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

The directly regulated entities are those vessels taking DSR as incidental catch in halibut and groundfish fisheries in Federal waters of the SEO district and the processors buying the DSR from them. NMFS estimates that 423 vessels participated in these fisheries in 2000. Most of these vessels were less than 60 feet (18.3 m) in length, fishing with hook-and-line gear and jig gear. Average gross revenues for these vessels from the Alaskan halibut and groundfish fisheries were about $262,000. Average gross revenues from all fisheries for these entities are undoubtedly higher, because these vessels participate in other fisheries in Alaska. In the years from 1996 to 2001, between 17 and 26 plants bought groundfish in Southeast Alaska. In 2000, the average gross revenues for these plants were about $12 million. NMFS estimates that these fishing and processing operations were all ''small entities'' within the meaning of the Regulatory Flexibility Act.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This rule will impose no new recordkeeping requirements on regulated entities. NMFS has not been able to identify any relevant Federal rules that may duplicate, overlap, or conflict with the preferred alternative.

Steps Taken to Minimize Economic Impacts on Small Entities

The FRFA evaluated four alternatives: (1) the status quo, (2) full retention allowing all retained DSR to enter the stream of commerce, (3) full retention prohibiting certain amounts of DSR from entering the stream of commerce, and (4) use of an observer program. Alternative 3 is the preferred alternative. Alternative 1 imposes no adverse impacts on small entities, but fails to advance the action objectives of providing new information on DSR, reducing DSR wastage, and maintaining consistency between State and Federal regulations. Alternative 2 may be less costly than Alternative 3 in that fishermen could allow processors to sell the excess DSR and relinquish the proceeds to the State. However, regulation of the disposition of the proceeds from the sale of DSR under Alternative 2 appears to exceed the authority granted to NMFS under the Magnuson-Stevens Act. Alternative 3, the preferred alternative, is discussed in detail in the preamble to the proposed rule and summarized in this final rule. Under Alternative 4, fishermen face additional costs for observer coverage, including travel and logistical expenses for observers, and an additional cost of about $330/day for 30 percent of days at sea. This alternative would provide new information on the status of DSR stocks, but would not reduce DSR waste or reduce the inconsistency between State and Federal regulations. Using observers for the DSR incidental catch fishery might become more feasible in the future in the context of a comprehensive restructuring of the observer program that would include funding for the observers so that the entire cost did not fall on fishermen.

The Council considered but rejected several other alternatives because they did not appear to be effective solutions to the stated goals. Those mentioned in the EA include: (1) open the directed DSR fishery during halibut IFQ seasons and require full retention, (2) defer all management of DSR to the State, and (3) implement an IFQ fishery for DSR. The EA also discussed the option of an exempted fishing permit (EFP) conducted in order to obtain bycatch data. However, although such a program might allow more flexibility in design, it would depend on voluntary participation, and would therefore not enable the State to obtain a full census.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) that have been approved by the Office of Management and Budget (OMB). These collections are provided below by OMB control number:

OMB No. 0648–0206 Public reporting burden is estimated to average 21 minutes for a Federal Fisheries Permit application and 20 minutes for a Federal Processor Permit application.

OMB No. 0648–0213 This collection contains the recordkeeping and reporting forms and logbooks in which species, including DSR, are recorded and reported. Total public reporting burden for this family of forms is estimated at 32,329 hours. This estimate covers all forms of logbooks, and is not necessarily indicative of the burden associated with those to whom this rule applies. No measurable increase in burden is associated with this final rule because activity under this final rule is included in the existing collection.

The estimated response times shown include the time to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to *DRostker@omb.eop.gov*, or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

Small Entity Compliance Guide

Affected commercial fishermen will be in compliance with this rule if they retain all DSR they catch incidental to fishing for other groundfish and Pacific halibut. Further, these fishermen may not sell their incidental harvest of DSR if it is in excess of 10 percent of the aggregate round weight equivalent of IFQ halibut and groundfish species, other than sablefish, that are landed during the same fishing trip, or if it is in excess of 1 percent of the aggregate round weight equivalent of IFQ sablefish that are landed during the same fishing trip. Copies of the final rule are available from NMFS (see **ADDRESSES**) and at the following website: *http:/www.fakr.noaa.gov*.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: November 18, 2004.

Rebecca Lent,

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

■ For reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; 16 U.S.C. 1540(f); Pub. L. 105–277, Title II of Division C; Pub L. 106–31, Sec. 3027; and Pub L. 106–554, Sec. 209.

■ 2. In § 679.20, paragraph (j) is added to read as follows:

§ 679.20 General limitations.

* * * * *

(j) *Full retention of Demersal Shelf Rockfish (DSR) in the Southeast Outside District of the GOA (SEO)*—(1) *Retention and landing requirements.* The operator of a catcher vessel that is required to have a Federal fisheries permit, or that harvests IFQ halibut with hook and line or jig gear, must retain and land all DSR that is caught while fishing for groundfish or IFQ halibut in the SEO.

(2) *Disposal of DSR when closed to directed fishing.* When DSR is closed to directed fishing in the SEO, the operator of a catcher vessel that is required to have a Federal fisheries permit under § 679.4 (b), or the manager of a shoreside processor that is required to have a Federal processor permit under § 679.4(f), must dispose of DSR retained and landed in accordance with paragraph (j)(1) of this section as follows:

(i) A person may sell, barter, or trade a round weight equivalent amount of DSR that is less than or equal to 10 percent of the aggregate round weight equivalent of IFQ halibut and groundfish species, other than sablefish, that are landed during the same fishing trip.

(ii) A person may sell, barter, or trade a round weight equivalent amount of DSR that is less than or equal to 1 percent of the aggregate round weight equivalent of IFQ sablefish that are landed during the same fishing trip.

(iii) Amounts of DSR retained by catcher vessels under paragraph (j)(1) of this section that are in excess of the limits specified in paragraphs (j)(2)(i) and (ii) may be put to any use, including but not limited to personal consumption or donation, but must not enter commerce through sale, barter, or trade.

■ 3. In 50 CFR part 679, Table 10 is revised as follows:

BILLING CODE 3510–22–S

Table 10 to Part 679—Gulf of Alaska Retainable Percentages

BASIS SPECIES		INCIDENTAL CATCH SPECIES (for DSR caught on catcher vessels in the SEO, see § 679.20 (j)[6])														
Code	Species	Pollock	Pacific cod	DW flat (2)	Rex sole	Flathead sole	SW flat (3)	Arrow tooth	Sablefish	Aggregated rockfish[8]	SR/RE ERA (1)	DSR SEO (C/Ps only): (6)	Atka mackerel	Aggregated forage fish (10)	Skates[11]	Other species (7)
110	Pacific cod	20	na[9]	20	20	20	20	35	1	5	(1)	10	20	2	20	20
121	Arrowtooth	5	5	0	0	0	0	na[9]	0	0	0	0	0	2	0	0
122	Flathead sole	20	20	20	20	na[9]	20	35	7	15	7	1	20	2	20	20
125	Rex sole	20	20	20	na[9]	20	20	35	7	15	7	1	20	2	20	20
136	Northern rockfish	20	20	20	20	20	20	35	7	15	7	1	20	2	20	20
141	Pacific ocean perch	20	20	20	20	20	20	35	7	15	7	1	20	2	20	20
143	Thornyhead	20	20	20	20	20	20	35	7	15	7	1	20	2	20	20
152/151	Shortraker/rougheye (1)	20	20	20	20	20	20	35	7	15	na[9]	1	20	2	20	20
193	Atka mackerel	20	20	20	20	20	20	35	1	5	(1)	10	na[9]	2	20	20
270	Pollock	na[9]	20	20	20	20	20	35	1	5	(1)	10	20	2	20	20
710	Sablefish	20	20	20	20	20	20	35	na[9]	15	7	1	20	2	20	20
Flatfish, deep water (2)		20	20	na[9]	20	20	20	35	7	15	7	1	20	2	20	20
Flatfish, shallow water (3)		20	20	20	20	20	na[9]	35	1	5	(1)	10	20	2	20	20

BASIS SPECIES		INCIDENTAL CATCH SPECIES (for DSR caught on catcher vessels in the SEO, see § 679.20 (j)[6])														
Code	Species	Pollock	Pacific cod	DW flat (2)	Rex sole	Flathead sole	SW flat (3)	Arrow tooth	Sablefish	Aggregated rockfish[8]	SR/RE ERA (1)	DSR SEO (C/Ps only): (6)	Atka mackerel	Aggregated forage fish (10)	Skates[11]	Other species (7)
Rockfish, other (4)		20	20	20	20	20	20	35	7	15	7	1	20	2	20	20
Rockfish, pelagic (5)		20	20	20	20	20	20	35	7	15	7	1	20	2	20	20
Rockfish, DSR-SEO (6)		20	20	20	20	20	20	35	7	15	7	na[9]	20	2	20	20
Skates[11]		20	20	20	20	20	20	35	1	5	(1)	10	20	2	na[9]	20
Other species (7)		20	20	20	20	20	20	35	1	5	(1)	10	20	2	20	na[9]
Aggregated amount of non-groundfish species		20	20	20	20	20	20	35	1	5	(1)	10	20	2	20	20

Notes to Table 10 to Part 679					
1	Shortraker/rougheye rockfish				
		SR/RE	shortraker/rougheye rockfish (171)		
			shortraker rockfish (152)		
			rougheye rockfish (151)		
		SR/RE ERA	shortraker/rougheye rockfish in the Eastern Regulatory Area.		
	Where numerical percentage is not indicated, the retainable percentage of SR/RE is included under Aggregated Rockfish				
2	Deep-water flatfish	Dover sole, Greenland turbot, and deep-sea sole			
3	Shallow water flatfish	Flatfish not including deep water flatfish, flathead sole, rex sole, or arrowtooth flounder			
4	Other rockfish	Western Regulatory Area	means slope rockfish and demersal shelf rockfish		
		Central Regulatory Area			
		West Yakutat District			
		Southeast Outside District	means slope rockfish		
		Slope rockfish			
		S. aurora (aurora)	S. variegatus (harlequin)	S. brevispinis (silvergrey)	
		S. melanostomus (blackgill)	S. wilsoni (pygmy)	S. diploproa (splitnose)	
		S. paucispinis (bocaccio)	S. babcocki (redbanded)	S. saxicola (stripetail)	
		S. goodei (chilipepper)	S. proriger (redstripe)	S. miniatus (vermilion)	
		S. crameri (darkblotch)	S. zacentrus (sharpchin)	S. reedi (yellowmouth)	
		S. elongatus (greenstriped)	S. jordani (shortbelly)		
		In the Eastern GOA only, Slope rockfish also includes *S. polyspinous*. (Northern)			
5	Pelagic shelf rockfish	S. ciliatus (dusky)	S. entomelas (widow)	S. flavidus (yellowtail)	

Notes to Table 10 to Part 679					
6	Demersal shelf rockfish (DSR)	S. pinniger (canary)	S. maliger (quillback)	S. ruberrimus (yelloweye)	
		S. nebulosus (china)	S. helvomaculatus (rosethorn)		
		S. caurinus (copper)	S. nigrocinctus (tiger)		
		DSR-SEO = Demersal shelf rockfish in the Southeast Outside District The operator of a catcher vessel that is required to have a Federal fisheries permit, or that harvests IFQ halibut with hook and line or jig gear, must retain and land all DSR that is caught while fishing for groundfish or IFQ halibut in the SEO. Limits on sale and requirements for disposal of DSR are set out at § 679.20 (j).			
7	Other species	sculpins	octopus	squid	sharks
8	Aggregated rockfish	means rockfish of the genera Sebastes and Sebastolobus defined at § 679.2 except in:			
		Southeast Outside District (SEO)	where DSR is a separate category for those species marked with a numerical percentage		
		Eastern Regulatory Area (ERA)	where SR/RE is a separate category for those species marked with a numerical percentage		
9	N/A	not applicable			
10	Aggregated forage fish (all species of the following families)				
		Bristlemouths, lightfishes, and anglemouths (family Gonostomatidae)			209
		Capelin smelt (family Osmeridae)			516
		Deep-sea smelts (family Bathylagidae)			773
		Eulachon smelt (family Osmeridae)			511
		Gunnels (family Pholidae)			207
		Krill (order Euphausiacea)			800

Notes to Table 10 to Part 679			
		Laternfishes (family Myctophidae)	772
		Pacific herring (family Clupeidae)	235
		Pacific Sand fish (family Trichodontidae)	206
		Pacific Sand lance (family Ammodytidae)	774
		Pricklebacks, war-bonnets, eelblennys, cockscombs and Shannys (family Stichaeidae)	208
		Surf smelt (family Osmeridae)	515
11	Skates Species and Groups		
		Big Skates (702)	
		Longnose Skates (701)	
		Other Skates (700)	

[FR Doc. 04–25960 Filed 11–22–04; 8:45 am]

BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 69, No. 225
Tuesday, November 23, 2004

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket FAA–2004–19084; Airspace Docket 04–ANM–08]

Proposed Establishment of Class E Airspace, Mariposa, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rule Making (NPRM).

SUMMARY: This action would establish Class E airspace at Mariposa-Yosemite Airport, Mariposa, CA. New Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the RNAV (GPS) SIAPs at Mariposa-Yosemite Airport. This action is necessary for the safety of aircraft executing Instrument Flight Rules (IFR) operations at Mariposa-Yosemite Airport, Mariposa, CA.

DATES: Comments must be received on or before January 7, 2005.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–19084, Airspace Docket 03–ANM–08, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final dispositions in person in the Docket Office between 9 a.m. to 5 p.m., Monday through Friday, excpet federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the Office of the Western En Route and Oceanic Operations, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA, 98055.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket FAA–2004–19084, Airspace Docket 04–ANM–08.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

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

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

The Proposal

The FAA is considering an amendment to 14 CFR part 71 by establishing a Class E airspace at Mariposa-Yosemite Airport, Mariposa, CA. New RNAV (GPS) SIAPs at Mariposa-Yosemite Airport requires additional controlled airspace extending upward from 700 feet above the surface. This airspace is needed to contain aircraft and provide adequate controlled airspace for aircraft executing the new IFR approaches at Mariposa-Yosemite Airport, Mariposa, CA.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9M dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR part 71.1 of the Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and Effective, September 16, 2004, is amended as follows

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

* * * * *

ANM CA E5 Mariposa, CA [NEW]

Mariposa-Yosemite Airport
(Lat. 37°30′65″ N., long. 120°02′37″ W.)

That airspace extending upward from 700 feet above the surface of the earth within a 6.5 mile radius of the Mariposa-Yosemite Airport.

* * * * *

Issued in Seattle, Washington, on October 8, 2004.

Raul C. Treviño,

Area Director, Western En Route and Oceanic Operations.

[FR Doc. 04–25885 Filed 11–22–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–19422; Airspace Docket No. 03–AEA–11]

RIN 2120–AA66

Proposed Establishment of VOR Federal Airway 623 (V–623)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Federal Airway 623 (V–623) between the Sparta, NJ, Very High Frequency Omnidirectional Range Tactical Air Navigation (VORTAC) and the Carmel, NY, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME). The purpose of the proposed airway is to enhance the management of aircraft transiting from the New England area to airports in the Newark, NJ area.

DATES: Comments must be received on or before January 7, 2005.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify FAA Docket No. FAA–19422 and Airspace Docket No. 03–AEA–11, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules, Office of System Operations and Safety, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–19422 and Airspace Docket No. 03–AEA–11) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–19422 and Airspace Docket No. 03–AEA–11.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRM's

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 159–30 Rockaway Boulivard, Jamaica, NY 11434–4848.

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

History

On September 5, 2002, the New York Air Route Traffic Control Center (ARTCC) requested an airway be established to accommodate air traffic transiting from the New England area to Newark Liberty International Airport and its satellites. This action responds to this request.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 (part 71) to establish V–623 in the vicinity of Newark, NJ; between the Sparta, NJ; VORTAC and the Carmel, NY; VOR/DME. The proposed airway would enhance the management of aircraft transiting from the New England area to airports in the Newark, NJ, area.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–623 [New]

From Carmel, NY; INT Carmel 275°(M) 263°(T) and Sparta, NJ 039°(M) 028°(T) radials; Sparta.

* * * * *

Issued in Washington, DC, on November 16, 2004.

Reginald C. Matthews,

Manager, Airspace and Rules.

[FR Doc. 04–25881 Filed 11–22–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM05–1–000]

Regulations Governing the Conduct of Open Seasons for Alaska Natural Gas Transportation Projects

November 15, 2004.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is proposing to amend its regulations to establish requirements governing the conduct of open seasons for proposals to construct Alaska natural gas transportation projects. These proposed regulations are intended to fulfill the Commission's responsibilities to issue open season regulations under section 103 of the Alaska Natural Gas Pipeline Act (the Act), enacted on October 13, 2004. Section 103(e)(1) of the Act directs the Commission, within 120 days from enactment of the Act, to promulgate regulations governing the conduct of open seasons for Alaska natural gas transportation projects, including procedures for allocation of capacity. According to section 103(e)(2) of the Act, these regulations must include the criteria for and timing of any open season, promote competition in the exploration, development, and production of Alaska natural gas, and for any open seasons for capacity exceeding the initial capacity, provide for the opportunity for the transportation of natural gas other than from the Prudhoe Bay and Point Thomson units.

DATES: Comments are due on December 17, 2004.

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

FOR FURTHER INFORMATION CONTACT: Whit Holden, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8089, *edwin.holden@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking

I. Introduction

1. The Alaska Natural Gas Pipeline Act became law on October 13, 2004. Under the Act, Congress mandated the expedited processing by the Commission of any application for an Alaska natural gas transportation project, namely any natural gas pipeline system that carries natural gas derived from that portion of Alaska lying north of 64 degrees north latitude to the border between Alaska and Canada. The new law recognizes the importance of our Alaskan natural gas resources in meeting the rapidly rising demand for natural gas in the United States. The timely development of an Alaska natural gas transportation project to bring Alaskan natural gas to markets in Alaska and in the lower 48 states will help ensure that the nation has adequate supplies of natural gas at reasonable prices.[1] To this end, the Act charges the Commission with the responsibility of implementing an expedited approval process consistent with the Act. The Act specifically directs the Commission to prescribe the rules which will apply to any open season held for the purpose of soliciting interest in, or making binding commitments to the acquisition of capacity on, any Alaska natural gas transportation project, including the criteria for allocating capacity among competing bidders.

2. To date, it has been the Commission's policy, developed through its orders and opinions, that all new interstate pipeline construction be preceded by a non-discriminatory, non-preferential ''open season'' process through which potential shippers may seek and obtain firm capacity rights. Congress has determined that it is necessary to supplant Commission policy with specific regulations governing the conduct of open seasons for an Alaska natural gas transportation project in order to take into account the tremendous cost, long lead-time, and environmental sensitivities that are unique to such a project. In this regard, Congress has emphasized that the Commission's regulations are to be designed to promote competition in the exploration, development, and production of Alaska natural gas and, as to any open season for expansion of the initial capacity of any Alaska natural gas transportation project, the Commission's regulations are to specifically provide the opportunity for gas other than Prudhoe Bay and Point Thomson production to have access to the pipeline.

3. In summary, the Commission sees as its goal the creation of an open season process that provides non-discriminatory access to capacity on any Alaska natural gas transportation project while, at the same time, ensuring sufficient economic certainty to support the construction of the pipeline and

[1] Secretary of Energy Spencer Abraham, in requesting the National Petroleum Council (NPC) to undertake a study of natural gas in the United States in the 21st century, sought ''the NPC's advice on actions that can be taken by industry and Government to increase the productivity and efficiency of North American natural gas markets and to ensure adequate and reliable supplies of energy for consumers.'' The NPC's resulting report found that the solution includes accessing ''gas resources from previously inaccessible areas of the United States and gas from the Arctic.'' Balancing Natural Gas Policy—Fueling the Demands of a Growing Economy, A Report of the National Petroleum Council, at 7 (Sept. 25, 2003) (NPC Report).

thereby provide a stimulus for exploration, development and production of Alaska natural gas.

4. Congress has also given the Commission the statutory authority to require an expansion of an Alaska natural gas transportation project to address the circumstance where additional capacity is required but the pipeline owners have not committed to expand the system on a timely basis. Consequently, section 105(a) of the Act authorizes the Commission, upon the request of one or more persons, and upon the satisfaction of certain statutory criteria, to order the expansion of any Alaska natural gas transportation project. Section 105(e) authorizes the Commission to issue such regulations as are necessary to fulfill this responsibility. While the Commission may issue such regulations in the future, the regulations which are the subject of this rulemaking pertain solely to open seasons for initial capacity or expansion capacity other than expansion capacity ordered pursuant to section 105 of the Act.

II. Summary of Proposed Regulations

5. Proposed section 157.30 sets out the purpose of Subpart B. That purpose is to prescribe rules for the conduct of any open season on any Alaska natural gas transportation project. Section 103(e)(2) of the Act provides that these regulations must include the criteria for and timing of any open season, promote competition in the exploration, development, and production of Alaska natural gas, and, for any open seasons for capacity exceeding the initial capacity, provide for the opportunity for the transportation of natural gas other than from the Prudhoe Bay and Point Thomson units.[2]

6. Proposed section 157.31 defines the terms ''Alaska natural gas transportation project'' and ''Commission'' consistent with definitions provided in the Act.

7. Proposed section 157.32 provides that regulations proposed will apply to any application to the Commission for a certificate of public convenience and necessity or other authorization for an Alaska natural gas transportation project, whether filed pursuant to the Natural Gas Act, the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 *et seq.*), or the Alaska Natural Gas Pipeline Act, and to applications for expansion of such projects, other than expansions of Alaska natural gas transportation projects that are requested and ordered pursuant to section 105 of the Act.

8. Although the Commission is authorized in section 105(e) to issue regulations governing expansions requested under section 105(a), that authorization is separate from the authority granted the Commission in section 103(e) to issue regulations for open seasons. Moreover, the Commission is directed to issue the section 103(e) regulations within 120 days from the date of issuance of the Act, whereas the Commission is not under any time constraints in considering the need for any regulations to carry out its responsibilities under section 105. Therefore, the Commission is focusing solely on those issues relevant to open seasons under section 103 of the Act at this time. However, the proposed section 157.32 leaves open the possibility that the requirements of this subpart might, in a given case, have application or be suited to an expansion ordered under section 105 of the Act.

9. Proposed section 157.33 requires that any application for a certificate of public convenience and necessity for a proposed Alaska natural gas transportation project include a showing that the applicant conducted an open season for capacity on its proposed project that fully complies with the requirements of this subpart. To ensure compliance with this requirement, proposed section 157.33 provides that any application lacking such a showing will be dismissed as deficient.

10. Proposed section 157.34 sets forth the criteria for and timing of any open season for an Alaska natural gas transportation project. Proposed section 157.34(a) provides for public notice of an open season at least 30 days prior to the commencement of the open season through methods including postings on Internet websites, press releases, direct mail solicitations, and other advertising. The Commission believes that such prior notice would serve several purposes. First, it would reduce, if not eliminate, any advantage that one potential shipper might have as a result of prior knowledge of the open season. Second, it would afford both project sponsors and prospective shippers a period of time prior to the actual open season period in which they can address and possibly resolve any questions or problems regarding the terms and conditions of the open season. Third, it would afford potential shippers time to prepare submissions in response to the open season.

11. Proposed section 157.34(b) lists the information that any notice of open season for an Alaska natural gas transportation project must contain. The Commission recognizes in this section that a potential applicant for an Alaska natural gas transportation project might find it necessary or appropriate to initiate an open season before some of the information can be determined. Indeed, the Commission understands that in a given situation, such information cannot be reasonably determined until after an open season is held. The Commission can envision, for instance, a situation where a prospective project sponsor might first conduct a non-binding open season as a manner of gathering information and assessing demand, on the basis of which the sponsor would then be able to conduct a second, binding open season containing information sufficiently detailed to permit prospective shippers to enter into binding precedent agreements.

12. The proposed list of information contained in proposed section 157.34(b) is intentionally inclusive. In this area, as well as others, the Commission is soliciting comments received in response to this Notice of Proposed Rulemaking to fashion a final rule that meets the Commission's goal which is, as stated above, to create an open season process that provides non-discriminatory access to capacity on any Alaska natural gas transportation project while, at the same time, ensuring sufficient economic certainty to support the construction of the pipeline and thereby provide a stimulus for exploration, development and production of Alaska natural gas.

13. Proposed section 157.34(c) provides that an open season for an Alaska natural gas transportation project must remain open for a period of at least 90 days. This minimum 90-day period for prospective shippers to examine the open season materials and make service requests to the pipeline is intended to establish some parity among shippers, given that certain shippers, primarily the ''anchor shippers,''[3] may have had advance information relating to the pipeline's proposed services, tariff provisions, and cost projections. Ninety days is proposed as an adequate amount of time in which to conduct a reasoned evaluation of the open season materials and to help level the playing field. The Commission considers this provision essential to ensuring that the Commission's regulations promote competition in the exploration,

[2] The Prudhoe Bay and Point Thomson units are gas fields located on Alaska's North Slope with a total of approximately 35 Tcf of known gas reserves.

[3] ''Anchor shipper(s)'' as used in the natural gas industry means one or a very few shippers with very large, significant volumes of natural gas that will fully financially support the initial design and cost of a project.

development, and production of Alaska natural gas.

III. Public Comment and Expedited Procedures

14. The Act mandates that the Commission issue regulations implementing the open season requirements within 120 days of the date of its enactment. Congress and the Commission consider the promulgation of these regulations to be a matter of critical importance to the construction and development of, and access to, an Alaska natural gas transportation project. Therefore, the Commission intends to promulgate final regulations by February 10, 2005. To that end, public comments on this notice are due on December 17, 2004. The Commission will carefully weigh and consider all public comments received.

15. In addition to seeking comments on the proposed rules contained herein, the Commission seeks comments on the following questions:

(1) Should the Commission require that prospective applicants for Alaska natural gas transportation projects, before conducting open seasons, file with the Commission proposals for how the open seasons will be conducted? If so, should the proposals be filed for notice and comment, or for a decision or pre-determination by the Commission that such proposals conform to the regulations? What other procedures are suitable to facilitate the expeditious resolution of objections or concerns regarding any open season for an Alaska natural gas transportation project?

(2) Should the Commission issue regulations now, pursuant to section 105 of the Alaska Natural Gas Pipeline Act, with respect to the Commission's authority to require expansion of any Alaska natural gas transportation project? If so, should those regulations deal with the rate treatment (rolled-in or incremental) of any such expansion?

(3) Should the Commission allow pre-subscribed, reserved capacity such as was allowed in connection with open seasons for certain new Outer Continental Shelf pipeline facilities? *See, e.g.*, Garden Banks Gas Pipeline, LLC, 78 FERC ¶ 61,066 (1997); Green Canyon Pipe Line Co., 47 FERC ¶ 61,310 (1989)?

(4) Congress has made expressly clear that the open season rules must promote competition in the exploration, development, and production of Alaska natural gas. Commenters are invited to discuss whether, and to what extent, any tension may exist between this mandated purpose and the application of existing Commission policies to the open season rules due to circumstances unique to access to capacity on any Alaska natural gas transportation project.

(5) To what extent should the Commission's open season regulations address the issues of tying the receipt of capacity on any Alaska natural gas transportation project to ancillary services involving the treatment of gas to meet specified gas quality requirements or allocating capacity at a gas treatment plant or other facility?

IV. Information Collection Statement

16. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting, record keeping, and public disclosure (collections of information) imposed by an agency.[4] The following information collection requirements contained in this proposed rule are being submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995.[5] FERC identifies the information disclosed under Part 157 as FERC–537. The Commission has submitted this information collection to OMB for review and clearance under emergency processing procedures.[6] OMB approval has been requested by December 31, 2004.

17. Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondent's burden, including the use of automated information techniques. The burden estimates for complying with this rule are as follows:

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC–537	30	1	80	2400
Totals				2400

Total Annual Hours for Collection: 2400 hrs. These are mandatory information collection requirements.

Information Collection Costs: The Commission seeks comments on the cost to comply with these requirements. It has projected the average annualized cost for all respondents to be $139,000 (2400 × $58.00).

Title: FERC–537 ''Gas Pipeline Certificates: Construction, Acquisition and Abandonment.''

Action: Proposed Information Collection.

OMB Control Nos.: 1902–0060. The applicant shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

Respondents: Business or other for profit.

Frequency of Responses: One-time implementation.

Necessity of Information: On October 13, 2004, Congress enacted the Alaska Natural Gas Pipeline Act. Section 103(e)(1) of the Act directs the Commission to issue regulations within 120 days from the enactment of the Act. Congress and the Commission consider the issuance of these regulations to be of critical importance to the construction and development of and access to Alaska natural gas transportation projects. The Commission must issue a final rule by February 10, 2005. The Commission seeks emergency processing of this proposed information collection because the use of normal clearance procedures is reasonably likely to cause a statutory ordered deadline to be missed. The proposed rule revises the reporting requirements contained in 18 CFR Part 157. Specifically, the Alaska Natural Gas Pipeline Act authorized the Commission to expedite application for any natural gas transportation projects that carries gas derived from that portion of Alaska lying north of 64 degree north latitude to the border between Alaska and Canada. Specifically, the Commission is proposing rules to establish open seasons to accept bids for capacity on any Alaska natural gas transportation project. The Alaska Natural Gas Pipeline Act regulations must (1) include the

[4] 5 CFR 1320.11.

[5] 44 U.S.C. 3507(d).

[6] 5 CFR 1320.13.

criteria for and timing of any open season, (2) promote competition in the exploration, development and production of Alaska natural gas, and (3) for any open seasons for capacity exceeding the initial capacity, provide for the opportunity for the transportation of natural gas other than from Prudhoe Bay and Point Thomson.

Internal Review: The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements. The Commission's Office of Energy Projects will review the data included in the application to determine whether the proposed facilities are in the public interest as well as for general industry oversight. This determination involves, among other things, an examination of adequacy of design, cost, reliability, redundancy, safety and environmental acceptability of the proposed facilities. These requirements conform to the Commission's plan for efficient information collection, communication and management within the natural gas industry.

18. Interested persons may obtain information on the reporting requirements by contacting the Commission, as follows: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426 (Attention: Michael Miller, Office of the Executive Director, 202–502–8415, fax: 202–273–0873), e-mail: *michael.miller@ferc.gov*.

19. For submitting comments concerning the collection of information and the associated burden estimate(s)s including suggestions for reducing this burden, please send your comments to the contact listed above and to the Office of Management and Budget, Room 10202 NEOB, 725 17th Street, NW., Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission, 202–395–4650, fax: 202–395–7285).

V. Environmental Analysis

20. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[7] No environmental consideration is raised by the promulgation of a rule that is procedural in nature or does not substantially change the effect of legislation or regulations being amended.[8] The proposed rule establishes requirements governing the conduct of open seasons for proposals to construct Alaska natural gas transportation projects and does not substantially change the effect of the underlying legislation or regulations being revised.

VI. Regulatory Flexibility Act Statement

21. The Regulatory Flexibility Act of 1980 (RFA)[9] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such an analysis if a rule would not have such an effect.

22. The Commission concludes that this rule would not have such an impact on small entities. Most companies regulated by the Commission do not fall within the RFA's definition of a small entity.[10]

VII. Comment Procedures

23. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due on December 17, 2004. Comments must refer to Docket No.RM05–1 and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. Comments may be filed either in electronic or paper format.

24. Comments may be filed electronically via the eFiling link on the Commission's web site at *http://www.ferc.gov*. The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE., Washington, DC, 20426.

25. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VIII. Document Availability

26. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

27. From FERC's Home Page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

28. User assistance is available for eLibrary and the FERC's Web site during normal business hours. For assistance, please contact FERC Online Support at 1–866–208–3676 (toll free) or 202–502–6652 (e-mail at *FERCOnlineSupport@FERC.gov*), or the Public Reference Room at 202–502–8371, TTY (202) 502–8659 (e-mail at *public.referenceroom@ferc.gov*).

List of Subjects in 18 CFR Part 157

Administrative practice and procedure; Natural gas; Reporting and recordkeeping requirements.

By direction of the Commission.

Magalie R. Salas,

Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 157, Chapter I, Title 18, *Code of Federal Regulations*, as follows.

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

1. The authority citation for part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717w.

2. Subpart B is added to Part 157 to read as follows:

Subpart B—Open Seasons for Alaska Natural Gas Transportation Projects

Sec.
157.30 Purpose.
157.31 Definitions.

[7] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[8] 18 CFR 380.4(a)(2)(ii) (2004).

[9] 5 U.S.C. 601–612.

[10] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 623. Section 3 of the Small Business Act defines a ''small-business concern'' as a business which is independently-owned and operated and which is not dominant in its field of operation.

157.32 Applicability.
157.33 Requirement for open season.
157.34 Notice of open season.
157.35 Capacity allocation.
157.36 Open season for expansion.

Subpart B—Open seasons for Alaska Natural Gas Transportation Projects

§ 157.30 Purpose.

This subpart establishes the procedures for conducting open seasons for Alaska natural gas transportation projects, as defined herein.

§ 157.31 Definitions.

(a) ''Alaska natural gas transportation project'' means any natural gas pipeline system that carries Alaska natural gas to the border between Alaska and Canada (including related facilities subject to the jurisdiction of the Federal Energy Regulatory Commission).

(b) ''Commission'' means the Federal Energy Regulatory Commission.

§ 157.32 Applicability.

These regulations shall apply to any application to the Commission for a certificate of public convenience and necessity or other authorization for an Alaska natural gas transportation project, whether filed pursuant to the Natural Gas Act, the Alaska Natural Gas Transportation Act of 1976, or the Alaska Natural Gas Pipeline Act, and to applications for expansion of such projects. Absent a Commission order to the contrary, these regulations are not applicable in the case of an expansion ordered by the Commission pursuant to section 105 of the Alaska Natural Gas Pipeline Act.

§ 157.33 Requirement for open season.

Any application for a certificate of public convenience and necessity for a proposed Alaska natural gas transportation project must include a demonstration that the applicant has conducted an open season for capacity on its proposed project, in accordance with the requirements of this sub-part. Failure to provide the requisite demonstration will result in an application being dismissed as deficient.

§ 157.34 Notice of open season.

(a) *Notice.* A prospective applicant must provide reasonable public notice of an open season, at least 30 days prior to the commencement of the open season, through methods including postings on Internet websites, press releases, direct mail solicitations, and other advertising. In addition, a prospective applicant must provide actual notice of an open season to the State of Alaska and to the Federal Coordinator for Alaska Natural Gas Transportation Projects.

(b) *Contents of Notice.* Notice of the open season shall contain at least the following information, to the extent that such information is known or determined at the time the notice is issued:

(1) The general route of the proposed project, including receipt and delivery points, and any alternative routes under consideration;

(2) Size and design capacity (including proposed certificate capacity to the extent that it differs from design capacity), and any estimated phase-in dates for capacity beyond initial capacity;

(3) Maximum allowable operating pressure and expected actual operating pressure;

(4) Delivery pressure;

(5) Projected in-service date;

(6) An estimated unbundled transportation rate, stated on an MMBtu basis, for each service offered, including reservation rates for pipeline capacity, interruptible transportation rates, usage rates, fuel retention percentages, and other applicable charges, or surcharges, such as annual charge adjustment (ACA);

(7) The estimated costs of proposed facilities and cost of service, and expected return on equity used to justify the transportation rates;

(8) Negotiated rate and other rate options under consideration;

(9) Quality specifications and any other requirements applicable to gas to be delivered to the project;

(10) Terms and conditions for each service offered;

(11) Creditworthiness standards to be applied to prospective shippers;

(12) The date, if any, by which potential shippers and the prospective applicant must execute precedent agreements;

(13) A detailed methodology for determining the value of bids;

(14) The methodology by which capacity will be awarded, in the case of over-subscription, clearly stating all terms that will be considered, including price and contract term;

(15) Required bid information, whether bids are binding or non-binding, receipt and delivery point requirements, the form of a precedent agreement and time of execution, definition and treatment of non-conforming bids;

(16) The projected date for filing an application with the Commission; and

(17) All other information that may be relevant to the open season, including information pertaining to the proposed service to be offered, projected pipeline capacity and design, proposed tariff provision, and cost projections, made available to or in the hands of any potential shipper, including any affiliates of the project sponsor and any shippers with pre-subscribed capacity, prior to the issuance of the public notice of open season.

(c) *Timing.* A prospective applicant must provide prospective shippers at least 90 days from the date on which notice of the open season is given within which to submit requests for transportation services.

§ 157.35 Capacity allocation.

Capacity allocated as a result of any open season shall be awarded without undue discrimination or preference of any kind.

§ 157.36 Open seasons for expansions.

Any open season for capacity exceeding the initial capacity of an Alaska natural gas transportation project must provide the opportunity for the transportation of gas other than Prudhoe Bay or Point Thomson production.

[FR Doc. 04–25933 Filed 11–22–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–208246–90]

RIN 1545–BD47

Allocation and Apportionment of Deductions for Charitable Contributions; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to the allocation and apportionment of charitable deductions.

DATES: The public hearing originally scheduled for Thursday, December 2, 2004, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Treena Garrett of the Publications and Regulations Branch, Associate Chief Counsel (Procedure and Administration) (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Wednesday, July 28, 2004, (69 FR 44988), announced that

a public hearing was scheduled for Thursday, December 2, 2004, at 10 a.m. in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 861 of the Internal Revenue Code. The public comment period for these proposed regulations expired on Tuesday, October 26, 2004. Outlines of oral comments were due on Tuesday, November 12, 2004.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Wednesday, November 17, 2004, no one has requested to speak. Therefore, the public hearing scheduled for Tuesday, December 2, 2004, is cancelled.

Cynthia E. Grigsby,

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

[FR Doc. 04–25964 Filed 11–22–04; 8:45 am]

BILLING CODE 4830–01–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 300–3, 302–2, 302–3, 302–4, 302–5, 302–6, 302–7, 302–9, 302–11, and 302–15

[FTR Case 2003–309]

RIN 3090–AH91

Federal Travel Regulation; Relocation Allowances

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) Office of Governmentwide Policy (OGP) continually reviews and adjusts policies as a part of its ongoing mission to provide policy assistance to the Government agencies subject to the Federal Travel Regulation (FTR). Accordingly, GSA created the Relocation Best Practices Committee (RBPC) to examine Government relocation policy. The RBPC consists of Government as well as private sector relocation experts and produced a complete package of recommendations affecting the statutes and regulations governing relocation. The following proposed FTR changes are the result of recommendations from the RBPC from benchmarking against private industry, and from GSA, representing Governmentwide policy interests. The proposed changes are intended to keep Government relocation practices in line with current relocation trends and allow for better management of the Government relocation programs and costs.

DATES: Comments must be received on or before January 24, 2005.

ADDRESSES: Submit comments identified by FTR case 2003–309 by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web Site: *http://www.gsa.gov/ftr*. Click on the FTR Case number to submit comments.
- E-mail: *ftrcase.2003–309@gsa.gov*. Include FTR case 2003–309 in the subject line of the message.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (V), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FTR case 2003–309 in all correspondence related to this case. All comments received will be posted without change to *http://www.gsa.gov/ftr*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content, contact Ed Davis, Program Analyst (Team Leader), Office of Governmentwide Policy, Travel Management Policy, at (202) 208–7638. Please cite FTR case 2003–309.

SUPPLEMENTARY INFORMATION:

A. Background

The General Services Administration (GSA), Office of Governmentwide Policy (OGP), reviews the regulations under its purview to address current Government relocation needs and incorporate private industry policies and best practices, where appropriate. Relocation is an area that continuously changes. Parts of the relocation regulation, such as the storage time and temporary quarters allowance time should not stand alone but be considered in relation to each other. Changes such as these need to be made as part of a new comprehensive relocation regulation.

Much of private industry uses lump sum relocation payments for all relocation expenses except real estate expenses. Thus, temporary quarters, miscellaneous expenses, and other payments have a small one-time administrative cost and do not need to be reconciled in a post-payment audit. The administrative savings and efficiency improvements of such systems are clear.

Private industry spends less time on its relocation packages because as a rule they are tiered, more flexible to handle exceptions, and relocation expenses rarely extend beyond one year because there are no extensions. The focus is on getting the transferee settled at the new location as fast as possible in permanent quarters. The main lesson that the Government can learn from benchmarking against private industry is that expediency is important. Currently, the Government permits Federal employees to voucher items from a move up to 4 years after the move (2 years to complete a relocation plus a two year extension). This is a drain on Federal accounting systems as monies must remain allocated to cover transactions.

The Travel Management Policy Division of OGP examined the issues facing agencies and employees in a relocation. Through benchmarking sessions with private industry as well as a RBPC consisting of many agencies' relocation policy experts, the current proposed rules emerged.

B. Proposed Changes

This proposed rule—

- Amends section 300–3.1 to add the terms and definitions for ''accompanied baggage'' and ''unaccompanied air baggage'' and change the definitions for ''Household Goods (HHG)'' and ''Non-foreign area'';
- Amends sections 302–2.8, 302–2.9, 302–2.10, 302–2.11, and 302–2.110 to reduce the length of time to complete a relocation from two years to one year;
- Further amends sections 302–2.11 and 302–2.110 to reduce the length of time for relocation extensions from two years to one year;
- Adds two new sections to part 302–2, subpart A, and amends section 302–2.100 to require disclosure statements so that the Government will not pay for relocation expenses that are paid by another Government or private source;
- Adds seven new sections to part 302–2, subpart B, to define relocation programs, relocation payment systems, and relocation management reporting systems;
- Adds two new sections to part 302–3, subpart D, relating to separation travel timing and extensions;
- Revises section 302–4.300 to reduce the mileage rate for relocation to be in

line with the Internal Revenue Service (IRS) relocation reimbursement rates;

- Amends section 302–5.11 to reduce the maximum allowable number of days for a househunting trip from 10 to 8 calendar days, to be in line with industry practices;
- Amends sections 302–5.13, 302–5.15, 302–5.16, 302–5.18, 302–5.101, 302–5.103 (to be redesignated as section 302–5.104), 302–6.11, 302–6.12, 302–6.301, and 302–6.304 by replacing the term ''fixed amount'' with the term ''lump sum'';
- Revises section 302–5.14;
- Adds a new section to part 302–5, subpart B, to establish a threshold for determining which mode of transportation (POV or common carrier) should be authorized for more cost efficient househunting trips;
- Revises part 302–6, subpart C, to encourage the use of lump sum payments because of the administrative efficiency as well as the potential for cost savings;
- Revises section 302–6.304 to explain the factors to consider when deciding to offer lump sum payments;
- Adds two new sections to part 302–6, subpart D, regarding temporary quarters subsistence expenses (TQSE) payments requiring employees who select lump sum TQSE reimbursement to certify that TQSE expenses will be incurred, and that payment to the employee of TQSE lump will be made prior to occupancy of temporary quarters (TQ);
- Revises section 302–7.2 to clarify that the definition of 18,000 pounds net weight of household goods does not include packing materials;
- Revises section 302–7.4 to include an agency option for unaccompanied air baggage (UAB) as a part of the household goods allowance;
- Adds a new section 302–7.8 to clarify where HHG may be temporarily stored;
- Revises and redesignates section 302–7.9 limiting the maximum number of days of temporary storage of household goods to a total of 150 and requiring that the number of days allowed parallel the number of days allowed for TQSE;
- Revises the new section 302–7.10 to reduce the initial temporary storage period from 90 to 60 days;
- Revises newly designated section 302–7.21 specifying the responsibility for payment of weight additives;
- Redesignates part 302–7, subpart D, as subpart E (Agency Responsibilities) and adds a new subpart D (Baggage Allowance) to incorporate policies for including unaccompanied air baggage in the HHG weight allowance for moves between CONUS and OCONUS;
- Adds another condition to section 302–9.301 that agencies must consider before authorizing transportation of a privately owned vehicle (POV) within CONUS to assure that agencies are not domestically transporting POV's when the cost of transportation is more than the value of the POV;
- Adds a new section to part 302–9, subpart F, to limit the number of POV's that may be transported at Government expense to two;
- Amends and redesignates sections 302–9.504 and 302–9.505 to insure that agencies are not transporting a POV to a post of duty when the cost of transportation is more than the value of the POV and limits agency shipment of a POV to 600 miles or more;
- Amends section 302–11.2 to follow guidelines in Internal Revenue Service Publication 521, Moving Expenses, for relocation by requiring the commute to new job location via commonly traveled routes from the old residence increase by at least 50 miles;
- Revises section 302–11.21 to reduce the time limit for submitting claims for residence transactions from two years to one year;
- Revises section 302–11.22 to reduce the time limit for extensions to submit claims for residence transactions from two years to one year;
- Amends section 302–11.200 by revising the introductory paragraph to clarify that reimbursement of residence transaction expenses is limited to amounts customarily charged where the residences are located;
- Revises paragraph 302–15.2 to correct grammatical error; and
- Revises paragraph 302–15.70 to allow for direct payment of property management service fees to the Government employee, when appropriate.

Because of the insertion of several new sections in the existing regulation, some existing sections will be redesignated and therefore, several cross-references will also be changed. This proposed rule makes those changes.

C. Executive Order 12866

GSA has determined that this proposed rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

D. Regulatory Flexibility Act

This proposed rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this proposed rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.*

F. Small Business Regulatory Enforcement Fairness Act

This proposed rule is also exempt from congressional review under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 300–3, 302–2, 302–3, 302–4, 302–5, 302–6, 302–7, 302–9, 302–11 and 302–15

Government employees, Travel and transportation expenses.

Dated: November 2, 2004.

G. Martin Wagner,

Associate Administrator, Office of Governmentwide Policy.

For the reasons set out in this preamble, 41 CFR parts 300–3, 302–2, 302–3, 302–4, 302–5, 302–6, 302–7, 302–9, 302–11, and 302–15 are proposed to be amended as set forth below:

PART 300–3—GLOSSARY OF TERMS

1. The authority citation for 41 CFR part 300–3 is revised to read as follows:

Authority: 5 U.S.C. 5707; 5 U.S.C. 5738; 5 U.S.C. 5741–5742; 20 U.S.C. 905(a); 31 U.S.C. 1353; 40 U.S.C. 121(c); 49 U.S.C. 40118; E.O. 11609, 3 CFR, 1971–1975 Comp., p. 586.

2. Amend section 300–3.1 by—

a. Adding, in alphabetical order, the definitions ''Accompanied baggage,'' ''Excess baggage,'' and ''Unaccompanied air baggage (UAB)'';

b. Amending the definition of ''Household Goods (HHG)'' by removing ''that can fit into a moving van'' from paragraph (l)(v) and adding paragraph (l)(vii); and

c. Amending the definition of ''Non-foreign area'' by removing ''Commonwealths of Puerto Rico,'' and adding ''Commonwealth of Puerto Rico,'' in its place.

The added text reads as follows:

§ 300–3.1 What do the following terms mean?

Accompanied baggage—Baggage that is carried free of charge for a passenger on a common carrier. There are weight and size limitations depending on the common carrier. You should check with

the common carrier you are traveling on for any restrictions.

* * * * *

Excess baggage—Preauthorized/preapproved baggage carried by a passenger on a common carrier that is in excess of the weight and size limitation that can be carried for free.

* * * * *

Household Goods (HHG) * * *

(1) * * *

(vii) Unaccompanied air baggage.

* * * * *

Unaccompanied air baggage (UAB)—Unaccompanied air baggage includes personal items and equipment (*i.e.*, pots, pans, light housekeeping items, collapsible items (cribs, playpens, baby carriages) and other articles required for the care of the family that may be shipped by air in accordance with chapter 302 of this subtitle. Household items (*i.e.*, refrigerators, washing machines and other major appliances or furniture) are not eligible as UAB. UAB is used in connection with permanent change of station OCONUS, renewal agreement travel, and long term temporary duty assignments of 30 days or more. UAB is subtracted from the 18,000 pound net weight household goods allowance.

* * * * *

PART 302–2—EMPLOYEE ELIGIBILITY REQUIREMENTS

3. The authority citation for 41 CFR part 302–2 continues to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a).

§ 302–2.8 [Amended]

4. Amend § 302–2.8 by removing ''two years'' and adding ''one year'' in its place.

§ 302–2.9 [Amended]

5. Amend § 302–2.9 by removing ''2–year'' and adding ''1–year'' in its place.

§ 302–2.10 [Amended]

6. Amend § 302–2.10 by removing ''2–year'' in both the heading and the text and adding ''1–year'' in its place.

§ 302–2.11 [Amended]

7. Amend § 302–2.11 by removing ''2–year'' in both the heading and the text and adding ''1–year'' in its place; and removing ''2 additional years'' and adding ''one additional year'' in its place.

8. Revise the undesignated center heading appearing immediately before § 302–2.12 to read as follows:

Service Agreements and Disclosure Statement

§§ 302–2.20, 302–2.21, 302–2.22 [Redesignated]

9. Redesignate §§ 302–2.20, 302–2.21, and 302–2.22 as §§ 302–2.22, 302–2.23, 302–2.24, respectively, and move the undesignated center heading ''Advancement of Funds'' to precede the newly designated § 302–2.22.

9a. Add new §§ 302–2.20 and 302–2.21 to read as follows:

§ 302–2.20 What is a disclosure statement?

A disclosure statement is a written statement signed by you to your agency stating that you, your immediate family, or any third party vendor have not and will not accept duplicate reimbursement for relocation expenses. The statement must be signed at the same time as the service agreement.

§ 302–2.21 Must I sign a disclosure statement?

Yes, you must sign a disclosure statement.

Subpart B—Agency Responsibilities

10. Amend § 302–2.100 by removing ''and'' at the end of paragraph (e), removing the period at the end of paragraph (f) and adding ''; and'' in its place, and adding paragraph (g) to read as follows:

§ 302–2.100 What internal policies must we establish before authorizing a relocation allowance?

* * * * *

(g) That all relocating employees are required to sign a disclosure statement (see §§ 302–2.20 and 302–2.21).

§ 302–2.110 [Amended]

11. Amend § 302–2.110 by removing ''2–year'' wherever it appears and adding ''1–year'' in its place.

12. Amend Subpart B by adding a new undesignated center heading and new §§ 302–2.200, 302–2.205, 302–2.300, 302–2.305, 302–2.400, and 302–2.405 to read as follows:

Relocation Programs

§ 302–2.200 What does the Federal relocation management program include?

The Federal relocation management program includes—

(a) All aspects of the Federal travel management program that support Federal relocation activities. (See §§ 301–73.1 through 301–73.30.) These include, but are not limited to, a—

(1) Relocation authorization and claim system that implements the related requirements of the Federal Travel Regulation;

(2) Travel Management System (TMS) that provides reservation and ticketing support for relocation activities;

(3) Travel payment system for paying travel service providers used in support of a relocation; and use of all applicable contracts and similar arrangements, with transportation and lodging providers (e.g., Government-contract air carriers, rental car companies, trains, hotels, etc.) that give preferential rates and other benefits to Federal travelers on official business.

(b) A relocation payment system for paying relocation service providers who are not paid from the Travel payment system; and

(c) A Relocation Management Reporting System that captures and reports financial and other relocation data required by the biennial Travel Survey (see §§ 300–70.1 through 300–70.4 of this title).

§ 302–2.205 What are agency responsibilities to implement the Federal relocation management program?

Agencies must—

(a) Designate an authorized representative to administer the program including the eTravel service or your agency's approved automated travel system;

(b) Ensure that you have internal policies and procedures in place to implement the requirements of this chapter; and

(c) Implement a Relocation Management Reporting System no later than September 30, 2005.

Relocation Payment System

§ 302–2.300 What is a relocation payment system?

A relocation payment system facilitates the payment of official relocation expenses which include, but are not limited to—

(a) Issuance and maintenance of Government contractor issued individually billed charge cards;

(b) Establishment of centrally billed accounts for the purchase of travel and transportation services;

(c) Issuance of travelers checks; and

(d) Provision of automated-teller-machine (ATM) services worldwide.

§ 302–2.305 How do agencies obtain relocation payment system services?

You may obtain relocation payment services by—

(a) Participating in GSA's travel payment system;

(b) Participating in another Federal agency's travel payment system services program; or

(c) Contracting directly with a travel payment system service if your agency

has contracting authority, and you are not a mandatory user of GSA SmartPay charge card program.

Note to § 302–2.305: Under the GSA charge card program effective November 30, 1998, it will be your responsibility to select the vendor that will be most beneficial to your agency's travel and transportation needs.

Relocation Management Reporting System

§ 302–2.400 How do agencies acquire a Relocation Management Reporting System?

You should acquire a Relocation Management Reporting System—

(a) As one of the services offered by a relocation management company under contract with the Federal Government;

(b) As a separate service provided by third party companies who specialize in such relocation management information services, or as a service provided by another Federal agency; or

(c) You may also use relocation reporting capabilities that are included with your agency's financial management system, provided that those capabilities are sufficient to satisfy the data capture and reporting requirements of a Relocation Management Reporting System. (See § 302–2.200.)

§ 302–2.405 May we obtain an exception from the use of a Relocation Management Reporting System?

Yes, your agency head may request an extension on the implementation deadline by writing the Administrator of General Services, explaining the reason for the delay, and proposing an alternative deadline that would be more achievable by your agency that is no later than September 30, 2006. Requests for exceptions should be sent to the Office of Govermentwide Policy, Travel Management Policy, Room G–219, General Services Administration, 1800 F Street, NW., Washington, DC 20405.

PART 302–3—RELOCATION ALLOWANCE BY SPECIFIC TYPE

13. The authority citation for 41 CFR part 302–3 continues to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a).

§§ 302–3.304 through 302–3.315 [Redesignated]

14. Redesignate §§ 302–3.304 through 302–3.315 as §§ 302–3.306, 302–3.307, 302–3.308, 302–3.309, 302–3.310, 302–3.311, 302–3.312, 302–3.313, 302–3.314, 302–3.315, 302–3.316, 302–3.317, respectively, and add new §§ 302–3.304 and 302–3.305 to read as follows:

§ 302–3.304 Is there a time limit by when I must begin my relocation travel and transportation of household goods upon separation?

Yes, all travel and transportation of household goods must begin no later than six months after—

(a) Your date of separation; or

(b) The date of death of the employee who died before separation.

§ 302–3.305 May I be granted an extension to the time limit for beginning my separation travel?

Yes, your agency may grant you or your immediate family member(s) (in case of your death) an extension to the time limit for beginning your separation travel, for up to 2 years from your effective date of separation or death, if you died before separation.

§ 302–3.306 [Amended]

15. Amend newly redesignated § 302–3.306 by removing ''§ 302–3.307'' in the introductory paragraph and adding ''§ 302–3.309'' in its place.

§ 302–3.307 [Amended]

16. Amend newly redesignated § 302–3.307 by removing ''§ 302–3.304'' in paragraph (b) and adding ''§ 302–3.306'' in its place.

§ 302–3.308 [Amended]

17. Amend newly redesignated § 302–3.308 by removing ''§ 302–3.307'' in the introductory paragraph and adding ''§ 302–3.309'' in its place.

PART 302–4—ALLOWANCES FOR SUBSISTENCE AND TRANSPORTATION

18. The authority citation for 41 CFR part 302–4 continues to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1973 Comp., p. 586.

19. Revise § 302–4.300 to read as follows:

§ 302–4.300 What is the POV mileage rate for PCS travel?

When PCS travel by POV is authorized/approved, the mileage reimbursement allowance shall not exceed that established, in any given year, by the IRS for moving expense deductions. See IRS Publication 521, Moving Expenses, available on the Internet at *http://www.irs.gov*.

PART 302–5—ALLOWANCE FOR HOUSEHUNTING TRIP EXPENSES

20. The authority citation for 41 CFR part 302–5 is revised to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1973 Comp., p. 586.

§ 302–5.11 [Amended]

21. Amend § 302–5.11 by removing ''10'' and adding ''8'' in its place.

§ 302–5.13 [Amended]

22. Amend § 302–5.13 by removing ''fixed amount'' wherever it appears and adding ''lump sum'' in its place.

23. Revise § 302–5.14 to read as follows:

§ 302–5.14 What transportation expenses will my agency pay?

(a) Your agency will authorize you to travel by any transportation mode (e.g., common carrier or POV) it determines to be advantageous to the Government. Your agency will pay for your transportation expenses by the authorized mode. If you travel by any other mode, your agency will pay your transportation expenses not to exceed the cost of transportation by the authorized mode. Generally, trips of under 250 miles will only be reimbursed for POV mileage and only at the rate prescribed in § 302–4.300 of this chapter.

(b) Unless the agency performs a written cost comparison proving cost savings, only common carrier will be authorized for trips with a distance greater than 250 miles.

§ 302–5.15 [Amended]

24. Amend § 302–5.15 by removing ''fixed amount'' wherever it appears and adding ''lump sum'' in its place.

§ 302–5.16 [Amended]

25. Amend § 302–5.16 by removing ''§ 302–2.20'' and adding ''§§ 302–2.21 and 302–2.22'' in its place; and by removing ''fixed amount'' wherever it appears and adding ''lump sum'' in its place.

§ 302–5.18 [Amended]

26. Amend § 302–5.18 by removing ''fixed amount'' in the section heading and adding ''lump sum'' in its place; and removing ''fixed'' in the section text and adding ''lump sum'' in its place.

§ 302–5.101 [Amended]

27. Amend § 302–5.101 by removing ''fixed amount'' wherever it appears and adding ''lump sum'' in its place.

§ 302–5.103 [Redesignated]

28. Redesignate § 302–5.103 as § 302–5.104 and add a new § 302–5.103 to read as follows:

§ 302–5.103 What modes of transportation may we authorize for a househunting trip?

(a) When the new official station is less than 250 miles from the old official station, you should only authorize the use of the employee's POV for a

househunting trip (HHT) and reimbursement for POV mileage at the rate prescribed in this part.

(b) When the new official station is 250 miles or more from the old official station, you may authorize the use of the common carrier transportation or POV for a househunting trip, whichever is most advantageous to the Government. Reimbursement for the related transportation costs is prescribed in part 302–5 of this chapter.

(c) Exceptions for this rule may be granted by the agency when an employee or immediate family member(s) has special circumstances requiring an exception (see § 303–13).

§ 302–5.104 [Amended]

29. Amend newly redesignated § 302–5.104 by removing ''fixed amount'' wherever it appears and adding ''lump sum'' in its place.

PART 302–6—ALLOWANCE FOR TEMPORARY QUARTERS SUBSISTENCE EXPENSES (TQSE)

30. The authority citation for 41 CFR part 302–6 is revised to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1973 Comp., p. 586.

§§ 302–6.11 and 302–6.12 [Amended]

31. Amend §§ 302–6.11 and 302–6.12 by removing ''fixed amount'' wherever it appears and adding ''lump sum'' in its place.

§ 302–6.15 [Amended]

32. Amend § 302–6.15 by removing ''§ 302–2.20'' and adding ''§§ 302–2.21, 302–2.22, and 302–2.23'' in its place.

33. Revise § 302–6.100 to read as follows:

§ 302–6.100 What am I paid under the actual TQSE reimbursement method?

Your agency will pay your actual TQSE incurred, provided the expenses are reasonable and do not exceed the maximum allowable amount. The ''maximum allowable amount'' is the ''maximum daily amount'' multiplied by the number of days you actually incur TQSE not to exceed the number of days authorized, taking into account that the rates decrease after the first 30 days. The ''maximum daily amount'' is determined by adding the rates in the following table for you and each member of your immediate family authorized to occupy temporary quarters:

For	The ''maximum daily amount'' of TQSE under the actual expense method that—		
	You and your unaccompanied spouse[1] may each receive is—	Your accompanied spouse or a member of your immediate family age 12 or older may each receive is—	Any member of your immediate family under age 12 may each receive is—
Day 1 to Day 30	100% x the applicable per diem rate.	75% x the applicable per diem rate.	50% x the applicable per diem rate.
Day 31 to Day 120 ...	55% x the applicable per diem rate.	40% x the applicable per diem rate.	30% x the applicable per diem rate.

[1] (That is, when the spouse necessarily occupies temporary quarters in lieu of the employee or in a location separate from the employee.)

34. Revise subpart C, consisting of §§ 302–6.200 through 302–6.204 to read as follows:

Subpart C—Lump Sum Payment

§ 302–6.200 What am I paid under the lump sum payment reimbursement method?

If your agency offers and you select the lump sum TQSE payment, you are paid a lump sum for each day authorized up to 30 days. No extensions are allowed under the lump sum payment.

§ 302–6.201 How do I determine the amount of my lump sum payment?

(a) Multiply the number of days your agency authorizes TQSE by the maximum per diem rate (*i.e.*, lodging plus meals and incidental expenses) prescribed in FTR Per Diem Bulletin for the locality *i.e.*, the old or new official station or combination thereof, where temporary quarters will be occupied.

(b) For each member of your immediate family, multiply the same number of days by .25 times the same per diem rate.

(c) Your payment will be the sum of the calculations in paragraphs (a) and (b).

§ 302–6.202 Will I receive additional TQSE reimbursement if my lump sum payment is not adequate to cover my actual TQSE?

No, you will not receive additional TQSE reimbursement if the lump sum payment is not adequate to cover your actual TQSE.

§ 302–6.203 May I retain any balance left over from my TQSE lump sum payment if such payment is more than adequate?

Yes, if your lump sum TQSE payment is more than adequate to cover your actual TQSE expenses, any balance belongs to you.

Note to § 302–6.203: For example, if your agency authorizes and you accept a lump sum payment for 15 days of TQSE and you vacate temporary quarters after 10 days for any reason, you would retain the remaining balance for the 5 days of TQSE not incurred.

§ 302–6.204 Am I required to file a voucher for TQSE if I selected the lump sum payment?

No, the intent of the lump sum payment is to simplify the process and eliminate the need for filing a voucher, however, your agency may request proof that you actually occupied temporary quarters and in the absence of sufficient proof, demand repayment of the TQSE lump sum payment in accordance with § 302–6.305.

§ 302–6.301 [Amended]

34a. Amend § 302–6.301 by removing ''fixed amount'' wherever it appears and adding ''lump sum'' in its place.

35. Revise § 302–6.304 to read as follows:

§ 302–6.304 What factors should we consider in determining whether to offer an employee the lump sum payment option for TQSE?

When determining whether to offer an employee the lump sum payment option for TQSE, the following factors should be considered:

(a) *Ease of administration.* A lump sum for TQSE is paid to the employee prior to the occupancy of temporary quarters, and the voucher review process is eliminated under this method. Actual TQSE reimbursement requires an agency to review claims and receipts for the validity, accuracy, and reasonableness of each expense amount.

(b) *Cost consideration.* You must weigh the cost of each alternative. Actual TQSE reimbursement may extend up to 120 consecutive days, while the lump sum payment is limited to a maximum of 30 days.

(c) *Treatment of employee.* The employee is allowed to choose between actual TQSE reimbursement and the lump sum TQSE payment when you

offer the lump sum TQSE payment method. You therefore should weigh employee morale and productivity considerations against actual cost considerations in determining which method to offer.

§ 302–6.305 [Redesignated as § 302–6.307]

36. Redesignate § 302–6.305 as § 302–6.307.

37. Add new §§ 302–6.305 and 302–6.306 to read as follows:

§ 302–6.305 Must we require transferees to sign a statement that TQSE was incurred?

Yes, transferees electing the lump sum TQSE reimbursement option must sign a statement that they will occupy temporary quarters and incur TQSE expenses. If no TQSE expenses are incurred, all monies advanced for the lump sum TQSE payment must be returned to the agency. You must not authorize lump sum TQSE for employees who do not need temporary quarters.

§ 302–6.306 When must we make the lump sum TQSE payment to the transferee?

You must pay the transferee the lump sum TQSE payment prior to the occupancy of temporary quarters.

PART 302–7—TRANSPORTATION AND TEMPORARY STORAGE OF HOUSEHOLD GOODS AND PROFESSIONAL BOOKS, PAPERS, AND EQUIPMENT (PBP&E)

38. The authority citation for 41 CFR part 302–7 continues to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1973 Comp., p. 586.

§ 302–7.1 [Amended]

39. Amend § 302–7.1 by removing ''§ 302–3.304'' from paragraph (d) and adding ''§ 302–3.306'' in its place.

40. Revise § 302–7.2 to read as follows:

§ 302–7.2 What is the maximum weight of HHG that may be transported or stored at Government expense?

By statue, the maximum weight allowance of HHG that may be shipped or stored at Government expense is 18,000 pounds net weight. The HHG net weight is determined by subtracting 10 percent from the shipment net weight as shown on the shipping documents to reflect the weight of packing materials.

41. Revise section 302–7.4 to read as follows:

§ 302–7.4 Does the weight of any professional books, papers and equipment (PBP&E) or Unaccompanied Air Baggage (UAB) count against the 18,000 pound HHG weight limitation?

(a) Yes, the weight of any PBP&E and UAB (see subpart D of this part) is generally part of and not in addition to the 18,000 pounds net HHG weight limitation. However, if the weight of any PBP&E causes the lot to exceed 18,000 pounds net weight, the excess weight of the PBP&E may be transported to the new duty station as an administrative expense of the agency. To the extent possible for ease of administration, the PBP&E items should be included as part of the HHG shipment. Only in the case of an overweight shipment should a separate administrative expense be charged to the agency, and only for the overweight portion of the shipment. Authorization for such shipment is granted solely at the discretion of the agency and subject to its policies governing such shipment. (See definition of PBP&E in § 300–3.1 of this subtitle.)

(b) If PBP&E are included with an HHG shipment and cause an overweight condition, you must identify this fact and the total weight of the PBP&E, so that your agency is made aware of this situation and determine whether or not to approve the shipment of the overweight PBP&E.

§§ 302–7.8 through 302–7.20 [Redesignated]

42. Redesignate §§ 302–7.8 through 302–7.20 as §§ 302–7.9, 302–7.10, 302–7.11, 302–7.12, 302–7.13, 302–7.14, 302–7.15, 302–7.16, 302–7.17, 302–7.18, 302–7.19, 302–7.20, 302–7.21, respectively, and add a new § 302–7.8 to read as follows:

§ 302–7.8 At what location may my HHG be temporarily stored?

Your HHG may be placed in temporary storage at origin, in transit, at destination, or any combination thereof upon agency approval.

43. Revise newly redesignated § 302–7.9 to read as follows:

§ 302–7.9 Is there a time limit for the temporary storage of an authorized HHG shipment?

(a) The initial period of temporary storage at Government expense shall not exceed 60 days in connection with any authorized HHG shipment. However, upon your written request, up to an additional 90 days may be authorized by the designated agency official. In no case may the maximum time limit for temporary storage exceed 150 days.

(b) The number of days authorized for HHG storage must coincide with the number of days authorized for TQSE. For example, if TQSE is authorized for 60 days, storage of HHG must be equal to the number of days authorized for TQSE plus a reasonable number of days for delivery from the storage location (not to exceed 14 days).

§ 302–7.10 [Amended]

44. Amend newly redesignated § 302–7.10 by removing ''90–day'' and adding ''60–day'' in its place in the section heading and introductory paragraph.

45. Revise newly redesignated § 302–7.16 to read as follows:

§ 302–7.16 Must I use the method selected by my agency for transporting my HHG, PBP&E and temporary storage?

No, you do not have to use the method selected (§ 302–7.301) by your agency for transporting your HHG, PBP&E and temporary storage. You may pursue other methods. However, your reimbursement is limited to the actual cost incurred, not to exceed what the Government would have incurred under the method selected by your agency.

46. Revise newly redesignated § 302–7.21 to read as follows:

§ 302–7.21 If my HHG shipment includes an item (e.g., boat, trailer, ultralight vehicle) for which a weight additive is assessed by the HHG carrier, am I responsible for payment?

Yes, you are responsible for the shipping charges resulting from the weight additive as well as any special packing, crating, and handling of the weight additive items. If your HHG shipment includes an item (e.g., boat or trailer) for which a weight additive is assessed by the HHG carrier (as prescribed in applicable tariffs), only the actual weight of the item and not the weight additive is included in the computation of the maximum weight prescribed in § 302–7.2. (*For example*, when a weight additive of 700 pounds is imposed by a HHG carrier on a 65–pound canoe, only the 65 pounds is charged against the employee's 18,000 pounds net weight allowance). See § 302–7.200 on how charges are paid and who makes the shipping arrangements.

47. Revise subpart D and add a new subpart E to read as follows:

Subpart D—Baggage Allowance

302–7.300 When may I be authorized a UAB shipment?
302–7.301 Is my UAB shipment in addition to the 18,000 pounds net weight of HHG weight allowance?
302–7.302 What is the maximum weight allowance for a UAB shipment?
302–7.303 When may my agency authorize the shipment of UAB?

302–7.304 Is there a time limit for shipment of my UAB?
302–7.305 Who makes arrangements for transporting my UAB?

Subpart E—Agency Responsibilities

302–7.400 What policies and procedures must we establish for this part?
302–7.401 What method of transportation should we authorize for shipment of HHG and temporary storage?
302–7.402 What method of transportation should we authorize for shipment of PBP&E and UAB?
302–7.403 What guidelines must we follow when authorizing transportation of PBP&E as an administrative expense?
302–7.404 When HHG are shipped under the actual expense method and PBP&E are shipped as an administrative expense in the same lot, are separate weight certificates required?
302–7.405 How must we arrange transportation of HHG and UAB?

Subpart D—Baggage Allowance

§ 302–7.300 When may I be authorized a UAB shipment?

You may be authorized a UAB shipment prior to transferring from a CONUS location to an OCONUS location, between OCONUS locations, and from an OCONUS location to a CONUS location.

§ 302–7.301 Is my UAB shipment in addition to the 18,000 pounds net weight of HHG weight allowance?

No, the UAB shipment is part of, not in addition to, the 18,000 pounds net weight allowance for HHG.

§ 302–7.302 What is the maximum weight allowance for a UAB shipment?

The maximum weight allowance for a UAB shipment is—

(a) 350 pounds net weight for the employee and for each immediate family member 12 years of age and over; or

(b) 175 pounds net weight for each immediate family member under 12 years of age.

§ 302–7.303 When may my agency authorize the shipment of UAB by expedited means?

Your agency may authorize the shipment of UAB by expedited means when—

(a) Shipment by a lower cost mode cannot provide the required service, or

(b) You certify that your UAB is necessary to carry out your assigned duties, or

(c) Your agency determines that an expedited shipment is necessary to prevent undue hardship to you and members of your immediate family.

§ 302–7.304 Is there a time limit for shipment of my UAB?

Yes, your UAB must be shipped prior to your departure from your old duty station to ensure that your shipment arrives by the time you report to your new duty station. Arrangements should begin prior to your departure to your new duty station.

§ 302–7.305 Who makes arrangements for transporting my UAB?

Your agency or your agency's designee should arrange for the transport of your UAB.

Subpart E—Agency Responsibilities

Note to subpart E: Use of pronouns ''we'', ''you'', and their variants throughout this subpart refers to the agency.

§ 302–7.400 What policies and procedures must we establish for this part?

You must establish policies and procedures as required for this part, including who will—

(a) Administer your household goods program;

(b) Authorize PBP&E to be transported as an agency administrative expense;

(c) Authorize an employee to ship UAB;

(d) Authorize temporary storage in excess of the initial 60–day limit;

(e) Collect any excess cost or charges;

(f) Advise the employee on the Government's liability for any loss and damage claims under 31 U.S.C. 3721–3723; and

(g) Ensure that international HHG shipments by water are made on ships registered under the laws of the United States whenever such ships are available.

§ 302–7.401 What method of transportation should we authorize for shipment of HHG and temporary storage?

There are two methods of transporting HHG and providing for temporary storage, actual expense and commuted rate. As a general rule, you should authorize the method that is less costly to the Government. The selected method should be stated on the relocation travel authorization. Additional considerations that might affect your choice of method are:

(a) *Actual Expense Method*. Under the actual expense method, the Government assumes the responsibility for arranging and paying for the actual expenses of all aspects of transporting the employee's HHG, including PBP&E (e.g., packing/unpacking, pickup/delivery, weighing, line-haul, drayage, temporary storage, etc.). This method is used for all shipments OCONUS and within CONUS, where deemed economical to the Government.

(b) *Commuted Rate System*. Under the commuted rate system, the employee assumes total responsibility for arranging and paying for the following services: Packing/unpacking, crating/uncrating, pickup/delivery, weighing, line-haul, drayage, and temporary storage of the employee's HHG (including PBP&E) with a commercial HHG carrier or by renting self drive equipment for a do-it-yourself move. The commuted rate is calculated based on published freight tariffs applied to the actual weight of the goods being shipped (subject also to the weight limitation in § 302–7.2). The commuted rate method may be used in lieu of the actual expense method for relocation or first duty station assignment within CONUS, as long as using this method is less expensive than using the actual expense method. If PBP&E make the weight of a shipment under the commuted rate method go over the 18,000 net weight limit for HHE, then the actual cost of shipping that excess weight must be paid as an administrative expense of the agency. In this case, all related transportation arrangements (e.g., packing/unpacking, pickup/delivery, weighing, temporary storage, etc.) associated with shipping this excess weight will be handled and paid for by your agency.

§ 302–7.402 What method of transportation should we authorize for shipment of PBP&E and UAB?

You should authorize the actual expense method for transporting an employee's PBP&E only when the weight of the PBP&E causes the employee's shipment to exceed the maximum 18,000 pounds net HHG weight limitation and in accordance with § 302–7.403. PBP&E and UAB should be weighed prior to shipment, if necessary, so the weight can easily be deducted from the 18,000 pounds net weight allowance. The PBP&E shipment should then be made separate from the HHG shipment and is an administrative expense to your agency if your agency authorized PBP&E and the PBP&E caused the HHG shipment to go overweight.

§ 302–7.403 What guidelines must we follow when authorizing transportation of PBP&E as an administrative expense?

You have the sole discretion to authorize transportation of PBP&E as an administrative expense and may do so provided that—

(a) An itemized inventory of PBP&E is provided for review by the authorizing official at the new official station;

(b) The authorizing official at the new official station has certified that the PBP&E are necessary for performance of the employee's duties at the new duty station, and if these items were not transported, the same or similar items would have to be obtained at Government expense for the employee's use at the new official station; and

(c) You have acquired evidence that transporting the PBP&E would cause the employees' HHG to exceed the 18,000 pounds maximum net weight allowance.

§ 302–7.404 When HHG are shipped under the actual expense method and PBP&E are shipped as an administrative expense in the same lot, are separate weight certificates required?

Yes, separate weight certificates are required. The weight of PBP&E and the administrative appropriation chargeable must be listed as separate items on the bill of lading or other shipping document.

§ 302–7.405 How must we arrange transportation of HHG and UAB?

When arranging transportation of HHG and UAB, you should—

(a) Determine the constructive cost of transporting HHG plus UAB, not to exceed 18,000 pounds net weight in one lot by the most economical means and limit the employee's HHG transportation payment to such constructive cost;

(b) Make arrangements for transporting the employee's UAB under the appropriate bill of lading with direct payment by the agency; and

(c) Advise employees of this relocation entitlement limitation and its potential to result in out-of-pocket expenses to the employee. Advise employees that they will have to use their personal funds to pay for transporting HHG (including UAB) in excess of 18,000 pounds net weight.

48. Add Appendix A to part 302–7 as follows:

Appendix A to Part 302–7—How to Calculate a Constructive Cost

An employee is authorized temporary duty (TDY) in Dallas, TX, from his/her permanent duty station in Washington, DC.

Employee is authorized to travel by commercial air; however, employee elects to travel by privately owned vehicle (POV) (not authorized). Maximum per diem rate for Dallas, TX, at the time of the TDY assignment, $142.00 ($95.00 maximum lodging plus $47.00 (meals and incidental expenses (M&IE)). Actual lodging cost at Dallas, TX, was $85.00.

TOTAL CONSTRUCTED TRAVEL COST BY COMMON CARRIER

Round-trip air coach ticket (city-pair fare paid by Government) =	$355.71
Taxi fare residence to airport =	$35.00
Taxi fare airport to hotel =	$25.00
First Day - travel to Dallas: 75% of M&IE rate for Dallas, plus lodging cost = $35.25 (75% x $47.00) plus $85.00 lodging cost =	$120.25
Three full days TDY in Dallas: 3 days x $132.00 ($85.00 lodging + $47.00 M&IE) =	$396.00
Last Day - return to PDS Washington, DC: 75% of M&IE rate for Dallas, TX = (75% X $47.00) =	$35.25
Lodging Taxes in Dallas (13%) =	$44.20
Taxi fare hotel to airport =	$25.00
Taxi fare airport to residence =	$35.00
Total constructed cost by common carrier =	$1,071.41

PART 302–9—ALLOWANCES FOR TRANSPORTATION AND EMERGENCY STORAGE OF A PRIVATELY OWNED VEHICLE

49. The authority citation for 41 CFR part 302–9 continues to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1973 Comp., p. 586.

§ 302–9.140 [Amended]

50. Amend § 302–9.140 in paragraph (a) by removing ''§ 302–9.503'' and adding ''302–9.504'' in its place.

§ 302–9.170 [Amended]

51. Amend § 302–9.170 by removing ''302–9.503'' in paragraph (d) and adding ''302–9.504'' in its place.

52. Amend § 302–9.301 by removing ''and'' at the end of paragraph (b), removing the period at the end of paragraph (c) and adding '';'' in its place, and adding paragraphs (d) and (e) to read as follows:

§ 302–9.301 Under what conditions may my agency authorize transportation of my POV within CONUS?

* * * * *

(d) Your agency must determine that the cost of transporting your POV is not greater than the value of your POV; and

(e) The distance to be shipped is 600 miles or more.

53. Revise § 302–9.302 to read as follows:

§ 302–9.302 How many POV's may I be authorized to transport within CONUS?

You may be authorized to transport up to two POV's within CONUS at Government expenses under this subpart, provided your agency determines such transportation is advantageous and cost effective to the Government in accordance with § 302–9.301.

§§ 302–9.501 through 302–9.505 [Redesignated]

54. Redesignate §§ 302–9.501 through 302–9.505 as §§ 302–9.502, 302–9.503, 302–9.504, 302–9.505, 302–9.506, respectively, and add a new § 302–9.501 to read as follows:

§ 302–9.501 How many POV's may we authorize for transporting at Government expense?

You may authorize transportation of up to two POV's at Government expense.

§ 302–9.504 [Amended]

55. Amend newly designated § 302–9.504 by removing the reference to ''§ 302–9.504'' and adding ''§ 302–9.505'' in its place.

56. Amend newly designated § 302–9.505 by removing ''and'' at the end of paragraph (c), removing the period at the end of paragraph (d) and adding ''; and'' in its place, and adding paragraph (e) to read as follows:

§ 302–9.505 What factors must we consider in deciding whether to authorize transportation of a POV to a post of duty?

* * * * *

(e) Cost of transporting the POV to the new duty station will be greater than the value of the POV.

57. Amend newly designated § 302–9.506 by removing the period at the end of paragraph (d) and adding ''; and'' in its place, and adding paragraph (e) to read as follows:

§ 302–9.506 What must we consider in determining whether transportation of a POV within CONUS is cost effective?

* * * * *

(e) Cost of transporting the POV to the new duty station will be greater than the value of the POV.

PART 302–11—ALLOWANCES FOR EXPENSES INCURRED IN CONNECTION WITH RESIDENCE TRANSACTIONS

58. The authority citation for 41 CFR part 302–11 continues to read as follows:

Authority: 5 U.S.C. 5738 and 20 U.S.C. 905(c).

59. Amend § 302–11.2 by removing the period at the end of paragraph (b)(2) and adding ''; and'' in its place, and adding paragraphs (c) and (d) to read as follows:

§ 302–11.2 Am I eligible to receive an allowance for expenses incurred in connection with my residence transactions?

* * * * *

(c) For this allowance to be tax deductible, your commute from the old residence to the new duty station by commonly traveled routes must increase by at least 50 miles. (See Internal Revenue Service Publication 521, Moving Expenses.) However, the head of your agency or designee may authorize an exception to the 50–mile threshold on a case-by-case basis when he/she determines that it is in the best interest of the Government. If such an exception is authorized, however, this allowance is not tax deductible.

(d) Any relocation must be incident to the transfer and not for the convenience of the employee.

§ 302–11.21 [Amended]

60. Amend § 302–11.21, in the second sentence, by removing ''two years'' and adding ''one year'' in its place.

61. Revise § 302–11.22 to read as follows:

§ 302–11.22 May the 1–year time limitation be extended by my agency?

Yes, your agency may extend the 1–year limitation for up to one additional year for reasons beyond your control and acceptable to your agency.

62. Amend § 302–11.200 by revising the introductory paragraph to read as follows:

§ 302–11.200 What residence transaction expenses will my agency pay?

Your agency will reimburse you for residence transaction expenses not to exceed those customarily charged in the locality where the residence is located. Provided that they are customarily paid by the seller of a residence at the old official station or by the purchaser of a residence at the new official station, your agency will pay the following expenses:

* * * * *

PART 302–15—ALLOWANCE FOR PROPERTY MANAGEMENT SERVICES

63. The authority citation for 41 CFR part 302–15 continues to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1973 Comp., p. 586.

64. Revise § 302–15.2 to read as follows:

§ 302–15.2 What are the purposes of the property management services allowance?

The purposes of the property management allowance are—

(a) To reduce overall Government relocation costs by using the property management allowance in place of the allowances for the sale of the employee's residence; and

(b) To relieve employees transferred OCONUS from the costs of maintaining a home in the United States during their tour of duty.

65. Revise § 302–15.70 to read as follows:

§ 302–15.70 What governing policies must we establish for the allowance for property management services?

You must establish policies and procedures governing—

(a) When you will authorize payment for property management services for an employee who transfers in the interest of the Government;

(b) When it is appropriate to authorize this service on a reimbursable basis to the employee, rather than paying the property management company directly as long as any reimbursement is limited to the agency negotiated rate for this service or lower;

(c) Who will determine, for relocations to official duty stations in the United States, whether payment for property management services is more advantageous and cost effective than sale of an employee's residence at Government expense;

(d) If and when you will allow an employee who was offered and accepted payment for property management services to change his/her residence at Government expense in accordance with paragraph (e) of this section; and

(e) How you will offset expenses you have paid for property management services against payable expenses for sale of the employee's residence when an eligible employee who elected payment for property management services later changes his/her mind and elects instead to sell his/her residence at Government expense.

[FR Doc. 04–25890 Filed 11–22–04; 8:45 am]

BILLING CODE 6820–14–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 040804227–4227–01; I.D. 072604A]

RIN 0648–AP02

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Rebuilding Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues proposed regulations to implement Amendment 22 to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Amendment 22) prepared by the Gulf of Mexico Fishery Management Council (Council). These proposed regulations would provide the regulatory authority to implement a mandatory observer program for selected commercial and for-hire (charter vessel/headboat) vessels in the Gulf of Mexico reef fish fishery. The observer program would be an important component of a standardized methodology to collect bycatch information in the fishery. In addition, consistent with the requirements of the Magnuson-Stevens Act, Amendment 22 would establish a stock rebuilding plan, biological reference points, and stock status determination criteria for red snapper in the Gulf of Mexico. The intended effect of these proposed regulations is to end overfishing and rebuild the red snapper resource.

DATES: Written comments on the proposed rule must be received no later than 5 p.m., eastern time, on January 7, 2005.

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

- E-mail: *0648–AP02.Proposed@noaa.gov*. Include in the subject line the following document identifier: 0648–AP02.
- Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Peter Hood, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.
- Fax: 727–570–5583, Attention: Phil Steele.

Copies of Amendment 22, which includes a Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analyses (IRFA), and a Final Supplemental Environmental Impact Statement may be obtained from the Gulf of Mexico Fishery Management Council, The Commons at Rivergate, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619–2266; telephone: 813–228–2815; fax: 813–225–7015; e-mail: *gulfcouncil@gulfcouncil.org*. Copies of Amendment 22 can also be downloaded from the Council's website at *www.gulfcouncil.org*.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule must be submitted to Robert Sadler, Southeast Region, NMFS, at the above address, and to *David__Rostker@omb.eop.gov*, or 202–395–7285 (fax).

FOR FURTHER INFORMATION CONTACT: Peter Hood, telephone: 727–570–5305, fax: 727–570–5583, e-mail: *peter.hood@noaa.gov*.

SUPPLEMENTARY INFORMATION: The reef fish fishery in the exclusive economic zone (EEZ) of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

In May 2001, the Council submitted to NMFS a regulatory amendment to the FMP, based on NMFS's 1999 stock assessment, that proposed to redefine biological reference points and status determination criteria for the red snapper stock and proposed a plan to rebuild the red snapper stock to the stock biomass capable of producing maximum sustainable yield on a continuous basis (B_{MSY}) by the year 2032. The rebuilding plan proposed in the regulatory amendment was based on analyses provided by NMFS in 2000. Because the incidental catch of juvenile (age 0–age 1) red snapper in the shrimp trawl fishery comprises the vast majority of the total fishing mortality on red snapper, the success of the rebuilding plan is primarily dependent upon reductions in shrimp trawl bycatch.

According to NMFS's stock assessment, the number of juvenile red snapper taken incidental to the shrimp trawl fisheries accounted for about 90 percent of the total red snapper harvest prior to the implementation of a April 14, 1998, rule (63 FR 1813) requiring the use of bycatch reduction devices (BRDs), which are estimated to have reduced shrimp trawl bycatch mortality of red snapper by 40 percent. However, the Council's Reef Fish Stock Assessment Panel indicated even greater reductions would be required to rebuild the red snapper stock to B_{MSY} within the maximum recommended 31-year time frame, even if the directed red snapper fishery were eliminated.

NMFS returned the red snapper regulatory amendment to the Council in July 2002, identifying the need to further explore alternative rebuilding plans based on realistic expectations for further reductions in shrimp trawl bycatch, and to more fully evaluate the impacts of these alternatives in a Draft Supplemental Environmental Impact Statement. Additionally, NMFS suggested the need to better address the bycatch provisions of the Magnuson-Stevens Act. Amendment 22 to the Reef Fish FMP was developed in response to NMFS's suggestions.

Biological Reference Points and Stock Status Determination Criteria Proposed in Amendment 22

Consistent with the requirements of the Magnuson-Stevens Act, Amendment 22 would establish the following biological reference points and stock status criteria for Gulf of Mexico red snapper: maximum sustainable yield (MSY); optimum yield (OY); maximum fishing mortality threshold (MFMT) (the fishing mortality rate which, if exceeded, would constitute overfishing); and minimum stock size threshold (MSST) (the stock size below which the stock would be considered overfished).

MSY for red snapper would equal the yield associated with fishing at F_{MSY} (currently estimated at 0.092); thus, MSY would equal 41.13 million lb (18.66 million kg) whole weight (wwt), assuming low maximum recruitment and an initial steepness of 0.90 for the stock-recruitment relationship.

Until the red snapper stock recovers to the target level, B_{MSY}, the harvest for red snapper would be defined as consistent with the rebuilding strategy selected in Amendment 22. After achieving B_{MSY}, the OY for red snapper would correspond to a fishing mortality rate (F_{OY}) defined as $F_{OY} = 0.75*F_{MSY} = 0.069$.

Red snapper MSST would equal $(1-M)*B_{MSY}$ = 2.453 billion lb (1.112 billion kg) wwt where B_{MSY} = 2.726 billion lb (1.237 billion kg) wwt and M (natural mortality) = 0.1.

Red snapper MFMT would be equal to F_{MSY} which is currently estimated at 0.092.

Stock Rebuilding Plan

The Magnuson-Stevens Act requires that rebuilding plans establish a schedule for rebuilding overfished stocks that is as short as possible, and not to exceed 10 years, except in cases where the biology of the stock, other environmental conditions, or management measures under an international agreement dictate otherwise. The National Standard Guidelines provide a formula for calculating the maximum rebuilding schedule in situations where it would take 10 years or longer to rebuild a stock to B_{MSY} in the absence of fishing mortality. Applied to the red snapper stock, this formula defines the maximum recommended rebuilding schedule as 31 years (e.g., time it would take to rebuild the stock to B_{MSY} in the absence of fishing mortality (12 years) plus one mean generation time (19.6 years)). Implicit to establishing a rebuilding plan for a stock, overfishing will end sometime during the rebuilding period. When overfishing ends depends on the type of rebuilding schedule selected.

For Gulf of Mexico red snapper, the rebuilding plan would initially maintain total allowable catch (TAC) at 9.12 million lb (4.14 million kg) wwt, end overfishing between 2009 and 2010, and rebuild the red snapper stock by 2032. The status of the stock would be reviewed and management measures would be adjusted, as necessary, based upon periodic stock assessments. The next stock assessment is scheduled for late 2004. Annual landings also would be monitored to ensure quotas are not exceeded.

Bycatch Reporting Methodology

The Council is required by the Magnuson-Stevens Act to establish a standardized bycatch reporting methodology for Federal fisheries. Current regulations require commercial and recreational for-hire participants in the Gulf of Mexico reef fish fishery who are selected by the Southeast Science and Research Director (SRD) to maintain and submit a fishing record, including bycatch information, on forms provided by the SRD.

To enhance current bycatch reporting, this proposed rule would provide for the establishment of a mandatory observer program for the reef fish fishery. NMFS would develop a procedure for the random selection of vessels for which a Federal commercial vessel permit or charter vessel/headboat

permit for Gulf of Mexico reef fish has been issued. Vessels selected by NMFS would be required to carry a NMFS-approved observer. The owner or operator of a vessel selected for observer coverage would be required to provide food and accommodations for the observer and provide the observer access to the vessel's equipment, personnel, and physical space sufficient to carry out the observer's duties. The costs associated with observer coverage, other than food and accommodations, would be borne by NMFS. In selecting vessels, NMFS would consider the suitability of the vessel for observer coverage and would ensure that the universe of vessels included is representative of all statistical sub-zones in the Gulf of Mexico. Vessel permits would not be renewed for vessels that fail or refuse to carry observers in accordance with this process. NMFS would initiate implementation of the observer program as soon as sufficient funding for the program is obtained.

In addition, to further improve bycatch reporting for the headboat sector of the Gulf of Mexico reef fish fishery, NMFS's Marine Recreational Fisheries Statistical Survey (MRFSS) would be enhanced by including headboats, using the same sampling methodology as currently used for charter vessels. The existing MRFSS catch-and-effort program would be continued to collect bycatch information from the private recreational sector of the fishery.

Request for Comment

Under the Magnuson-Stevens Act, the Council is responsible for developing fishery management plans and amendments necessary for the conservation and management of fisheries within its area of jurisdiction. In formulating proposed management recommendations, the Council relies upon the expertise and informed judgement of its members and staff; development and evaluation of scientific information by its scientific and statistical committees; advice from its advisory panels that are comprised of balanced representation from user groups and interested constituents; and substantial public input resulting from the public's participation at Council meetings, public hearings, and during public comment periods on amendments and associated rules. After considering all of this information and making any appropriate revisions, the Council approves the fishery management plan or amendment for submission to the Secretary of Commerce (Secretary) for review and approval, partial approval, or disapproval. The Secretary's decision regarding approvability is based on a number of factors including careful consideration of public comments and consistency of the proposed action with national standards, other provisions of the Magnuson-Stevens Act, and other applicable law.

The national standards in the Magnuson-Stevens Act state the following:

IN GENERAL.–Any fishery management plan prepared, and any regulation promulgated to implement any such plan, pursuant to this title shall be consistent with the following national standards for fishery conservation and management:

1. Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.

2. Conservation and management measures shall be based upon the best scientific information available.

3. To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

4. Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

5. Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

6. Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

7. Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

8. Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

9. Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

10. Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

NMFS is requesting comments on whether this proposed rule meets the national standards.

Classification

At this time, NMFS has not determined that Amendment 22, which this proposed rule would implement, is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. In making that determination, NMFS will take into account the data, views, and comments received during the comment period on Amendment 22 (August 3, 2004, 69 FR 46518) and the comment period on this proposed rule.

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

An IRFA has been prepared, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A copy of the full analysis is available from the Council office (see **ADDRESSES**). A summary of the analysis follows.

The Magnuson-Stevens Act provides the statutory basis for the proposed rule. Consistent with the requirements of the Magnuson-Stevens Act, the proposed rule would establish biological reference points and stock status criteria for red snapper, establish a rebuilding plan for the overfished red snapper stock, develop an observer program for the reef fish fishery with implementation being contingent on sufficient funding, and enhance the MRFSS through the inclusion of headboats in that survey.

The objectives of the proposed rule are to bring management of the red snapper fishery into compliance with requirements of the Magnuson-Stevens Act, to address the overfished and overfishing conditions of the red snapper stock, and to establish a standardized methodology to collect bycatch information in the fishery.

The proposed rule would impact both the commercial and recreational participants in the Gulf reef fish fishery. At present, both the commercial and for-hire reef fish vessel permits are under a moratorium, and no new permits will be issued during the moratorium. There are 1,158 vessels with active commercial reef fish permits. Of these commercial permitees, 131 entities hold Class 1 licenses that allow a vessel trip limit of up to 2,000 lb (907 kg) of red snapper, and approximately 357 entities hold Class 2 licenses that allow a trip limit of up to 200 lb (91 kg) of red snapper. There are 1,515 for-hire vessels with permits for both reef fish and coastal migratory pelagics. Also, there are 431 dealers who purchase reef fish from various vessels in the Gulf of Mexico. The proposed rule is expected to affect

all these reef fish commercial and for-hire vessels and dealers.

According to a survey of commercial fishing vessels in the Gulf, average gross receipts ranged from $24,095 for low-volume vertical line vessels to $116,989 for high-volume longline vessels. Also, according to a survey of reef fish processors in the Southeast, employment by reef fish processors totaled 700 individuals, both part- and full-time. Given this number and the likelihood that fish dealers are generally of smaller size than processors, employment by any of the affected dealers is very likely to be less than 100 individuals. Furthermore, according to two surveys of for-hire vessels in the Gulf, average gross receipts for charterboats range from $58,000 in the eastern Gulf of Mexico to $81,000 in the western Gulf while gross receipts for headboats range from $281,000 in the eastern Gulf to $550,000 in the western Gulf. A fishing business is considered a small entity if it is independently owned and operated and is not dominant in its field of operation, and if it has annual receipts not in excess of $3.5 million in the case of commercial harvesting entities or $6.0 million in the case of for-hire entities, or if it has fewer than 500 employees in the case of fish processors, or fewer than 100 employees in the case of fish dealers. Given these data on earnings and employment, all of the business entities affected by the proposed rule are determined to be small business entities.

Specification of sustainable fishing parameters has no economic impacts on small entities because it does not alter the current harvest or use of component stocks. The specification merely establishes benchmarks for fishery and resource evaluation from which future management actions would be based. As benchmarks, these parameters do not limit how, when, where, or with what frequency participants in the fishery engage the resource. For rebuilding the red snapper stock, a TAC of 9.12 million lb (4.14 million kg) is selected, and because this is the same as the current TAC, this measure has no impacts on small entities. The preferred alternative for bycatch reporting is an observer program for the commercial and for-hire reef fish fishery. An observer program would be new to the Gulf of Mexico reef fish fishery and is expected to potentially affect all commercial and for-hire vessels, although each year only a sample of these vessels would be selected to carry observers. An observer program can lessen the reporting burden for bycatch to the extent that this task would be carried out by a trained observer. Assuming the observer program covers 8 percent of commercial vessel trips, 1 percent of charterboat trips, and 4 percent of headboat trips, total costs would be about $5.92 million annually, including the total costs for all observers' food and accommodations, which are estimated to range between $98,640 and $123,300 annually. Owners of vessels selected for observer coverage would be responsible only for the cost associated with providing food and accommodations for the observer. NMFS would cover the cost of providing the observer. Because there is no expected reduction in harvests, and the bycatch reporting through an observer program would be imposed only on vessels, dealers are not expected to be adversely affected by the proposed rule.

There are four basic alternatives considered for the rebuilding plan; two are constant catch strategies and two are constant fishing mortality rate (F) strategies. The no action alternative is not considered a viable alternative, because a rebuilding plan has to be instituted for the overfished red snapper stock. Under the constant catch strategies, the preferred alternative would hold TAC constant at 9.12 million lb (4.14 million kg), while the other alternative would keep TAC constant at 6.0 million lb (2.7 million kg). For the constant F strategies, one alternative would hold the TAC at 9.12 million lb (4.14 million kg) for a period of years and gradually increase it over time, while the other would hold the TAC constant at 6.0 million lb (2.7 million kg) for a period of years and increase it over time. In essence, the other significant alternative to the preferred TAC of 9.12 million lb (4.14 million kg) is a TAC of 6.0 million lb (2.7 million kg). Over the first 5 years, this lower TAC would reduce commercial vessel profits by $3.92 million and for-hire vessel profits by $18.35 million. The profit reduction for dealers cannot be estimated. Thus, the preferred alternative would enable the achievement of the goal to rebuild the stock and at the same time would minimize the impacts on small entities.

Six alternatives are considered for reporting bycatch in the commercial and for-hire reef fish fishery. Alternative 1 is the no action alternative. Alternative 2 requires all permitted reef fish vessels in the Gulf of Mexico to participate in an electronic logbook program that includes bycatch reporting. Alternative 3 is similar to Alternative 2, but the electronic logbook program would be administered only to a randomly selected sample of reef fish permitted vessels. Alternative 4 would establish an observer program for randomly selected reef fish permitted vessels. Alternative 5 would expand the current bycatch reporting program for commercial reef fish and mackerel permitted vessels to cover 100 percent of such vessels and all federally permitted for-hire vessels. Alternative 6 would enhance the MRFSS to include the headboat sector using the same sampling methodology as for charter vessels.

Among the alternatives, Alternative 1 (no action) is the least costly as it involves no additional burden on the fishermen and the Federal government other than what is currently being incurred in generating bycatch information. The cost of Alternative 2 would range from $0.87 million to $2.9 million, with burden time ranging from 3,764 to 4,053 hours for commercial vessels and from $1.16 million to $3.88 million, with burden time of 89,240 hours for for-hire vessels. The cost of Alternative 3 is proportional to that of Alternative 2 based on sample size. Alternative 4 is estimated to cost $5.92 million per year. Alternative 5 would affect 926 additional commercial vessels, with burden time ranging from 3,009 to 3,241 hours, and 1,552 for-hire vessels, with burden time of about 89,240 hours. Alternative 6 would mainly affect headboat vessels. Using the same sampling technique as for charter vessels, approximately 85 headboats would be sampled per wave (two-month period).

The monetary outlay of a bycatch reporting requirement may be shared by the industry and government, or borne solely by either entity. If the cost were borne solely by the industry, an observer program would have the largest negative impacts on small entities. An observer program paid for by the government would also be expected to cost fishery participants less than the logbook alternatives, even if an electronic logbook program were selected and the logbook paid for by the government. The reason for this is that a logbook program, electronic or otherwise, entails additional reporting and record-keeping activities that would still have to be incurred by the fishery participants. Such activities are less likely to increase under an observer program since most would be conducted by the observer. Under the proposed observer program, an owner of a vessel selected for observer coverage would be responsible only for the cost associated with providing food and accommodations for the observer. NMFS would cover the cost of providing the observer.

Notwithstanding any other provision of law, no person is required to respond

to, and no person shall be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This rule contains a collection-of-information requirement subject to review and approval by OMB to the PRA. This requirement has been submitted to OMB for approval. This requirement involves notification requirements for the purpose of accommodating observer coverage. Public reporting burden for this collection of information is estimated to average 5 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

NMFS seeks comments regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: November 16, 2004.

Rebecca Lent,

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

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.4, the second sentence of paragraph (h)(1) introductory text and the first sentence of paragraph (h)(1)(ii) are revised to read as follows:

§ 622.4 Permits and fees.

* * * * *

(h) * * *

(1) * * * In the interim years, renewal is automatic (without application) for a vessel owner or a dealer who has met the specific requirements for the requested permit, license, or endorsement; who has complied with all reporting and data collection requirements, including observer requirements, under the Magnuson-Stevens Act; and who is not subject to a sanction or denial under paragraph (j) of this section. * * *

* * * * *

(ii) * * * If the RA's notification indicates that the owner's or dealer's permit, license, or endorsement is ineligible for automatic renewal, the notification will specify the reasons and, if applicable, will provide an opportunity for correction of any deficiencies. * * *

* * * * *

3. In § 622.8, paragraph (a)(3) is added and paragraphs (c)(4) and (c)(5) are revised to read as follows:

§ 622.8 At-sea observer coverage.

(a) * * *

(3) *Gulf reef fish.* A vessel for which a Federal commercial vessel permit for Gulf reef fish or a charter vessel/headboat permit for Gulf reef fish has been issued must carry a NMFS-approved observer, if the vessel's trip is selected by the SRD for observer coverage. Vessel permit renewal is contingent upon compliance with this paragraph (a)(3).

* * * * *

(c) * * *

(4) Allow the observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish.

(5) Allow the observer to inspect and copy the vessel's log, communications logs, and any records associated with the catch and distribution of fish for that trip.

[FR Doc. 04–25961 Filed 11–22–04; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 69, No. 225
Tuesday, November 23, 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

Agricultural Research Service

Advisory Committee on Biotechnology and 21st Century Agriculture; Nominations

AGENCY: Office of the Under Secretary, Research, Education, and Economics, USDA.

SUMMARY: The Agricultural Research Service is requesting nominations for qualified persons to serve as members of the Secretary's Advisory Committee on Biotechnology and 21st Century Agriculture (AC21). The charge for the AC21 is two-fold: To examine the long-term impacts of biotechnology on the U.S. food and agriculture system and USDA; and to provide guidance to USDA on pressing individual issues, identified by the Office of the Secretary, related to the application of biotechnology in agriculture.

DATES: Written nominations must be received by fax or postmarked on or before December 23, 2004.

ADDRESSES: All nomination materials should be sent to Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, USDA, 202B Jamie L. Whitten Federal Building, 14th and Independence Avenue, SW., Washington, DC 20250. Forms may also be submitted by fax to (202) 690–4265.

FOR FURTHER INFORMATION CONTACT: Questions should be addressed to Michael Schechtman, Designated Federal Official, telephone (202) 720–3817; fax (202) 690–4265; e-mail *mschechtman@ars.usda.gov*. To obtain form AD–755 ONLY please contact Dianne Harmon, Office of Pest Management Policy, telephone (202) 720–4074, fax (202) 720–3191; e-mail *dharmon@ars.usda.gov*.

SUPPLEMENTARY INFORMATION: AC21 members serve staggered 2-year terms, with terms for half of the Committee members expiring in any given year. Nominations are being sought for open Committee seats. The terms of 9 members of the AC21 will expire in early 2005. The AC21 Charter allows for flexibility to appoint up to a total of 11 members. Members can be reappointed to serve up to 6 consecutive years. Equal opportunity practices, in line with USDA policies, will be followed in all membership appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Nominees of the AC21 should have recognized expertise in one or more of the following areas: Recombinant-DNA (rDNA) research and applications using plants; rDNA research and applications using animals; rDNA research and applications using microbes; food science; silviculture and related forest science; fisheries science; ecology; veterinary medicine; the broad range of farming or agricultural practices; weed science; plant pathology; biodiversity; applicable laws and regulations relevant to agricultural biotechnology policy; risk assessment; consumer advocacy and public attitudes; public health/epidemiology; ethics, including bioethics; human medicine; biotechnology industry activities and structure; intellectual property rights systems; and international trade. Members will be selected by the Secretary of Agriculture in order to achieve a balanced representation of viewpoints to address effectively USDA biotechnology policy issues under consideration.

Nominations for AC21 membership must be in writing and provide the appropriate background documents required by USDA policy, including background disclosure form AD–755.

The AC21 meets in Washington, DC, up to four (4) times per year. The function of the AC21 is solely advisory. Members of the AC21 and its subcommittees serve without pay, but with reimbursement of travel expenses and per diem for attendance at AC21 and subcommittee functions for those AC21 members who require assistance in order to attend the meetings. While away from home or their regular place of business, those members will be eligible for travel expenses paid by REE, USDA, including per diem in lieu of subsistence, at the same rate as a person employed intermittently in the government service as allowed under Section 5703 of Title 5, United States Code.

Submitting Nominations: Nominations should be typed and include the following:

1. A brief summary of no more than two (2) pages explaining the nominee's suitability to serve on the AC21.
2. A resume or curriculum vitae.
3. A completed copy of form AD–755.

Nominations should be sent to Michael Schechtman at the address listed above, and be post marked no later than December 23, 2004.

Dated: November 16, 2004.

Joseph Jen,

Under Secretary for Research, Education and Economics.

[FR Doc. 04–25981 Filed 11–22–04; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Office of the Under Secretary, Research, Education, and Economics

Notice of the Advisory Committee on Biotechnology and 21st Century Agriculture Meeting

AGENCY: Agricultural Research Service.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. II, the United States Department of Agriculture announces a meeting of the Advisory Committee on Biotechnology and 21st Century Agriculture (AC21).

DATES: December 9–10, 2004, 8:30 a.m. to 5 p.m. on the first day and 8 a.m. to 4 p.m. on the second day. Written requests to make oral presentations at the meeting must be received by the contact person identified herein at least three business days before the meeting.

ADDRESSES: Waugh Auditorium, USDA Economic Research Service, Third Floor, South Tower, 1800 M St., NW., Washington, DC 20036. Requests to make oral presentations at the meeting may be sent to the contact person at USDA, Office of the Deputy Secretary, 202 B Jamie L. Whitten Federal

Building, 12th and Independence Avenues, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, USDA, Telephone (202) 720–3817; Fax (202) 690–4265; E-mail *mschechtman@ars.usda.gov*.

SUPPLEMENTARY INFORMATION: The seventh meeting of the AC21 has been scheduled for December 9–10, 2004. The AC21 consists of 18 members representing the biotechnology industry, the seed industry, international plant genetics research, farmers, food manufacturers, commodity processors and shippers, environmental and consumer groups, and academic researchers. In addition, representatives from the Departments of Commerce, Health and Human Services, and State, and the Environmental Protection Agency, the Council on Environmental Quality, and the Office of the United States Trade Representative serve as ''ex officio'' members. The AC21 at this meeting will continue its work to develop a report examining the impacts of agricultural biotechnology on American agriculture and USDA over the next 5 to 10 years. In particular, the AC21 will review the progress of four work groups developing portions of the report, specifically: A work group developing the two introductory report chapters; a work group on key definitions; a work group on potential issues to consider; and a work group on preparing for the future. In this review, the AC21 will provide comments and suggestions for how the Committee can develop the reports and move them toward completion. The AC21 will seek to achieve consensus on the contents of the report. The AC21 will also discuss, with a view to finalizing, a second draft report developed by another work group on the issue of the proliferation of traceability and mandatory labeling regimes for biotechnology-derived products in other countries, the implications of those regimes, and what industry is doing to attempt to address those requirements for products shipped to those countries. Background information regarding the work of the AC21 will be available on the USDA Web site at *http://www.usda.gov/agencies/biotech/ac21.html*. On December 9, 2004, if time permits, reasonable provision will be made for oral presentations of no more than five minutes each in duration.

The meeting will be open to the public, but space is limited. If you would like to attend the meetings, you must register by contacting Ms. Dianne Harmon at (202) 720–4074, by fax at (202) 720–3191 or by E-mail at *dharmon@ars.usda.gov* at least 5 days prior to the meeting. Please provide your name, title, business affiliation, address, and telephone and fax numbers when you register. If you require a sign language interpreter or other special accommodation due to disability, please indicate those needs at the time of registration.

Dated: November 16, 2004.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics.

[FR Doc. 04–25982 Filed 11–22–04; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF COMMERCE

[Docket No. 000817241–4320–03]

Notice of Funding Availability for Postsecondary Internship Program

AGENCY: Office of Human Resources Management, U.S. Department of Commerce.

ACTION: Notice and request for proposals.

SUMMARY: The Department of Commerce (DOC) established a postsecondary internship program to aid and promote experiential training activities which foster future employment in DOC or the Federal Government in general. United States citizens enrolled as students in 2- and 4-year accredited educational institutions will participate in onsite work experiences in DOC bureaus and office in order to integrate academic theory and workplace requirements, gain relevant skills and knowledge, explore federal career options, develop professional networks, and develop a greater awareness of the role of federal agencies. The program will be administered through a partnership between the DOC and nonprofit and/or educational institution(s) of higher education and funded by cooperative agreement(s). There will be no employer-employee relationship between DOC and its hosted interns. The recipient will be the supervisor of record for the interns and shall control the means and manner of the interns' activities. This notice solicits proposals from eligible institutions that desire to collaborate with the DOC on this initiative.

DATES: Proposals must be received by the DOC no later than 12 noon Eastern Standard Time (EST), December 23, 2004.

ADDRESSES: Proposals must be submitted to the U.S. Department of Commerce, Office of Human Resources Management, ATTN: Carin Otero, 1401 Constitution Avenue, NW., Room 5004, Washington DC 20230. Note: If the application is hand-delivered by the applicant or its representative to the U.S. Department of Commerce, Herbert C. Hoover Building, the application must be delivered to Room 1874, which is located at Entrance #10, 15th Street, NW., between Pennsylvania and Constitution Avenues. The application should be addressed as specified above. Applications delivered on the date of the application deadline must be delivered by 12 noon EST. Applications will not be accepted electronically or via facsimile.

FOR FURTHER INFORMATION CONTACT: For a copy of the full funding opportunity announcement for this request for proposals and/or an application kit, please note the Web site below listed under ''Electronic Access.'' For a paper copy of the full funding opportunity announcement and/or an application kit, contact Carin Otero, U.S. Department of Commerce, Office of Human Resources Management, 1401 Constitution Avenue, NW., Room 5004, Washington DC 20230, or via Internet at *Cotero1@doc.gov*, or via telephone at (202) 482–1445.

SUPPLEMENTARY INFORMATION:

Electronic Access: The full funding opportunity announcement for the Postsecondary Internship Program is available via the Internet at: *http://ohrm.doc.gov/Intern/internprogram.htm*. This announcement will also be available through Grants.gov at: *http://www.Grants.gov*.

Funding Availability: Projections based upon previous programs indicate an average availability of between $230,000–$950,000 to support from 25 to 100 interns. However, the exact level of funding is not yet known until DOC and other agency host offices project their participation levels. Proposals should be based upon the cost of administering a summer program for 25 student interns and five interns for each academic year session.

Statutory Authority: Authority for the Postsecondary Internship Program is provided by 5 U.S.C. 7201, which requires that each Executive agency conduct a continuing program for the recruitment of members of minorities to address under representation of minorities in various categories of Federal employment. Executive Order 13256 provides for Executive departments to enter into, among other things, cooperative agreements with Historically Black Colleges and Universities (HBCUs) to further the

goals of the Executive Order, principally that of strengthening the capacity of HBCUs to provide quality education, and to increase opportunities to participate in and benefit from Federal programs. Executive Order 13230 calls for increasing opportunities for Hispanic Americans to participate in and benefit from Federal education programs. Executive Order 13270 helps ensure that greater Federal resources are available to the tribal colleges. Executive Order 13216 directs Federal agencies to increase participation of Asian and Pacific Islanders in Federal programs. Applications will be accepted from any eligible institution, and applications for internships shall be accepted from all students meeting program eligibility criteria and will not be limited only to minority students. Application, referral, and selection processes shall be conducted without any consideration of race, ethnicity, gender, or other personal factors.

Catalog of Federal Domestic Assistance: 11.702—Internship Program for Postsecondary Students.

Eligibility: Accredited universities, colleges and nonprofit organizations are eligible to apply. Eligible institutions may form joint ventures to submit a joint application to share costs and administration roles and responsibilities. In such cases, one of the institutions must be designated as the lead organization for purposes of receipt and overall accountability for any financial assistance award received under this program.

Cost Sharing or Matching Requirement: Cost sharing is not required for the internship program.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Evaluation and Selection Procedures: Prior to the formal paneling process, each application will receive an initial review to ensure that all required forms, signatures, and documentation are present. Each application will receive an independent, objective review by a panel qualified to evaluate the applications submitted. The Independent Review Panel, consisting of at least three individuals (who are federal employees), will review all applications based on the criteria stated below. The Independent Review Panel will evaluate and rank the proposals. Each reviewer will evaluate and provide a score for each proposal. After all proposals are assigned a score, each proposal will be ranked according to the average total score given by the reviewers. The final decision on awards will be based upon the proposal ranking, availability of funding, and the Selecting Official's (DOC Program Officer) determination of which proposals best meet the objectives of the program, specifically relating to who will best reach the targeted audience of intern candidates. The amount of funds awarded to each recipient will be determined in pre-award negotiations between the applicant, the Grants Office and the DOC Program Officer.

Evaluation Criteria:

(1) Quality of Program Plan (30 percent). Includes, but is not limited to, strategy for outreach and publicity, procedures for collecting and evaluating applications, comprehensiveness of program to include plans for onsite orientation for summer sessions, and practicality of approach.

(2) Proposed Costs (20 percent). The proposed budget must be comprehensive and should include all costs for program personnel, fringe benefits, travel, equipment, supplies, and other associated items. The stipend level and other benefits (i.e., housing, local transportation, etc.) proposed for students should be stated in the budget and the budget narrative.

(3) Key Personnel Qualifications (20 percent). Includes an assessment of the number, qualifications, and proposed roles of staff who will administer the internship program. Resumes of proposed personnel will facilitate the evaluation of the competency and experience of the proposed staff.

(4) Capabilities of the Applicant Organization (20 percent). Considers, among other things, previous experience and success administering similar programs, and staff and resources to assure adequate development, supervision, and execution of the proposed program. Additionally, an organization's commitment to educate/advance the education of women, minorities, and people with disabilities will be a consideration in evaluating this factor.

Limitation of Liability: Funding for the program listed in this notice is contingent upon the availability of Fiscal Year 2005 appropriations. DOC issues this notice subject to the appropriations made available under the current Continuing Resolution, H.J. Res. 107, ''making continuing appropriations for the Fiscal Year 2005, and for other purposes,'' Public Law 108–309. DOC anticipates making awards for this program provided that funding for the program is continued beyond November 20, 2005, the expiration of the current Continuing Resolution. In no event will the DOC be responsible for proposal preparation costs if this program fails to receive funding or is cancelled because of other agency priorities. Publication of this announcement does not oblige the DOC to award any specific project or to obligate any available funds.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), are applicable to this solicitation.

Paperwork Reduction Act: This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, SF–LLL, and CD–346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866: This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/Regulatory Flexibility Act: Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: November 17, 2004.

Deborah A. Jefferson,

Director for Human Resources Management.

[FR Doc. 04–25901 Filed 11–22–04; 8:45 am]

BILLING CODE 3510–BS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 52–2004]

Foreign-Trade Zone 141—Monroe County, NY; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the County of Monroe, New York, grantee of FTZ 141, requesting authority to expand FTZ 141, in Monroe County, New York, within the Rochester Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 17, 2004.

FTZ 141 was approved on April 2, 1987 (Board Order 355, 52 FR 12219, 4/15/87). The zone project currently consists of the following sites in the Monroe County, New York area: Site 1 (10 acres)—401 Pixley Road, Gates; Site 2 (8 acres)—39 Breck Street, Rochester; Site 3 (14 acres)—10 Carriage Street, Honoeye Falls; Site 4 (38 acres)—200 Carlson Road, Rochester; Site 5 (5 acres)—655–C Basket Road, Webster; Site 6 (5 acres)—111 Commerce Drive, Henrietta; Site 7 (3 acres)—10 Thruway Park Drive, Henrietta; Site 8 (2.2 acres)—1698 Lyell Avenue, Rochester; Site 9 (1 acre)—847 West Avenue, Building #10, Rochester; Site 10 (2 acres)—3025 Winton Road South, Rochester.

The applicant is requesting authority to expand the zone to include one additional site in Rochester: Proposed Site 11 (314 acres)—Rochester Technology Park, 789 Elmgrove Road, Rochester. The site is principally owned by Cohen Asset Management, Inc., and Continental Industrial Capital LLC. The new site is part of the former Site 4 (Elmgrove facility) subzone manufacturing site of FTZ 141A, Eastman Kodak Company, which is being converted to general industrial use. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses below:

1. *Submissions via Express/Package Delivery Services:* Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or

2. *Submissions via U.S. Postal Service:* Foreign-Trade Zones Board, U.S. Department of Commerce, FCB–4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is January 24, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 7, 2005).

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address No. 1 listed above and at the Office of the County Executive, Suite 8100, 39 West Main Street, Rochester, New York 14614.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 04–25957 Filed 11–22–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 041025291–4291–01]

Impact of Implementation of the Chemical Weapons Convention on Commercial Activities Involving ''Schedule 1'' Chemicals Through Calendar Year 2004

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of inquiry.

SUMMARY: The Bureau of Industry and Security (BIS) is seeking public comments on the impact that implementation of the Chemical Weapons Convention has had on commercial activities involving ''Schedule 1'' chemicals through calendar year 2004. This notice of inquiry is part of an effort to collect information to assist in the preparation of the annual certification required under Condition 9 of Senate Resolution 75, April 24, 1997, in which the Senate gave its advice and consent to the ratification of the Chemical Weapons Convention.

DATES: Comments are due December 21, 2004.

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

- *E-mail: wfisher@bis.doc.gov.* Include the phrase ''Schedule 1 Notice of Inquiry'' in the subject line;
- *Fax:* (202) 482–3355 (Attn: Willard Fisher);
- *Mail* or *Hand Delivery/Courier:* Willard Fisher, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: For questions on the Chemical Weapons Convention requirements for ''Schedule 1'' chemicals, contact Larry Denyer, Treaty Compliance Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, U.S. Department of Commerce, Phone: (703) 605–4400. For questions on the submission of comments, contact Willard Fisher, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce, Phone: (202) 482–2440.

SUPPLEMENTARY INFORMATION:

Background

In its resolution to advise and consent to the ratification of the Chemical Weapons Convention (Convention) (S. Res. 75, April 24, 1997), the Senate included several conditions. Condition 9 of Senate Resolution 75, titled ''Protection of Advanced Biotechnology,'' provides that the President shall certify to the Congress on an annual basis that ''* * * the legitimate commercial activities and interests of chemical, biotechnology, and pharmaceutical firms in the United States are not being significantly harmed by the limitations of the Convention on access to, and production of, those chemicals and toxins listed in Schedule 1* * *''.

In 2000, 2001, 2002, and 2003, BIS solicited comments from the public on the commercial impact of the Convention's Schedule 1 limitations, and received no comments. In light of this, the President certified to Congress that firms were not significantly harmed by the Convention's Schedule 1 limitations. The Bureau of Industry and Security is collecting data to assist in determining the impact, if any, that the implementation of the Convention's requirements have had on commercial ''Schedule 1'' activities through calendar year 2004.

On July 8, 2004, President Bush, by Executive Order 13346, delegated his authority to make the annual certification to the Secretary of Commerce.

The Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and Their Destruction, commonly called the Chemical Weapons Convention (CWC), is an international arms control treaty that establishes the Organization for the Prohibition of Chemical Weapons (OPCW) to implement the verification provisions of the treaty. The CWC imposes a number of obligations on countries that have ratified the Convention (States Parties), including enactment of legislation to prohibit the production, storage, and use of chemical weapons, and establishment of a National Authority for liaison with the OPCW and other States Parties. The CWC also requires States Parties to implement a comprehensive data declaration and inspection regime to provide transparency and to verify that both the public and private sectors of States Parties are not engaged in activities prohibited under the CWC.

Schedule 1'' chemicals are those toxic chemicals and precursors identified in the Convention as posing a high risk to the object and purpose of the Convention. The ''Schedule 1'' chemicals are set forth in the Convention's ''Annex on Chemicals,'' as well as in Supplement No. 1 to part 712 of the Chemical Weapons Convention Regulations (15 CFR 712).

The ''Schedule 1'' provisions of the Convention that affect commercial activities are implemented through part 712 of the Chemical Weapons Convention Regulations and parts 742 and 745 of the Export Administration Regulations, both administered by the Bureau of Industry and Security. These regulations:

(1) Prohibit the import of ''Schedule 1'' chemicals from States not Party to the Convention (15 CFR 712.2(b));

(2) Require annual declarations by certain facilities engaged in the production of ''Schedule 1'' chemicals in excess of 100 grams aggregate per calendar year (*i.e.*, declared ''Schedule 1'' facilities) for purposes not prohibited by the Convention (15 CFR 712.5);

(3) Require government approval of ''declared Schedule 1'' facilities (15 CFR 712.5(e));

(4) Provide that ''declared Schedule 1'' facilities are subject to initial and routine inspection by the Organization for the Prohibition of Chemical Weapons (15 CFR 712.5(d));

(5) Require 200 days advance notification of establishment of new ''Schedule 1'' production facilities producing greater than 100 grams aggregate of ''Schedule 1'' chemicals per calendar year (15 CFR 712.4);

(6) Require advance notification and annual reporting of all imports and exports of ''Schedule 1'' chemicals to, or from, other States Parties to the Convention (15 CFR 712.6, 742.18 and 745); and

(7) Prohibit the export of ''Schedule 1'' chemicals to States not Party to the Convention (15 CFR 742.18 and 745.2).

Discussion and Request for Comments

In order to assist in determining whether the legitimate commercial activities and interests of chemical, biotechnology, and pharmaceutical firms in the United States are being significantly harmed by the limitations of the Convention on access to, and production of, ''Schedule 1'' chemicals, BIS is seeking public comments on any effects that implementation of the Chemical Weapons Convention has had on commercial activities involving ''Schedule 1'' chemicals through calendar year 2004.

Submission of Comments

All comments must be submitted to the address indicated in this notice. The Department requires that all comments be submitted in written form.

The Department encourages interested persons who wish to comment to do so at the earliest possible time. The period for submission of comments will close on December 21, 2004. The Department will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered if possible, but their consideration 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. All comments submitted in response to this notice will be a matter of public record and will be available for public inspection and copying.

The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays public comments on the BIS Freedom of Information Act (FOIA) Web site at *http://www.bis.doc.gov/foia.* This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this web site, please call BIS's Office of Administration, at (202) 482–2165, for assistance.

Dated: November 18, 2004.

Peter Lichtenbaum,

Assistant Secretary for Export Administration.

[FR Doc. 04–25950 Filed 11–22–04; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 041103306–4306–01]

RIN 0693–AB54

Announcing Draft of Federal Information Processing Standard (FIPS) 201, Personal Identification Verification for Federal Employees and Contractors

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: This notice announces Draft Federal Information Processing Standard (FIPS) 201, Personal Identification Verification for Federal Employees and Contractors, for public review and comment. The draft of FIPS 201 is being proposed in response to tasking to the Secretary of Commerce by the President to promulgate, in accordance with applicable law, a Federal standard for secure and reliable forms of identification for Federal employees. The standard specifies the minimum necessary technical and operational requirements for such Federal identification credentials. Prior to the submission of this proposed standard to the Secretary of Commerce for review and approval, it is essential that consideration be given to the needs and views of the public, users, the information technology industry, and Federal, State and local government organizations. The purpose of this notice is to solicit such views.

DATES: Comments must be received on or before December 23, 2004.

ADDRESSES: Written comments may be sent to: Chief, Computer Security Division, Information Technology Laboratory, Attention: Comments on Draft FIPS 201, 100 Bureau Drive—Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930. Electronic comments may also be sent to: *DRAFTFIPS201@nist.gov.* The draft of the standard is available via *http://csrc.nist.gov/piv-project/index.html.* Comments received in response to this notice will be published electronically at *http://csrc.nist.gov.*

FOR FURTHER INFORMATION CONTACT: William Barker, Computer Security Division, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930, telephone (301) 975–8443, e-mail: *william.barker@nist.gov*.

SUPPLEMENTARY INFORMATION: On August 27, 2004, the President signed Homeland Security Presidential Directive (HSPD) Number 12 that directed the Secretary of Commerce to promulgate a Federal Standard by February 27, 2005, that assures secure and reliable forms of identification of Federal and Federal contractor employees. In response, the NIST Computer Security Division has initiated development of this standard. The principal requirements of HSPD Number 12 are to create a secure and reliable automated system that may be used Government-wide to: (1) Establish the authentic true identity of an individual; (2) issue an identity credential token to each authenticated individual containing an ''electronic representation'' of the identity and the person to whom it is issued which can later be verified using appropriate technical means when access to a secure Federal facility or information system is requested; (3) provide graduated criteria that provide appropriate levels of assurance and security to the application; (4) be strongly resistant to identity fraud, counterfeiting, and exploitation by individuals, terrorist organizations, or conspiracy groups; (5) initiate development and use of interoperable automated systems meeting these requirements.

To meet these requirements, the draft FIPS proposes (1) a credential issuance process that relies upon identity documentation supplemented by record checking; (2) specifications for storage of biometric information on the identity credential; (3) use of existing graduated criteria for employee position sensitivity and physical/logical access levels; (4) security controls to counter fraud and exploitation; and (5) information to facilitate agency establishment of real-time credential validity checking and integration of the new credential into physical and logical access systems.

Under the requirements of HSPD Number 12, the standard must be promulgated by February 27, 2005. NIST anticipates that the initial standard will be augmented over the course of two to three years as additional supporting technical guidelines, recommendations, reference implementations, and conformance tests are developed.

Authority: NIST's activities to develop computer security standards to protect Federal non-national security systems is undertaken pursuant to specific responsibilities assigned to NIST in the Federal Information Security Management Act of 2002. In addition, development of FIPS 201 is being undertaken in response to Homeland Security Presidential Directive Number 12.

Dated: November 18, 2004.

Richard F. Kayser,

Acting Deputy Director.

[FR Doc. 04–25953 Filed 11–22–04; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Visiting Committee on Advanced Technology (VCAT), National Institute of Standards and Technology (NIST), will meet Tuesday, December 7, 2004, from 8:15 a.m. to 5 p.m. The Visiting Committee on Advanced Technology is composed of fifteen members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an update on NIST's activities; a preview of a new NIST overview; a VCAT member's presentation on managing organizations with remote sites; an update on outreach strategy; an update on the Manufacturing Extension Partnership Program; and updates from the Fall Senior Management Board Strategy Retreat. Two laboratory tours are scheduled. Discussions scheduled to begin at 8:15 a.m. and to end at 9 a.m. on December 7, on the NIST budget and planning information will be closed. Agenda may change to accommodate Committee business. The final agenda will be posted on the NIST Web site. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, e-mail address and phone number to Carolyn Peters no later than Thursday, December 2, 2004, and she will provide you with instructions for admittance. Mrs. Peter's e-mail address is *carolyn.peters@nist.gov* and her phone number is (301) 975–5607.

DATES: The meeting will convene on December 7 at 8:15 a.m. and will adjourn at 5 p.m.

ADDRESSES: The meeting will be held in the Employees Lounge, Administration Building, at NIST, Gaithersburg, Maryland. Please note admittance instructions under **SUMMARY** paragraph.

FOR FURTHER INFORMATION CONTACT: Carolyn J. Peters, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–1000, telephone number (301) 975–5607.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on December 24, 2003, that portions of the meeting of the Visiting Committee on Advanced Technology which deal with discussion of sensitive budget and planning information that would cause harm to third parties if publicly shared be closed in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2.

Dated: November 18, 2004.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 04–25952 Filed 11–22–04; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111804B]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Magnuson-Stevens Act (MSA) Reauthorization Committee; its Ecosystem Committee; and, its Executive Committee will hold public meetings.

DATES: The meetings will be held on Tuesday, December 7, 2004 through

Thursday, December 9, 2004. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be at the Holiday Inn Select, Interstate 95 and Naamans Road, Claymont (North Wilmington), DE 19703; telephone 302–792–2700.

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:

Tuesday, December 7, 2004

1 p.m. to 3 p.m., the MSA Reauthorization Committee will meet.

3 p.m. to 5 p.m., the Ecosystem Committee will meet.

Wednesday, December 8, 2004

8:30–9:30 a.m.,the Executive Committee will meet.

9:30 a.m., the Council will convene.

9:30–11:45 a.m., the Council will meet jointly with the Atlantic States Marine Fishery Commission's (ASMFC) Summer Flounder, Scup, and Black Sea Bass Board (Board) to establish recreational management measures of the 2005 summer flounder fishery.

1 p.m., Council will present its 2004 Fisheries Achievement Award.

1:15 p.m. to 5:30 p.m., the Council, jointly with the ASMFC's Board, will set recreation management measures for scup and black sea bass fisheries for 2005.

Thursday, December 9, 2004

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

8:45 a.m. to 9:30 a.m., Council will hear a NMFS presentation regarding its Sea Turtle Strategy under the Endangered Species Act.

9:30 a.m. until adjournment, Council will approve the August and October Council meeting minutes, hear organizational reports, receive status of the Council's Fishery Management Plans, and hear the Executive Director's Report. Council will then receive Committee and Council liaison reports and address any continuing and/or new business.

Agenda items for the Council's committees and the Council itself are: on December 7, the meeting of the MSA Reauthorization Committee will review Bills proposed during the 108th Congress, discuss U.S. Commission on Ocean Policy Report and its implications on MSA, and discuss strengths and weaknesses of current law and how it could be reinforced or modified; and, the meeting of the Ecosystem Committee will review NMFS' ecosystem survey meeting outcome, and review the status of GIS (Geographic Information System) capabilities and applications for fishery management. On December 8, the meeting of the Executive Committee will discuss the implication of de-coupling Council and Commission FMPs, and possible elimination/transfer of authority to jointly manage dogfish and monkfish FMPs. The joint meeting with the ASMFC's Summer Flounder, Scup, and Black Sea Bass Board will set recreational management for the 2005 summer flounder, scup, and black sea bass recreational fisheries. For each fishery, the Council and Commission will review and discuss the Monitoring Committee's recommendations on management measures, and will also review and discuss the Advisory Panels' recommendations on management measures. Council will present its Fisheries Achievement Award to Sonja Fordham of The Ocean Conservancy. On December 9, the Council will convene at 8:30 a.m. to receive a presentation from NMFS regarding its Sea Turtle Strategy under the Endangered Species Act; approve August and October Council meeting minutes; hear organizational reports, liaison reports, internal staff reports and 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

This meeting is 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: November 18, 2004.

Tracey L. Thompson,

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

[FR Doc. 04–25962 Filed 11–22–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111704D]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Ad Hoc Bycatch Committee in December, 2004 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on December 6, 2004 at 10 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (978) 339–2200.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Ad Hoc Bycatch Committee will meet to begin the development of fishery management measures to reduce potential bycatch in fisheries, in particular the very large 2003–year class of haddock.

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

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: November 18, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–3288 Filed 11–22–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111704C]

North Pacific Fishery Management Council; Public Meetings

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

ACTION: Meetings of the North Pacific Fishery Management Council and its advisory committees.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings December 6 through December 14, 2004 at the Anchorage Hilton Hotel, Anchorage, AK.

DATES: The Council's Advisory Panel will begin at 8 a.m., Monday, December 6 and continue through Saturday December 11, 2004. The Scientific and Statistical Committee will begin at 8 a.m. on Monday, December 6, 2004, and continue through Wednesday, December 8, 2004.The Council will begin its plenary session at 8 a.m. on Wednesday, December 8 and continuing through Tuesday December 14. All meetings are open to the public except executive sessions. The Enforcement Committee will meet Tuesday, December 7 from 1 p.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Anchorage Hilton Hotel, 500 West 3rd Avenue, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION: *Council Plenary Session:* The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Reports
Executive Director's Report
National Marine Fisheries Service Management Report
Enforcement Report
Coast Guard Report
Alaska Department of Fish & Game Report (and review of proposals to Board of Fisheries)
U.S. Fish & Wildlife Service Report
Protected Species Report (Review MMPA listing proposed rule
2. Crab Rationalization: Review proposed rule and comment.
3. Gulf of Alaska Groundfish (GOA) Rationalization: Receive report from Community Committee, refine alternatives and options for analysis.
4. GOA Rockfish Demonstration Project: Review available information and take action as necessary.
5. Essential Fish Habitat (EFH) and Habitat Area Particular Concern (HAPC): Review Alternative 5B options analysis; and finalize alternatives. Review HAPC Process, and consider revisions as necessary. Update on proposed Dixon Entrance HAPC area, action as necessary.
6. Improved Retention/Improved Utilization (IR/IU): Finalize alternatives and options, and revise problem statement for Amendment 80.
7. Observer Program: Preliminary review of analysis of program restructuring.
8. Halibut/Sablefish Individual Fishing Quotas (IFQs) Program: Report from IFQ implementation Team and consider initiating amendments. Final Action on 4C/4D amendment. Final action on omnibus regulatory amendments.
9. Halibut Subsistence: Final action on omnibus regulatory amendment.
10. Pacific Cod Allocation: Review background paper and develop problem statement and alternatives.
11. Groundfish Management: Aleutian Island Special Management Area, review preliminary discussion paper. Bering Sea Aleutian Island Salmon Bycatch, develop problem statement and alternatives. Review rockfish management discussion paper (T). Receive report from Non-Target Species Committee. Final groundfish specifications for Gulf of Alaska. Final groundfish specifications for Bering Sea Aleutian Islands. Final action on FMP updates.
12. Staff Tasking: Review tasking and Committee and initiate action as appropriate.
13. Other Business.

Scientific and Statistical Committee (SSC): The SSC agenda will include the following issues:

1. EFH and HAPC
2. Groundfish Management
3. Observer Program

Advisory Panel: The Advisory Panel will address the same agenda issues as the Council.

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

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: November 18, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–3290 Filed 11–22–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111704B]

South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public workshop.

SUMMARY: The Southeast Data, Assessment and Review (SEDAR) process for the Caribbean Yellowtail Snapper and Spiny Lobster consists of a series of three workshops: a data workshop, an assessment workshop, and a review workshop. As part of this series, a Data Workshop is being held. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 8 Data Workshop for yellowtail snapper and spiny lobster will take place December 6–10, 2004. The workshop will be held December 6, 2004, 1 p.m. to 5:30 p.m.; December 7–9, 2004, 8:30 a.m. to 5 p.m.; and December 10, 2004, 8:30 a.m. to12 noon.

ADDRESSES: The Data Workshop will be held at the Frenchman's Reef and Morningstar Resort, 5 EstateBakkeroe, St. Thomas, VI 00801; telephone: (340) 776–8500.

FOR FURTHER INFORMATION CONTACT: John Carmichael, SEDAR Coordinator, SEDAR/SAFMC, One Southpark Circle,

Suite 306, Charleston, SC 29407; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: 843/769–4520.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the SEDAR process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR typically includes three workshops: (1) Data Workshop, (2) Assessment Workshop, and (3) Review Workshop. The product of the Data Workshop and the Assessment Workshop is a stock assessment report, which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment report is independently peer reviewed at the Review Workshop. The products of the Review Workshop are a Consensus Summary Report, which reports Panel opinions regarding the strengths and weaknesses of the stock assessment and input data, and an Advisory Report, which summarizes the status of the stock. Participants for SEDAR workshops are appointed by the Regional Fishery Management Councils. Participants include data collectors, database managers, stock assessment scientists, biologists, fisheries researchers, fishermen, environmentalists, Council members, international experts, and staff of Regional Councils, Interstate Commissions, and state and Federal agencies.

The Data Workshop gathers stock information, synthesizes available data sets, and compiles recommendations concerning the best available data. Workshop Panelists assemble the best available data and document their opinions on various biological and data collection issues. Panelists are responsible for drafting section I of the SEDAR Stock Assessment Report.

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

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the South Atlantic Fishery Management Council office (see **ADDRESSES**) at least 5 business days prior to the workshop.

Dated: November 18, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–3287 Filed 11–22–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111704A]

South 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 South Atlantic Fishery Management Council (Council) will hold meetings of its Shrimp Committee, Mackerel Committee, Protected Resources Committee, Dolphin Wahoo Committee and Snapper Grouper Committee. The Council will also hold a joint meeting of its Ecosystem-Based Management Committee and Habitat Committee, a joint Executive/Finance Committees meeting, and closed sessions of its Personnel Committee and Advisory Panel (AP) Selection Committee. In addition, there will be a public hearing addressing Action 5 in Amendment 6 to the Shrimp Fishery Management Plan (FMP) (Federal permits) and a meeting of the full Council.

DATES: The meeting will be held in December 2004. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at Sheraton Atlantic Beach, 2717 Fort Macon Road, Atlantic Beach, NC 28512; telephone: (1–800) 624–8875 or (252) 240–1155, fax: (252) 240–1452.

Copies of documents are available from Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: 843–571–4366 or toll free at 866/SAFMC-10; fax: 843–769–4520; e-mail: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION:

Meeting Dates

1. *Joint Ecosystem-Based Management and Habitat Committee Meeting: December 6, 2004, 1:30 p.m. – 5 p.m.*

During the joint meeting, the Committees will review the status of the Council's Draft Action Plan for Ecosystem-Based Management and receive an update on workshops conducted thus far relevant to the Action Plan. The Committees will also receive a briefing on the results of the joint meeting of the Council's Habitat AP and Coral AP and provide staff with direction for continued work regarding Ecosystem-Based Management.

Note: A public hearing for Action 5 (federal shrimp permits) in Amendment 6 to the Shrimp Fishery Management Plan (FMP) will be held December 6, 2004 beginning at 6 p.m.

2. *Personnel Committee Meeting: December 7, 2004, 8:30 a.m. – 10 a.m. (CLOSED SESSION)*

The Committee will receive a report from the Executive Director regarding staff issues.

3. *Joint Executive Committee and Finance Committee Meeting: December 7, 2004, 10 a.m. until 12 noon*

The Committees will receive an update on the Calendar Year (CY) 2004 budget, the status of the Fiscal Year 2005 Congressional budget, Approve the CY 2005 activities schedule and the 2005 CY budget, and receive a report on the status of the CY 2005–09 grant budget.

4. *Shrimp Committee Meeting: December 7, 2004, 1:30 p.m. 2:30 p.m.*

The Shrimp Committee will review the public comments received regarding Action 5 to Amendment 6 to the Shrimp FMP. Action 5 in the amendment addresses alternatives for federal shrimp vessel permit requirements in the South Atlantic exclusive economic zone (EEZ). After reviewing comments, the Committee will develop recommendations for full Council to consider.

5. *Mackerel Committee Meeting: December 7, 2004, 2:30 p.m. – 3:30 p.m.*

The Mackerel Committee will review public comments regarding Amendment 15 to the FMP for Coastal Migratory Pelagic Resources (mackerel) in the Gulf of Mexico and South Atlantic. Amendment 15 addresses the current permit moratorium for king mackerel and proposed changes to the fishing year for both king and Spanish mackerel in the South Atlantic. The Committee will review Final Amendment 15 and

develop recommendations for the full Council.

6. *Advisory Panel Selection Committee Meeting: December 7, 2004, 3:30 p.m. 5 p.m. (CLOSED SESSION)*

The Advisory Panel Selection Committee will meet to review applications to the Council's advisory panels and develop recommendations to full Council.

7. *Protected Resources Committee Meeting: December 8, 2004, 8:30 a.m. – 10 a.m.*

The Protected Resources Committee will receive an update on protected resources activities, a report on the Southeast Aquatic Resources Partnership (SARP) meeting, and a briefing on the strategy for reducing sea turtle bycatch in fisheries from NMFS. The Committee will provide input on future activities regarding protected resources.

8. *Dolphin Wahoo Committee Meeting: December 8, 2004, 10 a.m. – 12 noon*

The Dolphin Wahoo Committee will meet to discuss tournament sales of dolphin and wahoo and take action as necessary.

9. *Snapper Grouper Committee Meeting: December 8, 2004, 1:30 p.m. 5 p.m. and December 9, 2004, 8:30 a.m. – 5 p.m.*

The Snapper Grouper Committee will meet to continue its review of draft Amendment 13B to the Snapper Grouper FMP and choose its preferred management measure alternatives. In addition, the Committee will discuss the issue of the renewal timeframe for federal snapper/grouper permits.

10. *Council Session: December 10, 2004, 8:30 a.m. – 1:30 p.m.*

From 8:30 a.m. – 8:45 a.m., the Council will call the meeting order, make introductions and roll call and adopt the meeting agenda.

From 8:45 a.m. – 9:15 a.m., the Council will hear a report from the Shrimp Committee and approve Amendment 6 for formal Secretarial review.

Note: A public comment period on Action 5 (permit requirements) in Shrimp Amendment 6 will be held at 8:45 a.m.

From 9:15 a.m. – 9:30 a.m., the Council will receive a report from the Joint Executive/Finance Committee and take action to approve the CY 2005 Activities Schedule and Budget.

From 9:30 a.m. – 9:45 a.m., the Council will hear a report from the Mackerel Committee and approve Amendment 15 to the FMP for Coastal Migratory Pelagics in the Gulf of Mexico and South Atlantic for formal Secretarial review.

Note: A public comment on Mackerel Amendment 15 will be held at 9:30 a.m.

From 9:45 a.m. – 10 a.m., the Council will hear a report from the Snapper Grouper Committee and take action as appropriate.

From 10 a.m. – 10:15 a.m., the Council will hear a report from the joint meeting of the Ecosystem-Based Management Committee and Habitat Committee and take action as appropriate.

From 10:15 a.m. – 10:45 a.m., the Council will hear a report from the Advisory Panel Selection Committee and appoint Advisory Panel members.

From 10:45 a.m. – 11 a.m., the Council will hear a report from the Protected Resources Committee and take action as appropriate.

From 11 a.m. – 11:15 a.m., the Council will hear a report from the Dolphin Wahoo Committee and take action as appropriate.

From 11:15 a.m. – 11:30 a.m., the Council will hear a report from the Law Enforcement Committee and take action as appropriate.

From 11:30 a.m. – 11:45 a.m., the Council will receive status reports from NMFS Southeast Regional Office.

From 11:45 a.m. – 12:15 p.m., the Council will receive a briefing on litigation and other legal issues affecting the Council (CLOSED SESSION).

From 12:15 p.m. – 1:30 p.m., the Council will hear agency and liaison reports, discuss other business, and review upcoming meetings.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

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

Except for advertised (scheduled) public hearings and public comment, the times and sequence specified on this agenda are subject to change.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by December 3, 2004.

Dated: November 18, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–3289 Filed 11–22–04; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China

November 17, 2004.

AGENCY: The Committee for the Implementation of Textile Agreements (the Committee)

ACTION: Solicitation of public comments concerning a request for safeguard action on imports from China of combed cotton yarn (Category 301).

SUMMARY: The Committee has received a request from the National Council of Textile Organizations, the National Textile Association, and the American Manufacturing Trade Action Coalition (Requestors) asking the Committee to limit imports from China of combed cotton yarn in accordance with the textile and apparel safeguard provision of the Working Party on the Accession of China to the World Trade Organization (the Accession Agreement). The Committee hereby solicits public comments on this request.

FOR FURTHER INFORMATION CONTACT: Jay Dowling, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agriculture Act of 1956, as amended; Executive Order 11651, as amended.

BACKGROUND:

The textile and apparel safeguard provision of the Accession Agreement provides for the United States and other members of the World Trade Organization that believe imports of Chinese origin textile and apparel products are, due to market disruption, threatening to impede the orderly development of trade in these products to request consultations with China with a view to easing or avoiding the disruption. Pursuant to this provision, if the United States requests consultations with China, it must, at the time of the request, provide China with a detailed factual statement showing ''(1) the existence or threat of market disruption;

and (2) the role of products of Chinese origin in that disruption.'' Beginning on the date that it receives such a request, China must restrict its shipments to the United States to a level no greater than 7.5 percent (6 percent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the request. If exports from China exceed that amount, the United States may enforce the restriction.

The Committee has published procedures (the Procedures) it follows in considering requests for Accession Agreement textile and apparel safeguard actions (68 FR 27787, May 21, 2003; 68 FR 49440, August 18, 2003), including the information that must be included in such requests in order for the Committee to consider them.

On October 27, 2004, the Requestors asked the Committee to impose an Accession Agreement textile and apparel safeguard action on imports from China of combed cotton yarn (Category 301) on the ground that an anticipated increase in imports of combed cotton yarn after January 1, 2005, threatens to disrupt the U.S. market for combed cotton yarn. The request is available at *http://otexa.ita.doc.gov*. In light of the considerations set forth in the Procedures, the Committee has determined that the Requestors have provided the information necessary for the Committee to consider the request.

The Committee is soliciting public comments on the request, in particular with regard to whether there is a threat of disruption to the U.S. market for combed cotton yarn and, if so, the role of Chinese-origin combed cotton yarn in that disruption. To this end, the Committee seeks relevant information addressing factors such as the following, which may be relevant in the particular circumstances of this case, involving a product under a quota that will be removed on January 1, 2005: (1) Whether imports of combed cotton yarn from China are entering, or are expected to enter, the United States at prices that are substantially below prices of the like or directly competitive U.S. product, and whether those imports are likely to have a significant depressing or suppressing effect on domestic prices of the like or directly competitive U.S. product or are likely to increase demand for further imports from China; (2) Whether exports of Chinese-origin combed cotton yarn to the United States are likely to increase substantially and imminently (due to existing unused production capacity, to capacity that can easily be shifted from the production of other products to the production of combed cotton yarn, or to an imminent and substantial increase in production capacity or investment in production capacity), taking into account the availability of other markets to absorb any additional exports; (3) Whether Chinese-origin combed cotton yarn that is presently sold in the Chinese market or in third-country markets will be diverted to the U.S. market in the imminent future (for example, due to more favorable pricing in the U.S. market or to existing or imminent import restraints into third country markets); (4) The level and the extent of any recent change in inventories of combed cotton yarn in China or in U.S. bonded warehouses; (5) Whether conditions of the domestic industry of the like or directly competitive product demonstrate that market disruption is likely (as may be evident from any anticipated factory closures or decline in investment in the production of combed cotton yarn, and whether actual or anticipated imports of Chinese-origin combed cotton yarn are likely to affect the development and production efforts of the U.S. combed cotton yarn industry; and (6) Whether U.S. managers, retailers, purchasers, importers, or other market participants have recognized Chinese producers of combed cotton yarn as potential suppliers (for example, through pre-qualification procedures or framework agreements).

Comments may be submitted by any interested person. Comments must be received no later than December 23, 2004. Interested persons are invited to submit ten copies of such comments to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, U.S. Department of Commerce, 14th and Constitution Avenue N.W., Washington, DC 20230.

The Committee will protect any business confidential information that is marked ''business confidential'' from disclosure to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided in which business confidential information is summarized or, if necessary, deleted. Comments received, with the exception of information marked ''business confidential'', will be available for inspection between Monday–Friday, 8:30 a.m. and 5:30 p.m. in the Trade Reference and Assistance Center Help Desk, Suite 800M, USA Trade Information Center, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, DC, (202) 482–3433.

The Committee will make a determination within 60 calendar days of the close of the comment period as to whether the United States will request consultations with China. If the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination. If the Committee makes a negative determination, it will cause this determination and the reasons therefore to be published in the **Federal Register**. If the Committee makes an affirmative determination that imports of Chinese origin combed cotton yarn threaten to disrupt the U.S. market, the United States will request consultations with China with a view to easing or avoiding the disruption.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E4–3306 Filed 11–22–04; 8:45 am]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Removal of Export Visa and ELVIS Requirements for Certain Cotton, Wool, and Man-Made Fiber Socks in Category 432 and 632 Part Produced or Manufactured in the People's Republic of China

November 18, 2004.

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

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection removing visa and ELVIS requirements.

EFFECTIVE DATE: November 24, 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 Bureau of Customs and Border Protection website (*http://www.cbp.gov*), or call (202) 344-2650. 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.

On October 29, 2004, as provided for under paragraph 242 of the Report of the Working Party on the Accession of China to the World Trade Organization

(Accession Agreement), the United States requested consultations with the Government of the People's Republic of China with respect to imports of Chinese origin socks in Category 332/432 and 632 part. Through a letter published on November 1, 2004, the Chairman of CITA directed the Commission, U.S. Customs and Border Protection, to establish a twelve-month limit on these products, beginning on October 29, 2004, and extending through October 28, 2005 (69 FR 63371). At the same time, the Chairman of CITA directed the Commissioner to require that shipments of these products be accompanied by an export visa and Electronic Visa Information System (ELVIS) transmission issued by the Government of the People's Republic of China; this requirement did not apply to shipments exported prior to November 28, 2004. The Government of the People's Republic of China has objected to the requirement that shipments of products in Category 432 and 632 Part be accompanied by an export visa and ELVIS transmission. Therefore, effective on November 24, 2004, the United States is rescinding the visa and ELVIS requirements for products in these categories. However, the quota limit for Category 332/432 and 632 Part remains in effect. Goods in Category 332 shall remain subject to the Group II limit, and will continue to be subject to export visa and ELVIS requirements. CITA will revisit this issue if the situation warrants.

A description of the textile and apparel categories in terms of Harmonized Tariff Schedule of the United States numbers is available in the CORRELATION: Textile and Apparel Category 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 65445, published on November 20, 2003.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

The Committee for the Implementation of Textile Agreements

November 18, 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 28, 2004. Those directives concern the establishment of quota and visa requirements for certain cotton, wool, and man-made fiber socks in Category 332/432 and 632 Part, produced or manufactured in China and exported during the period beginning on October 29, 2004, and extending through October 28, 2005.

Effective on November 24, 2004, you are directed to remove the visa and ELVIS requirements for textile products in Category 432 and 632 part. However, the quota limit for Category 332/432 and 632 Part remains in effect. Goods in Category 332 shall remain subject to the Group II limit, and will continue to be subject to export visa and ELVIS requirements.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of 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. E4–3305 Filed 11–22–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Department Advisory Committee on Women in the Services; (DACOWITS)

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS). The purpose of the Committee meeting is to discuss the 2004 DACOWITS Report. The meeting is open to the public, subject to the availability of space.

Interested persons may submit a written statement for consideration by the Committee and make an oral presentation of such. Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed below no later than 5 p.m., December 2, 2004. Oral presentations by members of the public will be permitted only on Thursday, December 9, 2004, from 4:30 p.m. to 4:45 p.m. before the full Committee. Presentations will be limited to two minutes. Number of oral presentations to be made will depend on the number of requests received from members of the public. Each person desiring to make an oral presentation must provide the point of contact listed below with one (1) copy of the presentation by 5 p.m., December 2, 2004 and bring 35 copies of any material that is intended for distribution at the meeting. Persons submitting a written statement must submit 35 copies of the statement to the DACOWITS staff by 5 p.m. on December 2, 2004.

DATES: 9 December 2004, 10:30 a.m.–5 p.m., 10 December 2004, 8:30 a.m.–5 p.m.

ADDRESSES: Embassy Suites Hotel, Crystal City—National Airport, 1300 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: MSgt Gerald T. Posey, USAF, DACOWITS, 4000 Defense Pentagon, Room 2C548A, Washington, DC 20301–4000. Telephone (703) 697–2122. Fax (703) 614–6233.

SUPPLEMENTARY INFORMATION: Meeting agenda.

Thursday December 9, 2004 10:30 a.m.–5 p.m.

2004 Committee Report, 4:30 p.m.–4:45 p.m. (Public Forum).

Friday December 10, 2004 8:30 a.m.–5 p.m.

2004 Committee Report, 2 p.m.–3:30 p.m. Committee Presents Findings and Recommendations of the 2004 DACOWITS Report to Dr. David S.C. Chu, Under Secretary of Defense for Personnel and Readiness and Mr. Charles Abell, Principle Deputy for Personnel and Readiness.

Note: Exact order may vary.

Dated: November 18, 2004.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–25906 Filed 11–22–04; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

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 submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 23, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

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.

Dated: November 17, 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: Revision.

Title: Common Core of Data (CCD) 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 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.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 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 address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E4–3302 Filed 11–22–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Fernald. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Saturday, December 4, 2004 8:30 a.m.—12 noon.

ADDRESSES: Fernald Closure Project Site, Crosby Township Senior Center, 8910 Willey Road, Harrison, Ohio 45030.

FOR FURTHER INFORMATION CONTACT: Doug Sarno, The Perspectives Group, Inc., 1055 North Fairfax Street, Suite 204, Alexandria, VA 22314, at (703) 837–1197, or e-mail; *djsarno@theperspectivesgroup.com.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board:

The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Goals

- Update status of post-closure education facility
- Understand the status of Legacy Management

8:30 a.m.—Call to Order

8:30 a.m.—Updates and Announcements

9:15 a.m.—Post-closure Education Facility, Status of Trailers/Warehouse Legacy Management Report on Rocky Flats Museum

9:45 a.m.—Legacy Management and Institutional Controls Plan Timeline, DOE Response to Environmental Protection Agency Comments

10:15 a.m.—Break

10:30 a.m.—Planning for Fernald Citizens' Advisory Board History/Final Report

11:40 a.m.—FY 2005 Meeting Topics

12 noon—Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gary Stegner, Public Affairs Office, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to the Fernald Citizens' Advisory Board, Phoenix Environmental Corporation, MS–76, Post Office Box 538704, Cincinnati, OH 43253–8704, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC, on November 18, 2004.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–25913 Filed 11–22–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket Nos. 04–87–NG; 04–93–NG; 04–95–LNG; 04–92–NG; 04–98–NG; 04–96–NG; 04–100–NG; 04–105–NG; 04–103–NG; 04–99–NG; 04–109–NG; 04–110–NG; 04–102–NG; 04–94–NG; 04–97–NG; 04–94–NG; 04–112–NG]

Boise White Paper, L.L.C.; Transcanada Energy Ltd.; Duke Energy LNG Marketing and Management Company; Virginia Power Energy Marketing, Inc.; Pioneer Natural Resources Canada Inc.; Petrocom Ventures, Ltd.; Pasadena Water and Power; Constellation Energy Commodities Group, Inc.; Astra Power, LLC; Glendale Water and Power; WPS Energy Services, Inc.; WPS Energy Services of Canada Corp.; Connecticut Natural Gas Corporation; Hunt Oil Company of Canada, Inc.; Kanebi Inc.; Hunt Oil Company of Canada, Inc.; Regent Resources Ltd.; Office of Fossil Energy; Orders Granting Authority To Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during October 2004, it issued Orders granting authority to import and export natural gas, including liquefied natural gas. These Orders are summarized in the attached appendix and may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation). 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 November 16, 2004.

R.F. Corbin,

Manager, Natural Gas Regulation, Office of Natural Gas Regulatory Activities, Office of Fossil Energy.

APPENDIX—ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

[DOE/FE Authority]

Order No.	Date issued	Importer/Exporter FE docket No.	Import volume	Export volume	Comments
2023	10–7–04	Boise White Paper, L.L.C. 04–87–NG.	10 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on November 1, 2004, and extending through October 31, 2006.
2024	10–14–04	TransCanada Energy Ltd. 04–93–NG.	700 Bcf	300 Bcf	Import and export natural gas from and to Canada, beginning on November 1, 2004, and extending through October 31, 2006.
2025	10–14–04	Duke Energy LNG Marketing and Management company 04–95–LNG.	700 Bcf		Import LNG from various international sources, beginning on October 4, 2004, and extending through October 3, 2006.
2026	10–18–04	Virginia Power Energy Marketing, Inc. 04–92–NG.	100 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on July 1, 2004, and extending through June 30, 2006.
2027	10–27–04	Pioneer Natural Resources Canada Inc. 04–98–NG.	77 Bcf		Import natural gas from Canada, beginning on October 30, 2004, and extending through October 29, 2006.
2028	10–27–04	Petrocom Ventures, Ltd. 04–96–NG.	73 Bcf 73 Bcf	73 Bcf 73 Bcf	Import and export natural gas from and to Canada and Mexico, beginning on November 1, 2004, and extending through October 31, 2006.
2029	10–27–04	Pasadena Water and Power 04–100–NG.	3.8 Bcf		Import natural gas from Canada, beginning on November 1, 2004, and extending through October 31, 2006.
2030	10–27–04	Constellation Energy Commodities Group, Inc.	400 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on November 1, 2004, and extending through October 31, 2006.
2031	10–27–04	Astra Power, LLC 04–103–NG	146 Bcf	146 Bcf	Import and export natural gas from and to Canada, beginning on November 1, 2004, and extending through October 31, 2006.
2032	10–28–04	Glendale Water and Power 04–99–NG.	3.8 Bcf		Import natural gas from Canada, beginning on November 1, 2004, and extending through October 31, 2006.
2033	10–28–04	WPS Energy Services, Inc. 04–109–NG.	100 Bcf	100 Bcf	Import and export natural gas from and to Canada, beginning on November 1, 2004, and extending through October 31, 2006.
2034	10–28–04	WPS Energy Services of Canada Corp. 04–110–NG.	100 Bcf	100 Bcf	Import and export natural gas from and to Canada, beginning on November 1, 2004, and extending through October 31, 2006.
2035	10–28–04	Connecticut Natural Gas Corporation 04–102–NG.	19 Bcf		Import natural gas from Canada, beginning on November 1, 2004, and extending through October 31, 2006.
2036	10–28–04	Kanebi Inc. 04–97–NG	20 Bcf		Import natural gas from Canada, beginning on December 20, 2004, and extending through December 19, 2006.

APPENDIX—ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS—Continued

[DOE/FE Authority]

Order No.	Date issued	Importer/Exporter FE docket No.	Import volume	Export volume	Comments
2037	10–28–04	Hunt Oil Company of Canada, Inc. 04–94–NG.	6 Bcf		Import natural gas from Canada, beginning on December 1, 2004, and extending through November 31, 2006.
2038	10–28–04	Regent Resources Ltd. 04–112–NG.	15 Bcf		Import natural gas from Canada, beginning on October 22, 2004, and extending through October 21, 2006.

[FR Doc. 04–25912 Filed 11–22–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 04–106–NG]

Cascade Natural Gas Corporation; Order Granting Authority To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy (FE) gives notice that it issued DOE/FE Order No. 2045 granting Cascade Natural Gas Corporation authority to import up to 6.4 billion cubic feet of natural gas annually from Canada, over a term of five years that began on November 1, 2004. The natural gas will be imported under a Base Contract and Transaction Confirmation with Enserco Energy.

This Order may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation). It is 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 20585–0334, (202) 586–9478. The Docket Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC November 17, 2004.

R.F. Corbin,

Manager, Natural Gas Regulatory Activities, Office of Global Supply and Security, Office of Fossil Energy.

[FR Doc. 04–25909 Filed 11–22–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 04–107–NG]

Cascade Natural Gas Corporation; Order Granting Authority To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy (FE) gives notice that it issued DOE/FE Order No. 2046 granting Cascade Natural Gas Corporation authority to import up to 7.3 billion cubic feet of natural gas annually from Canada, over a term of four years that began on November 1, 2004. The natural gas will be imported under a Gas Transaction Agreement with Nexen Marketing.

This Order may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation). It is 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 20585–0334, (202) 586–9478. The Docket Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 17, 2004.

R.F. Corbin,

Manager, Natural Gas Regulatory Activities, Office of Global Supply and Security, Office of Fossil Energy.

[FR Doc. 04–25910 Filed 11–22–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Transmission Policy-Level Environmental Impact Statement

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of termination of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: On December 22, 2003, BPA published in the **Federal Register** a Notice of Intent (NOI) to prepare an EIS (Volume 68, Number 245, Page 71101–71102). The NOI announced BPA's intent to prepare an EIS in conjunction with its exploration of a broad range of potential transmission policies. At the time the NOI was issued, BPA decided it would reevaluate the need for this Transmission Policy-Level EIS at the conclusion of the public scoping process under the National Environmental Policy Act (NEPA), based on public comments received and internal considerations. BPA has decided that it is not necessary to proceed with preparation of the Transmission Policy-Level EIS at this time, and therefore BPA is issuing this notice of termination of intent to prepare the Transmission Policy-Level EIS.

FOR FURTHER INFORMATION CONTACT: Mike Mayer or Rick Yarde, NEPA project managers, Bonneville Power Administration—KEC–4, PO Box 3621, Portland, Oregon 97208–3621; toll-free telephone number 1–800–282–3713; fax number 503–230–5699; e-mail addresses *msmayer@bpa.gov* or *rryarde@bpa.gov*.

SUPPLEMENTARY INFORMATION: BPA has been considering the voluntary adoption of a comprehensive policy for its transmission business. At the time the NOI was issued, the EIS thus was proposed as a policy-level document to assist in decision-making for the planning, construction, operation, marketing, and other transmission-related efforts of BPA's Transmission Business Line. Also at that time, BPA decided it would reevaluate the need for this EIS at the conclusion of the public scoping process under NEPA, based on public comments received and internal considerations. Subsequent to publication of the NOI, BPA entered the formal scoping period, informing the public of the proposed Transmission Policy-Level EIS via newspaper notices, Internet postings, regular BPA publications, a focused mailing, and public meetings. The public meetings were held in Portland, Oregon; Seattle and Spokane, Washington; Boise, Idaho; and Helena, Montana, in January and February 2004. Once the meetings had concluded, BPA published the comments received, as well as a Public Meeting Scoping Summary, on the project Internet page on March 19, 2004. In addition to comments noted during the public meetings, BPA received approximately 44 written statements. BPA continued to accept comments on the proposed Transmission Policy-Level

EIS until March 31, 2004. Once scoping ended, BPA revised the Scoping Summary to reflect all comments received, and republished the summary on April 7, 2004.

Based on the results of the public scoping conducted for the Transmission Policy-Level EIS and internal considerations such as the current and most recently projected activities of BPA's Transmission Business Line and budget issues, BPA has decided that continued consideration of a comprehensive policy for BPA's transmission business is not in the best interests of the agency at this time. As a result, it is no longer necessary to proceed with preparation of the Transmission Policy-Level EIS. Therefore, BPA is issuing this notice of termination of intent to prepare the Transmission Policy-Level EIS.

Information gathered from the Transmission Policy-Level EIS public scoping process will be considered in a separate NEPA process being undertaken by BPA to review its Business Plan Environmental Impact Statement (DOE/EIS–0183, June 1995) which since its completion has acted as a comprehensive analysis of the agency's business practices.

Issued in Portland, Oregon, on November 15, 2004.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. 04–25911 Filed 11–22–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

BP Cherry Point Cogeneration Project

AGENCY: Bonneville Power Administration (Bonneville), Department of Energy (DOE).

ACTION: Notice of availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD to implement the proposed action identified in the BP Cherry Point Cogeneration Project Final Environmental Impact Statement (FEIS) (DOE/EIS–0349, August 2004). Under the proposed action, Bonneville will offer contract terms for interconnection of the BP Cherry Point Cogeneration Project (Project) with the Federal Columbia River Transmission System (FCRTS), as requested by BP West Coast Products, LLC (BP) and proposed in the FEIS. Under that contract, Bonneville and BP will jointly construct a switchyard at the Project site, and Bonneville will construct a 230-kilovolt transmission line to connect the Project to the FCRTS (0.8 miles of new construction, and about 5 miles involving reconstruction of an existing transmission line). Bonneville also has decided to offer separate contract terms for firm transmission services from the point of interconnection to the Mid-Columbia trading hub in central Washington (400 megawatts) and to John Day Substation in north central Oregon (200 megawatts).

ADDRESSES: Copies of the ROD and EIS may be obtained by calling BPA's toll-free document request line, 1–800–622–4520. The ROD and EIS Summary are also available on our Web site, *http://www.efw.bpa.gov*.

FOR FURTHER INFORMATION, CONTACT: Thomas C. McKinney, Bonneville Power Administration-KEC–4, P.O. Box 3621, Portland, Oregon, 97208–3621; toll-free telephone number 1–800–282–3713; fax number 503–230–5699; or e-mail *tcmckinney@bpa.gov*.

SUPPLEMENTARY INFORMATION: The proposed Project involves constructing and operating a new 720-megawatt (MW) natural gas-fired, combined-cycle power generation facility at a 265-acre site adjacent to BP's existing Cherry Point Refinery between Ferndale and Blaine in northwestern Whatcom County, Washington. A new switchyard would be constructed at the Project site, connecting to a new 230-kilovolt (kV) double-circuit transmission line 0.8 miles east to Bonneville's existing 230-kV Custer-Intalco No. 2 transmission line. From there, Bonneville would add another 230-kV circuit to Custer Substation by rebuilding the single-circuit Custer-Intalco No. 2 line to double-circuit, a distance of about 5 miles.

A Large Generation Interconnection Agreement with BP would provide for interconnection of the BP Cherry Point Cogeneration Project with the FCRTS and electrical generation in the Bonneville Control Area. The agreement also would provide for construction of interconnection facilities (*i.e.*, adding or modifying electrical equipment at the Cherry Point Switchyard and at Custer and/or Intalco Substations, and/or rebuilding the Custer-Intalco No. 2 transmission line) and continued operations and maintenance of interconnection equipment at BP expense.

Issued in Portland, Oregon, on November 10, 2004.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. 04–25914 Filed 11–22–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER04–691–010, EL04–104–009, ER04–106–004]

Midwest Independent Transmission System Operator, Inc.; Notice of Filing

November 17, 2004.

Take notice that on November 15, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted a compliance filing pursuant to the Commission's September 16, 2004 Order in *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,236 (2004).

The Midwest ISO states that it has electronically served a copy of the filing upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, and all state commissions within the region. In addition, the Midwest ISO states that the filing has been posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading ''Filings to FERC''. The Midwest ISO further states that it will provide hard copies upon request.

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, 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 the parties in 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.

Comment Date: 5 p.m. eastern time on November 29, 2004.

Linda Mitry,

Deputy Secretary.

[FR Doc. E4–3303 Filed 11–22–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER00–744–002, ER00–1712–004, ER00–1703–001]

PPL Brunner Island, LLC, PPL Holtwood, LLC, PPL Martins Creek, LLC, PPL Montour, LLC, PPL Susquehanna, LLC, PPL Electric Utilities Corporation, PPL EnergyPlus, LLC; Notice of Filing

November 17, 2004.

Take notice that on November 9, 2004, PPL Brunner Island, LLC, PPL Holtwood, LLC, PPL Martins Creek, LLC, PPL Montour, LLC and PPL Susquehanna, LLC (collectively, the PPL Generating Companies), PPL Electric Utilities Corporation (PPL Electric) and PPL EnergyPlus, LLC (PPL EnergyPlus), tendered for filing amendments to their pending triennial market power updates pursuant to *Acadia Power Partners, LLC,* 107 FERC ¶ 61,168 (2004). The PPL Generating Companies, PPL Electric and PPL EnergyPlus also submitted amendments to each of their market-based rate tariffs to incorporate the Market Behavior Rules adopted by the Commission in *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations,* 105 FERC ¶ 61,218 (2003).

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, 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 the parties in 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.

Comment Date: 5 p.m. eastern time on November 30, 2004.

Linda Mitry,

Deputy Secretary.

[FR Doc. E4–3304 Filed 11–22–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2004–0020, FRL–7840–4]

Agency Information Collection Activities: Proposed Collection; Comment Request; Willingness To Pay Survey: Phase III Cooling Water Intake Structures, EPA ICR Number 2155.01

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request for a new collection. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before January 24, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OW–2004–0020, to EPA online using EDOCKET (our preferred method), by e-mail to *ow-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, EPA Docket Center, Environmental Protection Agency, Water Docket, EPA West, 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Erik Helm, Office of Science and Technology, 4303T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–1066; fax number: 202–566–1054; e-mail address: *helm.erik@epa.gov*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OW–2004–0020, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's

Federal Register notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

Affected entities: Entities potentially affected by this action are individuals/households.

Title: Willingness to Pay Survey: Phase III Cooling Water Intake Structures.

Abstract: The U.S. Environmental Protection Agency (EPA) is in the process of developing new regulations to provide national performance standards for controlling impacts from cooling water intake structures (CWIS) for Phase III facilities under section 316(b) of the Clean Water Act (CWA). The facilities considered Phase III facilities under Clean Water Act section 316(b) regulations include existing electrical generators with cooling water intake structures that are designed to withdraw 50 million gallons of water per day or less, as well as existing manufacturing and industrial facilities with cooling water intake structures, that withdraw water from rivers, streams, lakes, reservoirs, estuaries, oceans, or other waters of the United States for cooling purposes. The regulation also establishes section 316(b) requirements for new offshore oil and gas extraction facilities.

EPA has previously published final section 316(b) regulations that address new facilities (Phase I) on December 18, 2001 (66 FR 65256) and existing large power producers (Phase II) on July 9, 2004 (69 FR 41576). See 40 CFR part 125, subparts I and J, respectively.

As required under executive Order 12866, EPA performs economic impact and cost/benefit analyses of the section 316(b) regulation for Phase III facilities. Comprehensive, appropriate estimates of total resource value include both use and non-use values, such that the resulting total social benefit estimates may be compared to total social cost. Developing comprehensive quantified benefit estimates for the section 316(b) regulation requires consideration of non-use values because nearly all (96 percent) of impingement and entrainment losses at CWIS consist of either forage species, or non-landed recreational and commercial species that do not have direct uses or, as a result, direct use values. Although individuals do not use these resources directly they may nevertheless be affected by changes in resource status or quality, such that they would be willing to pay to maintain these resources. It is generally accepted that non-use values may be substantial in some cases, and that failure to recognize such values may lead to improper inferences regarding policy benefits and costs. Many public comments on the proposed section 316(b) regulation for Phase II facilities and the Phase II Notice of Data Availability suggested that a properly designed and conducted stated preference, or contingent valuation (CV), survey would be the most appropriate and acceptable method to estimate the non-use benefits of the rule.[1] Stated preference survey methodology is the generally accepted means to estimate non-use values. Stated preference surveys use carefully designed questions to elicit respondents' willingness to pay (WTP) for particular ecological improvements, based on their responses to either discrete choice or open-ended questions regarding hypothetical resource improvements or programs. Such improvements may include increased protection of aquatic habitats or species with particular attributes.

To assess public policy significance or importance of the ecological gains from the section 316(b) regulation for Phase III facilities, EPA proposes to develop a stated preference study to measure non-use benefits of reduced fish losses at CWIS due to the section 316(b) regulation. The study would focus on a broad range of aquatic species, including forage fish and a variety of fish species harvested by commercial and recreational fisherman. The estimated values of reducing impingement and entrainment losses of a variety of fish species are also of academic interest since past studies focused only on a few selected fish species such as salmon and striped bass. The findings from this study would be used in developing estimates of the economic benefits of the section 316(b) regulation for Phase III facilities. These findings would also be pertinent to economists and policy makers studying changes in fish populations and aquatic habitat improvements.

The purpose of this information collection is to assist in the development of a stated preference survey that would allow estimation of non-use benefits from reduced impingement and entrainment attributable to the section 316(b) regulation for Phase III facilities. To assist in the development of a stated preference survey, EPA will conduct a series of focus groups. Such use of focus groups to assist in the design of stated preference surveys is well-established, as is the capacity of focus groups to provide insight into motivations underlying respondents' stated WTP values (Mitchell and Carson 1989; Desvousges *et al.* 1984; Desvousges and Smith 1988; Johnston *et al.* 1995). Focus groups are often described as ''informal sessions in which a skilled moderator leads a group of individuals through a discussion of specific topics to discover their attitudes and opinions'' (Desvousges *et al.* 1984, p. 2–1, cited in Johnston *et al.* 1995 p. 56). Following standard practice, EPA will use focus groups to better understand the public's perceptions and attitude concerning fishery resources, to frame and define [CV] survey questions and to pretest draft survey questions. Focus groups will also be used, following advice of Mitchell and Carson (1989), Desvousges *et al.* (1984), Johnston *et al.* (1995), to test for and eliminate or reduce potential biases which may be associated with stated preference methodology, and to ensure that both researchers and respondents share interpretations of survey language and scenarios.

EPA proposes to conduct 12 focus groups at different locations across the United States. The number of planned focus groups is based on an average number of focus groups used in prior stated preference studies to design a draft survey. Following generally accepted practice (*e.g.*, Desvousges *et al.* 1984), EPA would recruit seven to nine individuals for each focus group. These individuals will be randomly selected by commercial marketing research firms from panels of focus group participants maintained by each firm. Participants will be asked to attend a focus group session and participate in a discussion of specific topics led by a moderator. Participation in the focus group sessions is voluntary. Participants will have to expend time, effort, and travel to participate in the focus group sessions. Following standard practice in marketing research, participants will be compensated for their time and effort. The offered compensation would also help to avoid the self selection bias that otherwise may result. To maximize the research value of the focus group sessions for stated preference survey design, EPA will proceed iteratively. The version of the focus group script available now in the ICR package will undergo several modifications based on findings from initial focus groups. The goal of subsequent modifications is to develop and refine survey questions to ensure greater clarity of survey questions and, as a result, validity of the survey responses. Modifications will also be tested in terms of their ability to

[1] For detail see ''Phase II—Large Existing Electric Generating Plants Response to Public Comment,'' U.S. EPA, 2004. Available at: *http://www.epa.gov/waterscience/316b/commentph2.htm.*

eliminate or reduce biases that may occur in surveys that have undergone insufficient testing and development (Mitchell and Carson 1989). Based on the planned iterative modification of survey questions, the structure of subsequent draft survey instruments will depend on how people respond to surveys and questions in previous focus groups.

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

The EPA would like to solicit comments to:

(i) 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;

(ii) 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;

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

(iv) 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.

Burden Statement: EPA estimates that the public reporting and recordkeeping burden associated with the focus groups will average 160 minutes per respondent. The estimated total number of respondents is 96, producing an approximated 256 hours of total burden at a projected cost of $4,883. EPA estimates that there will be no capital and operating and maintenance cost burden.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: November 2, 2004.

Geoffrey H. Grubbs,

Director, Office of Science and Technology.

[FR Doc. 04–25942 Filed 11–22–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2004–0031, FRL–7840–6]

Agency Information Collection Activities: Proposed Collection; Comment Request; Information Collection Request for National Pollutant Discharge Elimination System (NPDES) and Sewage Sludge Monitoring Reports; OMB Control Number 2040–0004, EPA ICR Number 0229.16

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on February 28, 2005. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before January 24, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OW–2004–0031, to EPA online using EDOCKET (our preferred method), by e-mail to *ow-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, Mail Code 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Direct questions on this ICR to: Jack Faulk, Industrial Branch, Water Permits Division, Office of Wastewater Management; tel.: (202) 564–0768, fax: (202) 564–6431; or e-mail: *faulk.jack@epa.gov*. Or see Section I.C of the **SUPPLEMENTARY INFORMATION.**

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OW–2004–0031, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

Affected Entities: Entities potentially affected by this action are those covered by an NPDES permit and have monitoring and reporting requirements as a condition of the permit. States responsible for reviewing and following up to these reports are also affected.

Title: Information Collection Request for National Pollutant Discharge Elimination System (NPDES) and Sewage Sludge Monitoring Reports; OMB Control Number 2040–0004; EPA ICR Number 0229.16.

Abstract: This ICR estimates the current monitoring, recordkeeping and costs associated with submitting and reviewing Discharge Monitoring Reports

(DMRs), sewage sludge monitoring reports, and other monitoring reports under EPA's NPDES program. The NPDES program regulations, codified at 40 CFR parts 122 through 125, require permitted municipal and non-municipal point source discharges to collect, analyze, and submit data on their wastewater discharges. Under these regulations, the permittee is required to collect and analyze wastewater samples or have the analysis performed at an outside laboratory and report the results to the permitting authority (EPA or an authorized NPDES State) using a DMR, a preprinted form used for reporting pollutant discharge information. Sample monitoring, analysis, and reporting frequencies vary by permit, but must be performed at least annually for all permitted discharges except for certain storm discharges. Upon renewal of this ICR, the permitting authority will continue to require NPDES and sewage sludge facilities to report pollutant discharge monitoring data and other monitoring information. The permitting authority will use the data from these forms to assess permittee compliance, modify/add new permit requirements, and revise effluent guidelines. The monitoring data required of NPDES and sewage sludge facilities represents the minimum information necessary to achieve the Agency's goals and satisfy regulatory standards.

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

The EPA would like to solicit comments to:

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

(2) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: EPA estimates that 79,055 NPDES permittees and 24,346 sludge permittees will perform sample collection, pollutant analysis, reporting and recordkeeping as part of their NPDES permit requirements to collect and report discharge monitoring data to permit authorities. These permittees are expected to provide 598,016 responses to State and Federal NPDES permitting authorities. Nationally, permittees will spend 3,958,146 hours per year to collect samples of their wastewater or sludge, 9,041,965 hours per year to analyze samples collected, 1,202,620 hours per year to record and report the sampling and analysis information on DMRs, and 19,226 hours per year for sludge facilities to maintain records (the recordkeeping burden for the remaining NPDES permittees is reported in the Compliance Assessment ICR, OMB Control No. 2040–0110) for a total of 14,221,957 burden hours annually. Each permittee will spend an average of 138 hours per year (23.8 hours per response) to collect, analyze and report discharge monitoring data. Burden for State permitting authorities to review and follow-up on non-compliance identified in the monitoring reports is estimated to be 150,932 hours.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: November 18, 2004.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. 04–25943 Filed 11–22–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7840–5]

EPA Science Advisory Board Staff Office, Request for Nominations of Experts for the Children's Environmental Exposure Research Study (CHEERS) Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Requesting the nomination of experts for the Science Advisory Board (SAB) CHEERS Review Panel.

DATES: December 17, 2004—Deadline for submitting nomination of experts.

ADDRESSES: U.S. Postal Address—U.S. EPA Science Advisory Board (1400F), EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001. For FedEx or courier deliveries: 1025 F Street, NW., Room 3603, Mail Code: 1400F, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Dr. Suhair Shallal, Designated Federal Officer, by telephone/voice mail at (202) 343–9977, by fax at (202) 233–0643; or via e-mail at *shallal.suhair@epa.gov*. General information concerning the EPA SAB can be found on the EPA SAB Web site at: *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION:

Background: The Science Advisory Board (SAB) was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. Pursuant to a request by EPA's Office of Research and Development, the SAB will conduct a review of the study design of the Children's Environmental Exposure Research Study (CHEERS) entitled ''Longitudinal Study of Young Children's Exposures in their Homes to Selected Pesticides, Phthalates, Brominated Flame Retardants, and Perfluorinated Chemicals.'' The study is designed to fill critical data gaps in understanding children's exposures to pesticides and chemicals that can be found in typical residential environments. It will provide EPA with information to improve both risk assessment and risk management practices that will ultimately be more protective of children's health. In a separate notice, EPA announced the availability of and the opportunity to comment on the above-mentioned document (FRN 68(192):57442–57444; 69(42):10034–10035). The Agency has asked the SAB to comment on: (a) The scientific soundness of the study design (b) the ethical standards of the study design (c) ways of improving the study design.

The SAB will be augmented with members of EPA's Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) and EPA's Children's Health Protection Advisory Council (CHPAC) with additional outside experts to form the SAB CHEERS Review Panel. By including members of three EPA advisory bodies, the SAB, FIFRA SAP

and CHPAC, in the review of this document, the requesting office hopes to benefit from their unique expertise in children's exposure and health risk assessment and to receive a peer review report which reflects the views of these bodies on the charge questions in an expedited manner. Therefore, we are only soliciting additional experts in the areas which are not represented in the current membership of SAB, FIFRA SAP or CHPAC. Additional experts are needed in the following areas: ethical standards of research study protocols and bioethics; development of risk communication tools; and interdisciplinary experts with a focus on children's exposure monitoring and assessment.

This panel will comply with the provisions of the Federal Advisory Committee Act (FACA) and all appropriate SAB procedural policies. Upon completion, the panel's report will be submitted to the SAB for final approval for transmittal to the EPA Administrator.

Availability of the Review Materials: The updated EPA study design will be made available by the Office of Research and Development. For questions and information concerning the review materials, please contact Nicolle Tulve, U.S. EPA, 109 T.W. Alexander Drive, Research Triangle Park, NC 27709 (phone: 919–541–1077), or e-mail: *tulve.nicolle@epa.gov*.

Request for Nominations: The SAB Staff Office is requesting nominations of recognized experts with one or more of the following areas to supplement its available expertise: (a) Bioethics; (b) Interdisciplinary experts with a focus on children's exposure monitoring and assessment; (c) Risk Communication.

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate individuals qualified in the areas of expertise described above to serve on the SAB CHEERS Review Panel. Nominations should be submitted in electronic format through the Form for Nominating Individuals to Panels of the EPA Science Advisory Board which can be accessed through a link on the blue navigational bar on the SAB Web site at: *http://www.epa.gov/sab*. To be considered, all nominations must include the information requested on that form.

Anyone who is unable to submit nominations using this form and any questions concerning any aspects of the nomination process may contact the DFO, as indicated above in this notice. Nominations should be submitted in time to arrive no later than December 17, 2004. Any questions concerning either this process or any other aspects of this notice should be directed to the DFO. The process for forming a SAB panel is described in the Overview of the Panel Formation Process at the Environmental Protection Agency, Science Advisory Board (EPA–SAB–EC–COM–02–010), on the SAB Web site at: *http://www.epa.gov/sab/pdf/ec02010.pdf*.

From the nominees identified by respondents to this **Federal Register** notice (termed the ''Widecast''), the SAB Staff Office will develop a smaller subset (known as the ''Short List'') for more detailed consideration. The Short List will be posted on the SAB Web Site at: *http://www.epa.gov/sab*, and will include, for each candidate, the nominee's name and biosketch. Public comments on the Short List will be accepted for 21 calendar days. During this comment period, the public will be requested to provide information, analysis or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates for the Panel.

For the SAB, a balanced panel (*i.e.*, committee, subcommittee, or panel) is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. Public responses to the Short List candidates will be considered in the selection of the panel, along with information provided by candidates and information gathered by SAB Staff independently on the background of each candidate (*e.g.*, financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluation of an individual Panel member include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) absence of financial conflicts of interest; (c) scientific credibility and impartiality; (d) availability and willingness to serve; and (e) ability to work constructively and effectively in committees.

Short List candidates will be required to fill-out the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency'' (EPA Form 3110–48). This confidential form allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address: *http://www.epa.gov/sab/pdf/epaform3110-48.pdf*.

Dated: November 18, 2004.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 04–25945 Filed 11–22–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

November 17, 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 (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction (PRA) comments should be submitted on or before January 24, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Cathy.Williams@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at 202–418–2918 or via the Internet at *Cathy.Williams@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0180.

Title: Section 73.1610, Equipment Tests.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 500.

Estimated Time Per Response: 0.5 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 250 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: 47 CFR Section 73.1610 requires the permittee of a new broadcast station to notify the FCC of its plans to conduct equipment tests for the purpose of making adjustments and measurements as may be necessary to assure compliance with the terms of the construction permit and applicable engineering standards. The data is used by FCC staff to assure compliance with the terms of the construction permit and applicable engineering standards.

OMB Control Number: 3060–0374.

Title: Section 73.1690, Modification of Transmission System.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 600.

Estimated Time Per Response: 0.5–3 hours.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement.

Total Annual Burden: 1,050 hours.

Total Annual Cost: None.

Privacy Act Impact: No impact(s).

Needs and Uses: 47 CFR Section 73.1690(e) requires AM, FM and TV station licensees to prepare an informal statement or diagram describing any electrical and mechanical modification to authorized transmitting equipment that can be made without prior Commission approval provided that equipment performance measurements are made to ensure compliance with FCC rules. This informal statement or diagram is to be retained at the transmitter site as long as the equipment is in use. The data is used by broadcast licensees to provide prospective users of the modified equipment with necessary information.

OMB Control Number: 3060–0837.

Title: Application for DTV Broadcast Station License.

Form Number: FCC Form 302–DTV.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 600.

Estimated Time Per Response: 1.5–2 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 950 hours.

Total Annual Cost: $245,000.

Privacy Act Impact: No impact(s).

Needs and Uses: Licensees and permittees of DTV broadcast stations are required to file FCC Form 302–DTV to obtain a new or modified station license, and/or to notify the Commission of certain changes in the licensed facilities of these stations. The data is used by FCC staff to confirm that the station has been built to terms specified in the outstanding construction permit, and to update FCC station files. Data is then extracted from FCC Form 302–DTV for inclusion in the subsequent license to operate the station.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–25947 Filed 11–22–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

November 12, 2004.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 23, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov* or Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copy of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0609.

Title: Section 76.934(e), Petitions for Extension of Time.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities; and State, local, or tribal governments.

Number of Respondents: 20.

Estimated Time Per Response: 4 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure.

Total Annual Burden: 80 hours.

Total Annual Costs: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Small cable systems may obtain an extension of time to establish compliance regulations provided that they can demonstrate that

timely compliance would result in economic hardship. Requests for an extension of time are addressed to local franchising authorities concerning rates for basic service tiers.

OMB Control Number: 3060–0484.

Title: Part 4 of the Commission's Rules Concerning Disruptions to Communications.

Form Number: NA.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; and/or State, local or tribal governments.

Number of Respondents: 52.

Estimated Time Per Response: 5 hours (multiple responses annually).

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 1,040 hours.

Total Annual Costs: None.

Privacy Impact Assessement: No impact(s).

Needs and Uses: In recognition of the critical need for rapid, full, and accurate information on service disruptions that could affect homeland security, public health and safety, as well as the economic well-being of our Nation, and in view of the increasing importance of non-wireline communications in the Nation's communications networks and critical infrastructure, we propose to extend our disruption reporting requirements to communications providers who are not wireline carriers. We also propose to move the outage-reporting requirements from part 63 of our rules to part 4.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–25948 Filed 11–22–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 7, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. The Cecil and Olivia Batchelor Family Limited Partnership, J. Gregory Batchelor general partner; and The Olivia and Cecil Batchelor Family Limited Partnership, Rebecca Batchelor Reeves general partner; along with Cecil Batchelor, Oliva Batchelor, J. Gregory Batchelor, Rebecca Batchelor Reeves, Ray Bradley Reeves, Donna Batchelor, and Dependable True Value, Inc., all of Russellville, Alabama; to collectively acquire voting shares of CBS Banc-Corp, Russellville, Alabama, and thereby indirectly acquire voting shares of Citizens Bank & Savings Company, Russellville, Alabama, and Bank of Bolivar, Bolivar, Tennessee.

Board of Governors of the Federal Reserve System, November 17, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–25896 Filed 11–22–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center 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 December 17, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Saladrigas Holdings, LP, Miami, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Premier American Bank, Miami, Florida.

B. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Royal Financial, Inc., Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Royal Savings Bank, Chicago, Illinois.

C. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. First Bankshares of Las Animas, Inc., Las Animas, Colorado; to acquire 9.0 percent of the voting shares of Southern Colorado National Bancorp, Inc., and thereby indirectly acquire voting shares of Southern Colorado National Bank, both of Pueblo, Colorado.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. MNB Ventures, Inc., Mercedes, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Mercedes Bancorp, Inc., Mercedes, Texas, and thereby indirectly acquire Mercedes Delaware Financial Corporation, Dover, Delaware, and Mercedes National Bank, Mercedes, Texas.

Board of Governors of the Federal Reserve System, November 17, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–25895 Filed 11–22–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center 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 December 17, 2004.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045–0001:

1. The Toronto–Dominion Bank, Toronot, Ontario; to acquire 51 percent of the voting shares of Banknorth Group, Inc., and thereby indirectly acquire voting shares of Banknorth, National Association, both of Portland, Maine. **Comments on this application must be received by December 8, 2004**.

B. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Royal Financial, Inc., Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Royal Savings Bank, Chicago, Illinois.

Board of Governors of the Federal Reserve System, November 18, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–25954 Filed 11–22–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—10/12/2004			
20041428	GS Capital Partners 2000, L.P	CSA Acquisition Corp	CSA Acquisition Corp.
20041429	Cypress Merchant Banking Partners II, L.P.	CSA Acquisition Corp	CSA Acquisition Corp.
20041430	Cypress Merchant Banking Partners II, L.P.	Cooper Tire & Rubber Company	Cooper-Standard Automotive, Inc. and other subsidiaries.
20041437	James N. Stanard	RenaissanceRe Holdings Ltd	RenaissanceRe Holdings Ltd.
20041439	The PNC Financial Services Group, Inc.	MetLife, Inc	SSRM Holdings, Inc.
20041472	JLL Partners Fund IV, L.P	The Marco Group, Inc	The Marco Group, Inc.
20050008	Dave & Buster's, Inc	J.W. Childs Equity Partners, L.P	Jillian's Entertainment Holdings, Inc.
Transactions Granted Early Termination—10/14/2004			
20041411	BAE Systems plc	DigitalNet Holdings, Inc	DigitalNet Holdings, Inc.
20041465	CB Riley Investor LLC	MFA Limited Partnership	LNR Property Corporation.
Transactions Granted Early Termination—10/15/2004			
20041433	JLL Partners Fund IV, L.P	Long Point Capital Fund, L.P	CHI Holdings, Inc.
20041435	U.S.I. Holdings Corporation	Summit Global Partners, Inc	Summit Global Partners, Inc.
20041444	TRM Corporation	eFunds Corporation	eFunds Corporation.
20050007	Broadlane, Inc	National Oncology, Alliance, Inc	National Oncology, Alliance, Inc.
Transactions Granted Early Termination—10/18/2004			
20050015	Westmoreland Coal Company	E.ON AG	Westmoreland—LG&E Partners.
20050023	Triton PCS Holdings, Inc	SBC Communications, Inc	AT&T Wireless Services, Inc., Cingular Wireless LLC.

Trans #	Acquiring	Acquired	Entities
20050024	SBC Communications, Inc	Triton PCS Holdings, Inc	Triton PCS Equipment Company, L.L.C., Triton PCS, Inc., Triton PCS License Company, L.L.C., Triton PCS Operating Company, L.L.C.
20050025	Deseret Management Corporation	Emmis Communications Corporation	Emmis Radio License, LLC, Emmis Radio, LLC.
20050026	Emmis Communications Corporation	Deseret Management Corporation	Bonneville Holding Company, Bonneville International Corporation.
20050027	Abbott Laboratories	North Castle Partners II, L.P	Natural Supplement Association, Inc.
20050032	Alliance Data Systems Corporation	Carlyle Partners III, L.P	The Relizon e-CRM Company.
20050035	Fortstmann Little & Co. Equity Partnership VII, L.P.	Imagine Parent Corp	Imagine Parent Corp.
20050036	Sol Price	PriceSmart, Inc	PriceSmart, Inc.
20050037	Alcatel	Spatial Communications Technologies, Inc.	Spatial Communications Technologies, Inc.
Transactions Granted Early Termination—10/19/2004			
20041457	Fortress Investment Fund II, LLC	GreenPoint Financial Corp	c/o GreenPoint Financial Corp., GreenPoint Agency, Inc., GreenPoint Credit, LLC, GreenPoint Credit of Mississippi, LLC.
20050033	Forstmann Little & Co. Equity Partners VII, L.P.	Family Marital Trust c/o the Mark H. McCormick Trust.	IMG Worldwide, Inc.
20050034	Forstmann Little & Co. Subordinated Debt & Equity Management.	Imagine Parent Corp	Imagine Parent Corp.
20050044	Scandent Holdings Mauritius Limited	Aon Corporation	Cambridge Integrated Services Group, Inc.
Transactions Granted Early Termination—10/20/2004			
20050045	Williams Lea Group Limited	Browne & Co., Inc	Browne Business Solutions, Inc
20050054	Stewart A. Resnick & Lynda Rae Resnick.	David H. Gilmour	Fiji Water Holdings, LLC.
20050060	Iron Mountain Incorporated	Connected Corporation	Connected Corporation.
Transactions Granted Early Termination—10/21/2004			
20050021	Herbst Gaming, Inc	Estate of William M. Grace	Mark Twain Casino, L.L.C., St. Joseph Riverboat Partners.
20050022	Herbst Gaming, Inc	ALS Enterprise	Mark Twain Casino, L.L.C.
20050028	United Technologies Corporation	Kidde plc	Kidde plc.
20050065	Doughty Hanson & Co IV Limited	OCM Principal Opportunities Fund II, L.P.	Tumi Holdings, Inc.
Transactions Granted Early Termination—10/22/2004			
20050055	Patni Computer Systems Limited	Cymbal Corporation	Cymbal Corporation.
20050056	Apollo Investment Fund IV, L.P	Sirius Satellite Radio Inc	Sirius Satellite Radio Inc.
20050062	Credit-Based Asset Servicing and Securitization LLC.	National City Corporation	The Provident Bank.
20050063	Roper Industries, Inc	TransCore Holdings, Inc	TransCore Holdings, Inc.
20050070	TCV V, L.P	eHarmony.com, Inc	eHarmony.com, Inc.
20050078	Carlyle Partners III, Hawaii, L.P	Verizon Communications, Inc	Verizon HoldCo, LLC.
20050083	The Edward W. Scripps Trust	Glenn R. Jones	Great American Country, Inc.
Transactions Granted Early Termination—10/25/2004			
20050072	SBC Communications, Inc	Lawrence D. Canarelli	*www.yellowpages.com.* Inc.
Transactions Granted Early Termination—10/27/2004			
20041445	Delhaize Group	Victory Distributors, Inc	Victory Distributors, Inc.
20041454	Hughes Supply, Inc	Southwest Power, Inc	Southwest Power, Inc.
20041455	Hughes Supply, Inc	Western States Electric, Inc	Western States Electric, Inc.
20050012	Harbert Distressed Investment Offshore Fund, Ltd.	J.P. Morgan Chase & Co	Polaroid Holding Company.
20050013	Harbert Distressed Investment Offshore Fund, Ltd.	Leap Wireless International, Inc	Leap Wireless International, Inc.
20050019	Integrated Alarm Services Group, Inc	Tyco International, Ltd	National Alarm Computer Center, Inc.
20050038	Harbert Distressed Investment Offshore Fund, Ltd.	NorthWestern Corporation	NorthWestern Corporation.

Trans #	Acquiring	Acquired	Entities
20050046	Ares Corporate Opportunities Fund, L.P.	KTIN Holdings, LLC	KTIN Holdings, LLC.
20050047	Segal Projects, LLC	NRG Energy, Inc	LSP Equipment, LLC., LSP-Kendall Energy, LLC.
20050048	ArcLight Energy Partners Fund II, L.P.	Allegheny Energy, Inc	Monongohela Power Company, Mountaineer Gas Company.
20050067	Ares Corporate Opportunities Fund, L.P.	Samsonite Corporation	Samsonite Corporation.
20050068	Harris Corporation	Encoda Systems Holdings, Inc	Encoda Systems Holdings, Inc.
20050074	Macquarie Infrastructure Company Trust.	Macquarie Global Infrastructure Fund A.	Macquarie Airports North America Inc., Macquarie Americas Parking Corporation.
20050075	TPG Partner IV, L.P	Enron Corp. (Debtor in Possession)	Portland General Electric Company.
20050076	Macquarie Infrastructure Company Trust.	Macquarie Global Infrastructure Fund B.	Macquarie Airports North America Inc., Macquarie Americas Parking Corporation.
20050080	Vulcan Materials Company	Vulcan Materials Company	Vulcan Chloralkali, LLC.
20050084	AAFK Acquisition, Inc	K&F Industries, Inc	K&F Industries, Inc.
Transactions Granted Early Termination—10/29/2004			
20041442	Olympus Growth Fund IV, L.P	Three Cities Fund III, L.P	Meridian Rail Acquisition Corp.
20041459	BAE Systems plc	Alphatech, Inc	Alphatech, Inc.
20050003	Fidelity National Financial, Inc	InterCept, Inc	InterCept, Inc.
20050040	GlaxoSmithKline plc	Human Genome Sciences, Inc	Human Genome Sciences, Inc.
20050064	Wells Fargo & Company	Richard S. Strong	Strong Capital Management, Inc., Strong Financial Corporation, Strong Investments, Inc., Strong Investor Services, Inc., Strong Retirement Plan Services, Inc.
20050089	Windsor Food Company, Ltd	Fremont Partners III, L.P	SBI Holdings, Inc.
20050091	AB Holdings Inc	Kenneth R. Thomson	Thomson Media Inc.
20050093	Pfizer, Inc	GOJO Industries, Inc	GOJO Indusries, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, or Renee Hallman, Case Management Assistant, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–25934 Filed 11–22–04; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 032 3221]

Petco Animal Supplies, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before December 15, 2004.

ADDRESSES: Comments should refer to ''Petco Animal Supplies, Inc., File No. 032 3221,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the **SUPPLEMENTARY INFORMATION** section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following e-mail box: *consentagreement@ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Alain Sheer, FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3321.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for November 17, 2004), on the World Wide Web, at ''*http://www.ftc.gov/os/2004/11/index.htm.*'' A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Written comments must be submitted on or before December 15, 2004. Comments

should refer to ''Petco Animal Supplies, Inc., File No. 032 3221,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.'' [1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be sent to the following e-mail box: *consentagreement@ftc.gov*.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, a consent agreement from Petco Animal Supplies, Inc. (''Petco'').

The consent agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

Petco is a national retailer that sells pet food, pet supplies, and pet services from over 600 stores throughout the United States. It also sells pet food and supplies through its online store at *http://www.PETCO.com*. This matter concerns alleged false or misleading representations Petco made to consumers about the security of personal information collected through its online store.

The Commission's proposed complaint alleges that Petco represented that personal information it obtained from consumers through *http://www.PETCO.com* was stored in an encrypted format and therefore was not accessible to anyone except the consumer that provided the information. The complaint alleges this representation was false because a commonly known attack on its Web site could and was used to gain access in clear readable text to personal information, including credit card numbers and expiration dates, that Petco obtained from consumers.

The proposed complaint also alleges that Petco represented that it implemented reasonable and appropriate measures to protect the personal information it obtained through the website against unauthorized access. The complaint alleges this representation was false because Petco did not implement reasonable and appropriate measures to detect common vulnerabilities and prevent them from being exploited.

The proposed order applies to Petco's collection and storage of personal information from or about consumers in connection with its online business. It contains provisions designed to prevent Petco from engaging in the future in practices similar to those alleged in the complaint.

Specifically, Part I of the proposed order prohibits Petco, in connection with online advertising, marketing, promotion, offering for sale, or sale of any product or service, from misrepresenting the extent to which it maintains and protects the security, confidentiality, or integrity of any personal information collected from or about consumers.

Part II of the proposed order requires Petco to establish and maintain a comprehensive information security program in writing that is reasonably designed to protect the security, confidentiality, and integrity of personal information collected from or about consumers. The security program must contain administrative, technical, and physical safeguards appropriate to Petco's size and complexity, the nature and scope of its activities, and the sensitivity of the personal information collected from or about consumers. Specifically, the order requires Petco to:

- Designate an employee or employees to coordinate and be accountable for the information security program.
- Identify material internal and external risks to the security, confidentiality, and integrity of consumer information that could result in unauthorized disclosure, misuse, loss, alteration, destruction, or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks. At a minimum, this risk assessment should include consideration of the risks in each area of relevant operation.
- Design and implement reasonable safeguards to control the risks identified through risk assessment, and regularly test or monitor the effectiveness of the safeguards' key controls, systems, and procedures.
- Evaluate and adjust its information security program in light of the results of testing and monitoring, any material changes to its operations or business arrangements, or any other circumstances that Petco knows or has reason to know may have a material impact on the effectiveness of its information security program.

Part III of the proposed order requires that Petco obtain within 180 days after being served with the final order approved by the Commission, and on a biennial basis thereafter, an assessment and report from a qualified, objective, independent third-party professional, certifying, among other things, that: (1) Petco has in place a security program that provides protections that meet or exceed the protections required by Part II of the proposed order, and (2) Petco's security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of consumers' personal information has been protected.

Parts IV through VII of the proposed order are reporting and compliance provisions. Part IV requires Petco to retain documents relating to compliance. It requires Petco to retain most documents for a five-year period; assessments and supporting documents, however, must be retained for three years after the date when each assessment is prepared. Part V requires dissemination of the order now and in the future to persons with

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

responsibilities relating to the subject matter of the proposed order. Part VI requires Petco to notify the Commission of changes in Petco's corporate status. Part VII mandates that Petco submit compliance reports to the FTC. Part VIII is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–25935 Filed 11–22–04; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 042 3153]

Sunbelt Lending Services, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before December 15, 2004.

ADDRESSES: Comments should refer to ''Sunbelt Lending Services, Inc., File No. 042 3153,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the Supplementary Information section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following email box: *consentagreement@ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Jessica Rich, FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3224.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for November 16, 2004), on the World Wide Web, at *http://www.ftc.gov/os/2004/11/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Written comments must be submitted on or before December 15, 2004. Comments should refer to ''Sunbelt Lending Services, Inc., File No. 042 3153,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.'' [1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be sent to the following email box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted a consent agreement, subject to final approval, from Sunbelt Lending Services, Inc. (''Sunbelt''). Sunbelt is a mortgage broker with headquarters in Clearwater, Florida. Sunbelt collects sensitive customer information, including customer names, social security numbers, credit histories, bank account numbers, and income tax returns, and is a ''financial institution'' subject to the Gramm-Leach-Bliley Act's Standards for Safeguarding Customer Information Rule, 16 CFR part 314 (''Safeguards Rule'') and Privacy of Consumer Financial Information Rule, 16 CFR part 313 (''Privacy Rule'').

The proposed consent agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter concerns Sunbelt's alleged violations of the Safeguards and Privacy Rules. The Safeguards Rule, which became effective on May 23, 2003, requires financial institutions to implement reasonable policies and procedures to ensure the security and confidentiality of customer information, including:

---

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

• Designating one or more employees to coordinate the information security program;

• Identifying reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information, and assessing the sufficiency of any safeguards in place to control those risks;

• Designing and implementing information safeguards to control the risks identified through risk assessment, and regularly testing or otherwise monitoring the effectiveness of the safeguards' key controls, systems, and procedures;

• Overseeing service providers, and requiring them by contract to protect the security and confidentiality of customer information; and

• Evaluating and adjusting the information security program in light of the results of testing and monitoring, changes to the business operation, and other relevant circumstances.

The Privacy Rule, which became effective on July 1, 2001, requires financial institutions to provide customers with clear and conspicuous notices that explain the financial institution's information collection and sharing practices and allow customers to opt out of having their information shared with certain non-affiliated third parties.

The Commission's proposed complaint charges that Sunbelt failed to implement the protections required by the Safeguards Rule and, specifically, that it failed to: (1) Identify reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information; (2) implement information safeguards to control the risks to customer information and regularly test and monitor them; (3) develop, implement, and maintain a comprehensive written information security program; (4) oversee service providers and require them by contract to implement safeguards to protect respondent's customer information; and (5) designate one or more employees to coordinate the information security program. The proposed complaint also alleges that Sunbelt failed to provide its online customers with the notice required by the Privacy Rule.

The proposed order contains provisions designed to prevent Sunbelt from future practices similar to those alleged in the complaint. Specifically, Part I of the proposed order prohibits Sunbelt from violating the Safeguards Rule or the Privacy Rule. Part II of the proposed order requires that Sunbelt obtain, within 180 days after being served with the final order approved by the Commission, and on a biennial basis thereafter for ten (10) years, an assessment and report from a qualified, objective, independent third-party professional, certifying that: (1) Sunbelt has in place a security program that provides protections that meet or exceed the protections required by the Safeguards Rule and (2) Sunbelt's security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of consumer's personal information has been protected. This provision is substantially similar to comparable provisions obtained in prior Commission orders under Section 5 of the FTC Act. *See Tower Records*, FTC Docket No. C–4110 (June 2, 2004); *Guess?, Inc.*, FTC Docket No. C–4091 (July 30, 2003); and *Microsoft Corp.*, FTC Docket No. C–4069 (Dec. 20, 2002).

Part II of the proposed order requires Sunbelt to retain documents relating to compliance. For the assessments and supporting documents, Sunbelt must retain the documents for three years after the date that each assessment is prepared.

Parts III through VI of the proposed order are reporting and compliance provisions. Part III requires dissemination of the order now and in the future to persons with supervisory responsibilities. Part IV ensures notification to the FTC of changes in corporate status. Part V mandates that Sunbelt submit compliance reports to the FTC. Part VI is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–25936 Filed 11–22–04; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: IV–E Foster Care and Adoption Assistance Financial Report (IV–E–1).

OMB No.: 0970–0205.

Titled: Financial Reporting Form.

Description: This form is used by states, the District of Columbia and Puerto Rico9 to facilitate the reporting of expenditures for the Foster Care and Adoption Assistance programs. State agencies (including the District of Columbia and Puerto Rico) use this form to report data on a quarterly basis. The form provides specific data regarding financial disbursements, obligations and estimates. It provides states with a mechanism to request grant awards and certify the availability of state matching funds. Failure to collect this data would seriously compromise the Administration for Children and Families' (ACF) ability to issue grant awards monitor expenditures. This form is also used to prepare the ACF budget submission to Congress. ACF is implementing the On-Line Data Collection System (OLDC) to allow grantees the option to electronically submit the data.

Respondents: States, District of Columbia and Puerto Rico Annual Burden Estimates.

Instrument	Number of respondents	Number of responses per respondent (per year)	Average burden hours per response	Total burden hours
IV–E 1	52	4	24.5	5,096
IV–E–1 Proj.	52	2	1	104

Estimated Total Annual Burden Hours: 5,200.

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: November 16, 2004.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 04–25892 Filed 11–22–04; 8:45 am]

BILLING CODE 4184–01–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 commerical property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel NIAID AIDS Training Grant.

Date: December 14, 2004.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, 3145, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Geetha P. Bansal, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, Room 3145, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 402–5658, *gbansal@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: November 15, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–25902 Filed 11–22–04; 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: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Unsolicited Program Project (PO1) Application.

Date: December 14, 2004.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: John A. Bogdan, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *jbogdan@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: November 15, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–25903 Filed 11–22–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Conformationally Locked Nucleoside Analogs

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the following invention as embodied in the following patent applications: DHHS Ref. No. E–231–1993; U.S. Serial Number 08/126,796, filed on September 24, 1993; 08/311,425, filed on September 23, 1994, U.S. Patent No. 5,629,454; 08/818,563, filed on March 14, 1997, U.S. Patent No. 5,869,666; PCT (PCT/US94/10794) filed on September 23, 1994, and National Stage filed in Singapore (9607728–4), Australia (78420/94), Canada (2172534), Europe (94929321.1), Japan (07–506691), Greece (3026166); DHHS Ref. No. E–100–1996; U.S. Provisional 60/023,565, filed on August 7, 1996; U.S. Serial Number 08/908,724, filed on August 7, 1997, U.S. Patent No. 5,840,728; PCT (PCT/US96/12800) filed on August 15, 1996; DHHS Ref. No. E–249–2000; U.S. Provisional 60/220,934, filed on July 26, 2000; U.S. Serial Number 10/346,762, filed on January 15, 2003; PCT (PCT/US01/23246) filed on July 24, 2001, and National Stage filed in Australia (2001278993), Canada (2417251), Europe (01951228.8) to N&N Scientific, having a place of business in Maryland but incorporated in Illinois. The patent rights in these inventions have been assigned to the United States of America.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before January 24, 2005 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Robert M. Joynes, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Email: *joynesr@od.nih.gov*; Telephone: (301) 594–6565; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be

royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The compounds of the present invention represent the first examples of carbocyclic dideoxynucleosides that in solution exist locked in a defined N-geometry (C3′-endo) conformation typical of conventional nucleosides. These analogues exhibit increased stability due to the substitution of carbon for oxygen in the ribose ring. The invention includes 4′-6′-cyclopropane fused carbocyclic dideoxynucleosides, 2′-deoxynucleosides and ribonucleosides as well as oligonucleotides derived from these analogues; the preferred embodiment of the invention is carbocyclic-4′-6′-cyclopropane-fused analogues of dideoxypurines, dideoxypyrimidines, deoxypurines, deoxypyrimidines, purine ribonucleosides and pyrimidine ribonucleosides. In addition, oligonucleotides derived from one or more of the nucleosides in combination with the naturally occurring nucleosides are within the scope of the present invention.

The invention also includes a method for the treatment of herpes virus infections by the administration of cyclopropanated carbocyclic 2′-deoxynucleosides to an affected individual. This invention is a method of administration of the compounds described above. The compounds of this invention are particularly efficacious against herpes simplex viruses 1 and 2 (HSV–1 and HSV–2), Epstein-Barr Virus (EBV) and human cytomegalovirus (CMV), although the nucleoside analogues of the invention may be used to treat any condition caused by a herpes virus. Specifically, the N-methanocarba-T (Thymidine) analogue (hereafter (N)–MCT) has been shown to exhibit strong activity against HSV–1 and HSV–2, and moderate to strong activity against EBV. Significantly, the anti-HSV activity of the Thymidine analogue is thirty times more potent than Acyclovir (shown in a plaque reduction assay), a widely used anti-HSV therapeutic. Furthermore, the Thymidine analogue is also non-toxic against stationary cells and is potent against rapidly dividing cells. Dosage amounts for the compounds are similar to those of Acyclovir.

The field of use may be limited to development of antiviral therapeutics.

The licensed territory will be exclusive worldwide.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: November 15, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–25956 Filed 11–22–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS NO. 2330–04]

RIN 1615–ZA07

Information Regarding the H–1B Numerical Limitation for Fiscal Year 2005

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notice.

SUMMARY: This notice explains how the Department of Homeland Security (DHS), through U.S. Citizenship and Immigration Services (USCIS), will process H–1B petitions for new employment for Fiscal Year (FY) 2005 now that it is clear that the demand for H–1B workers will exceed the statutory numerical limit (the cap) for H–1B nonimmigrant aliens for FY 2005. This notice is published so that the public will understand the procedure for processing H–1B petitions now that the cap is reached, as this procedure may affect the hiring decisions of some prospective H–1B petitioners. These procedures are intended to minimize confusion and the burden on employers who use the H–1B program.

DATES: This notice is effective November 23, 2004.

FOR FURTHER INFORMATION CONTACT: Kevin J. Cummings, Business and Trade Services Branch/Program and Regulation Development, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529, telephone (202) 305–3175.

SUPPLEMENTARY INFORMATION:

Who Is an H–1B Nonimmigrant?

An H–1B nonimmigrant is an alien employed in a specialty occupation or as a fashion model of distinguished merit and ability. A specialty occupation is an occupation that requires theoretical and practical application of a body of specialized knowledge and attainment of a bachelor's or higher degree in the specific specialty as a minimum for admission into the United States.

What Is the Cap or Numerical Limitation on the H–1B Nonimmigrant Classification?

Section 214(g) of the Immigration and Nationality Act (Act) provides that the total number of aliens who may be issued H–1B visas or otherwise granted H–1B status during FY 2005 may not exceed 65,000. In accordance with the Free Trade Agreements (FTA) for Chile and Singapore, as approved by Congress in Public Laws 108–77 and 108–78, 1,400 out of the 65,000 H–1B numbers are reserved for H–1B1 nonimmigrants from Chile, and 5,400 out of the 65,000 are reserved for H–1B1 nonimmigrants from Singapore. This effectively reduces the overall number of H–1B numbers that may be used prior to September 30, 2005, from 65,000 to 58,200.

Section 214(g)(8)(B)(iv) of the Act also requires that any unused H–1B1 numbers set aside for aliens from Chile and Singapore be applied to the numerical limitation for the fiscal year in which they were not used. Visas may be issued under such an adjustment within 45 days of the next fiscal year to aliens who had applied for such visas during the fiscal year for which the adjustment was made. Id. The total number of Chileans and Singaporeans who were granted H–1B1 visas or otherwise granted H–1B1 status during FY 2004 was less than 100. Therefore, pursuant to Section 214(g)(8)(B)(iv), USCIS has returned approximately 6,700 unused H–1B1 numbers to the FY 2004 H–1B cap.

Following the adjustment for the Chile and Singapore H–1B1 program, and taking into account any other cases that can be counted against the FY 2004 cap, there now appears to be a sufficient number of H–1B petitions with employment start dates prior to October 1, 2005 pending at the USCIS Service Centers to reach the adjusted cap for FY 2005. Therefore, as of October 2, 2004, and until April 1, 2005, USCIS will return any petitions (along with the filing fee and, if applicable, the premium processing fee) requesting an

employment start date prior to October 1, 2005.

What Is the Effect of This Notice?

This notice explains the USCIS procedure for processing H–1B petitions for new employment, which are subject to the H–1B cap, and filed by employers seeking to employ H–1B aliens on or before September 30, 2005.

Will Electronic Filing (e-Filing) for H–1B Nonimmigrant Classification Still Be Available Now That the H–1B Cap for FY 2005 Has Been Reached?

No. Since the H–1B cap has been reached and USCIS is no longer accepting H–1B petitions pursuant to FY 2005 employment, e-filing for H–1B nonimmigrant classification has also been suspended. H–1B extensions and non-cap H–1B cases must now be filed under the mail-in process. In accordance with 8 CFR part 214.2(h)(9)(i)(B), which allows petitions for H–1B classification to be filed 6 months prior to the requested employment start date, petitions filed for work to commence on October 1, 2005 (FY 2006) may be filed via e-filing as early as April 1, 2005.

Why Was the Cap or Numerical Limitation on the H–1B Nonimmigrant Classification Reached So Early in FY 2005?

The FY 2004 cap or numerical limitation on the H–1B nonimmigrant classification was reached on February 17, 2004. As explained in the February 25, 2004 notice published in the **Federal Register** at 69 FR 8675, and under the procedure also carried out in this notice, USCIS regulations at 8 CFR part 214.2(h)(9)(i)(B) allow petitions for H–1B classification to be filed 6 months prior to the requested employment start date. Therefore, beginning on April 1, 2004, petitions filed for work to commence on October 1, 2004 could be filed. Although these petitions were filed in calendar year 2004 they count against the FY 2005 H–1B cap, unless applied to the required adjustment under Section 214(g)(8)(B)(iv).

The H–1B cap or numerical limitation of 65,000 under section 214(g) of the Act is set by Congress, and USCIS is required to adhere to the statutory numerical limitation.

Does This Notice Announcing That the Cap Has Been Reached for FY 2005 Affect All H–1B Petitions Filed for FY 2005?

No. This notice relates only to H–1B petitions filed for beneficiaries who are subject to the numerical limitations and will be engaged in ''new employment,'' to commence on or before September 30, 2005. A petition for new employment includes a petition where the alien beneficiary is outside the United States when the H–1B petition is approved or where the alien is already in the United States in another status and is seeking H–1B status, either through a change of nonimmigrant status from within the United States or a notice to the Consulate of the eligibility for the new status.

Petitions for beneficiaries exempt from the H–1B numerical limitations, amended petitions, and petitions for extension of stay are not affected by this procedure because these petitions do not count against the cap. Likewise, petitions for aliens in the United States who already hold H–1B status, *i.e.*, petitions filed on behalf of an H–1B alien by a new or additional employer, generally are not affected by this procedure. This procedure does not relate to petitions filed before October 1, 2005, for employment to commence on or after October 1, 2005.

What Is the USCIS Procedure for Processing H–1B Petitions for New Employment During the Remainder of FY 2005?

This notice informs the public that there appears to be a sufficient number of H–1B petitions pending at USCIS Service Centers to reach the adjusted cap of 58,200 for FY 2005. As of October 2, 2004, USCIS will not accept for adjudication any H–1B petition for new employment containing a request for a work start date prior to October 1, 2005. Petitions filed on or after October 2, 2004 will be returned (along with the filing fee and, if applicable, the premium processing fee) to the petitioner according to 8 CFR 214.2(h)(8)(ii)(E). In accordance with existing regulations, such petitioners may refile those petitions after April 1, 2005, with a new starting date of October 1, 2005, or later.

USCIS has established how many H–1B petitions are pending and will likely count towards the FY 2005 statutory limit. USCIS will adjudicate all petitions filed prior to October 2, 2004 in the order in which they are received. USCIS is not suspending premium processing and normal rules applicable to those cases filed on or before October 1, 2004 still apply.

How Should a Petitioner Notify USCIS That It Wishes To Withdraw a Petition?

If a petitioner wishes to withdraw a pending H–1B petition or an approved H–1B petition for new employment, the petitioner should send a withdrawal request to the USCIS service center where the petition is pending or was filed and approved. The request should be signed by the petitioner or an authorized representative and include the filing receipt number and the names of both the petitioner and beneficiary.

Does This Process Apply to H–1B Petitions Filed for Employment To Commence On or After October 1, 2005?

No. Those petitions are not affected by the procedures described in this notice and will be adjudicated in the normal fashion, regardless of whether they are filed after this year's cap is reached. Petitioners are reminded that, pursuant to 8 CFR part 214.2(h)(9)(i)(B), petitions for H–1B classification may not be filed or approved more than 6 months prior to the requested employment start date. Therefore, petitioners filing for work to commence on October 1, 2005 should not file prior to April 1, 2005. H–1B petitions filed for employment to commence on or after October 1, 2005 will be counted, if otherwise chargeable against the annual H–1B cap, against the FY 2006 numerical cap.

How Will USCIS Treat H–1B Petitions That Are Revoked for Any Reason Other Than Fraud or Willful Misrepresentation?

For purposes of the annual numerical limitation, if an H–1B petition was approved in a prior fiscal year (*e.g.* FY 2001, 2002, 2003, 2004) but revoked in FY 2005, that revocation will have no effect on the FY 2005 cap and the number will not be restored to the total number of H–1B new petition approvals available for the remainder of FY 2005.

However, if an H–1B petition was approved in FY 2005 (and the approval was counted against the FY 2005 cap), and the H–1B petition subsequently is revoked during FY 2005 for any reason other than fraud or willful misrepresentation (*e.g.* the petitioner goes out of business), that number will be restored to the total number of H–1B petition approvals available for the remainder of FY 2005. If the same H–1B petition is revoked for any reason other than fraud or willful misrepresentation after the end of FY 2005, USCIS will not restore the number to the FY 2005 cap.

How Will USCIS Process H–1B Petitions That Are Revoked for Fraud or Willful Misrepresentation?

Section 108 of the American Competitiveness in the Twenty-first Century Act of 2000, Public Law 106–313 (''AC21''), sets forth the procedure when an H–1B petition is revoked on the basis of fraud or willful

misrepresentation. Under AC21, one number for each petition that is revoked on the basis of fraud or misrepresentation shall be restored to the total number of H–1B petition approvals available for the fiscal year during which an H–1B petition is revoked, regardless of the fiscal year in which the petition was approved.

How Will USCIS Process H–1B Petitions That Were Originally Denied But Subsequently Ordered Approved by the Administrative Appeals Office or by a Federal Court?

USCIS has considered cases currently on appeal in its determination of cases that could count towards the statutory cap. USCIS will process approved petitions in the order that they were originally filed with USCIS or the former Immigration and Naturalization Service.

Will USCIS Refund a Filing Fee if a Petition Is Withdrawn or Revoked?

No, USCIS will not refund the $185 filing fee when a petition is revoked or withdrawn. The provisions contained in 8 CFR 103.2(a)(1) preclude the refunding of filing fees on Form I–129 petitions in these situations. USCIS will refund a filing fee only if the refund request is based on USCIS error or if the petition is filed subsequent to October 1, 2004. It should be noted that H–1B cap cases filed under the premium processing program are subject to the conditions contained in this notice.

Dated: October 4, 2004.

Michael Petrucelli,

Deputy Director, U.S. Citizenship and Immigration Services.

[FR Doc. 04–25917 Filed 11–22–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903-N–93]

Notice of Submission of Proposed Information Collection to OMB; Application for Access to the Automated Clearing House (ACH)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of correction.

SUMMARY: The notice previously published under Docket No. FR–4903–N–92 displayed an incorrect title heading. The correct title is ''Application for access to the Automated Clearing House (ACH).'' The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This is a request for continued approval to collect information from Title I Lenders applying for access to the Automated Clearing House (ACH) Program for electronic premium payment for the Title I Mortgage Insurance Program.

DATES: *Comments Due Date:* December 23, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0512) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* or Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms Deitzer and at HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm*.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Application for access to the Automated Clearing House (ACH)

OMB Approval Number: 2502–0512.

Form Numbers: HUD–56150.

Description of The Need For the Information and Its Proposed Use:

This is a request for continued approval to collect information from Title I Lenders applying for access to the Automated Clearing House (ACH) Program for electronic premium payment for the Title I Mortgage Insurance Program.

Frequency of Submission: On occassion.

	Number of burden respondents	Annual responses	×	Hours per response	=	Hours
Reporting Burden	2,406	147		0.2		29.4

Total Estimated Burden Hours: 29.4.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 16, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E4–3282 Filed 11–22–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Submission of Information Collection to the Office of Management and Budget (OMB) for Review Under the Paperwork Reduction Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) is submitting the information collection titled the Bureau of Indian Affairs Higher Education Grant Program Annual Report Form, OMB Control Number 1076–0106, and the Bureau of Indian Affairs Higher Education Grant Application Form, OMB Control Number 1076–0101 to OMB for approval under the Paperwork Reduction Act. Approval of the Higher Education Annual Grant Report form and the Higher Education Grant Application need to be renewed.

DATES: Submit comments on or before December 23, 2004.

ADDRESSES: You may submit comments on the information collection to the Desk Officer for the Department of the Interior, by facsimile at (202) 395–6566, or via e-mail: *OIRA_DOCKET@omb.eop.gov*.

Please send a copy of your comments to Director, Office of Indian Education Programs, 1849 C Street, NW., MS–3609–MIB, Washington, DC 20240. The telephone number is (202) 208–6123.

FOR FURTHER INFORMATION CONTACT: You may request further information or obtain copies of the information collection from Garry R. Martin, Branch Chief, Branch of Planning, Office of Indian Education Programs, 1849 C Street, NW., MS–3609–MIB, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The Bureau of Indian Affairs Higher Education Grant Program Annual Report Form (OMB No. 1076–0106) provides a profile of program financial data from which to derive a national analysis of supplemental funding, unmet financial needs of eligible students and college graduation rates. Authority for the collection of information is contained in Public Law 93–638, The Indian Self-Determination and Education Assistance Act of 1975, as amended. The Bureau of Indian Affairs Higher Education Grant Application (OMB No. 1076–0101) provides for an annual collection of information required to make a determination of an applicant's eligibility for funding. The information must be collected for the applicant to be considered for a benefit. A request for comments on these information collection requests appeared in the **Federal Register** on April 16, 2004 (69 FR 20636). No comments were received regarding either of the information collection forms.

Request for Comments

The Bureau of Indian Affairs requests you to send your comments on this collection to the locations listed in the **ADDRESSES** section. Your comments should address:

(a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used;

(c) Ways we could enhance the quality, utility and clarity of the information to be collected; and

(d) Ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it has valid OMB Control Number.

It is our policy to make all comments available to the public for review at the Bureau of Indian Affairs location listed in the **ADDRESSES** section, room 3609, during the hours of 8 a.m. to 4 p.m., Monday through Friday, except for legal holidays. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comments. We will honor your request according to the requirements of the law. All comments from organizations or representatives will be available for review. We may withhold comments from review for other reasons.

OMB has up to 60 days to make a decision on the submission for renewal, but may make the decision after 30 days. Therefore, to receive the best consideration of your comments, you should submit them as early as possible.

Bureau of Indian Affairs Higher Education Grant Program Annual Report Form

Title: Bureau of Indian Affairs Higher Education Grant Program Annual Report Form.

OMB Approval Number: 1076–0106.

Type of Review: Renewal.

Brief Description of Collection: Respondents who receive a grant are required to submit an annual report.

Respondents: Tribal higher education program directors.

Number of Respondents: 125.

Estimated Time Per Response: 3 hours.

Frequency of Response: Annual.

Total Annual Burden to Respondents: 375 hours.

Bureau of Indian Affairs Higher Education Grant Program Application

Title: Bureau of Indian Affairs Higher Education Grant Program Application.

OMB Approval Number: 1076–0101.

Type of Review: Renewal.

Brief Description of Collection: Respondents receiving a benefit must annually complete the form to demonstrate unmet financial need for consideration for a grant.

Respondents: Tribal members, students.

Number of Respondents: 14,000.

Estimated Time Per Response: 1 hour.

Frequency of Response: Annual.

Total Annual Burden to Respondents: 14,000 hours.

Dated: November 15, 2004.

David W. Anderson,

Assistant Secretary—Indian Affairs.

[FR Doc. 04–25949 Filed 11–22–04; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF THE INTERIOR

National Park Service

Plan of Operations, Environmental Assessment, Padre Island National Seashore, TX

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of a plan of operations, environmental assessment, and floodplains statement of findings for a 30-day public review at Padre Island National Seashore.

SUMMARY: The National Park Service (NPS), in accordance with § 9.52(b) of

Title 36 of the Code of Federal Regulations and Executive Order 11988, Floodplain Management has received from BNP Petroleum Corporation a Plan of Operations for drilling and production of the Dunn-Peach No. 2, 3, 4 , 5, and 6 Wells from the existing Dunn-Peach No. 1 Well surface location 6.9 miles south along the Gulf beach, from the end of Park Road 22, within Padre Island National Seashore. Additionally, the NPS has prepared an Environmental Assessment and a Floodplains Statement of Findings for the site of the proposed wells.

DATES: The above documents are available for public review and comment through December 23, 2004.

ADDRESSES: The Plan of Operations, Environmental Assessment, and Floodplain Statement of Findings are available for public review and comment in the Office of the Superintendent, Colin Campbell, Padre Island National Seashore, 20301 Park Road 22, Corpus Christi, Texas. Copies of the Plan of Operations are available, for a duplication fee, from the Superintendent, Colin Campbell, Padre Island National Seashore, P.O. Box 181300, Corpus Christi, Texas 78480–1300.

FOR FURTHER INFORMATION CONTACT: Ms. Arlene Wimer, Environmental Protection Specialist, Padre Island National Seashore, P.O. Box 181300, Corpus Christi, Texas 78480–1300, Telephone: 361–949–8173 x 224, e-mail at *Arlene_Wimer@nps.gov*.

SUPPLEMENTARY INFORMATION: If you wish to submit comments about this document within the 30 days; mail them to the post office address provided above, hand-deliver them to the park at the street address provided above, or electronically file them to the e-mail address provided above. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: September 17, 2004.

Michael D. Snyder,

Deputy Director, Intermountain Region, National Park Service.

[FR Doc. 04–26001 Filed 11–22–04; 8:45 am]

BILLING CODE 4312–CD–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October, 16, 2004. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by December 8, 2004.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ARIZONA

Maricopa County

Phoenix Union High School Historic District (Boundary Decrease), 512 E. Van Buren, Phoenix, 04001248

Pima County

Agua Caliente Ranch Rural Historic Landscape, (Cattle Ranching in Arizona MPS) 12325 E. Roger Rd., Tucson, 04001246

Empirita Cattle Ranch Rural Historic District, (Cattle Ranching in Arizona MPS) Between Vail & Benson S. of I10, Benson, 04001247

KENTUCKY

Boone County

South Main Street Historic District, (Boone County, Kentucky MPS) Roughly along Main St. between Edwards and Oreco Sts., Walton, 04001249

Christian County

Whitepath and Fly Smith Gravesite, (Cherokee Trail of Tears MPS) P.O. Box 350, Hopkinsville, 04001250

Daviess County

Owensboro Historic Downtown Commercial District, (Owensboro MRA) Roughly between Frederica, Clay, 2nd & 4th Sts., Owensboro, 04001251

Jefferson County

St. Cecilia School Building, 2530 Slevin St., Louisville, 04001252

Livingston County

Mantle Rock, (Cherokee Trail of Tears MPS) KY133, Smithland, 04001253

Todd County

Gray's Inn, (Cherokee Trail of Tears MPS) 88 Graysville Rd., Guthrie, 04001254

Whitley County

Lane Theater, 510 Main St., Williamsburg, 04001255

MASSACHUSETTS

Middlesex County

South Burying Ground, (Newton MRA) Winchester St., Newton, 04001256

Plymouth County

Pillsbury Summer House, 45 Old Cove Rd., Duxbury, 04001257

Worcester County

Warren First Congregational—Federated Church, 25 Winthrop Ter., Warren, 04001258

NEW JERSEY

Bergen County

Bogert, John Jacob, House, 163 Bogert's Mill Rd., Harrington Park, 04001259

Burlington County

Burlington's Lost Burial Ground, Address Restricted, Burlington, 04001260

Cape May County

Ludlam, Thomas Jr., House, 707 NJ47, Dennis Township, 04001261

OREGON

Deschutes County

Downing Building, 1033–1035 NW Bond St., Bend, 04001262

Multnomah County

Auto Freight Transport Building of Oregon and Washington, (Eastside MRA) 1001 SE Water Ave., Portland, 04001263

Bruening, Henry C. and Wilhemina, House, 5919 N. Williams, Portland, 04001264

VIRGINIA

Accomack County

Cokesbury Church, 13 Market St., Onancock, 04001265

Fauquier County

Atoka Historic District, 1461, 1466, 1468, 1481 Atoka Rd. & 7258, 7260 Rectors Ln., Atoka, 04001266

Rectortown Historic District, Roughly bounded by Maidstone, Rectortown, Atoka, Lost Corner and Crenshae Rds., Rectortown, 04001267

Lexington Independent City

Lexington and Covington Turnpike Toll House, 453 Lime Kiln Rd., Lexington, 04001268

Loudoun County

Janney House, 15 W. Colonial Hwy., Hamilton, 04001269

Northampton County

Chandler, John W., House, 3342 Main St., Exmore, 04001270

Patrick County

Goblintown Mill, 888 Iron Bridge Rd., Stuart, 04001271

Pulaski County

New Dublin Presbyterian Church, New Dublin Church Rd., Dublin, 04001272

Rappahannock County

Laurel Mills Historic District, Roughly bounded by Laurel Mills Rd., Thornton R. & Laurel Mills Farm, Laurel Mills, 04001273

Sunnyside, 186 Sunnyside Orchard Ln., Washington, 04001274

Roanoke Independent City

Boxley—Sprinkle House, 2611 Crystal Spring Ave., Roanoke, 04001275

Henry Street Historic District, 100 blk. of Henry St. NW, Roanoke, 04001276

Suffolk Independent City

West End Historic District (Boundary Increase), Roughly bounded by Wellons, Washington & Smith Sts., Suffolk, 04001277

WISCONSIN

Ozaukee County

Green Bay Road Historic District, 149—195 Green Bay Rd., Thiensville, 04001278

Main Street Historic District, 101 N. Main St., 105—130 S. Main St., 101 Green Bay Rd. & 107 W. Buntrock Ave., Thiensville, 04001279

[FR Doc. 04–25898 Filed 11–22–04; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of Agriculture, Forest Service, Angeles National Forest, Arcadia, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the U.S. Department of Agriculture, Forest Service, Angeles National Forest, Arcadia, CA. The human remains were removed from a site at Chilao Flats, Angeles National Forest, Los Angeles County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Angeles National Forest professional staff in consultation with representatives of the San Manuel Band of Serrano Mission Indians of the San Manuel Reservation, California; Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California; Native American Heritage Commission; and over 70 individuals representing nonfederally recognized Indian groups.

In 1954, human remains representing a minimum of one individual were removed from archeological site 05-01-51-08 (CA-LAn-1010), located in Chilao Flats, Angeles National Forest, Los Angeles County, CA, during salvage excavations conducted by archeologists from the Southwest Museum, Highland Park, CA, and the Archaeological Survey Association. The excavations were undertaken in response to discovery of human remains and artifacts during construction of a sewer line for a Forest Service residence. Human bone (some fragments burned, others unburned or slightly burned) and cultural items were recovered. Following the excavation, the human remains were curated at the Southwest Museum under accession number 28-S until 2004, when they were transferred to Angeles National Forest. Records indicate that some material from this excavation was loaned back to the Angeles National Forest in the early 1960s at which time some of it was lost or stolen. No known individual was identified. The 69 associated funerary objects are 11 pieces of charcoal, four fragments of red garnet, one piece of jasper, five ochre/hematite fragments, one chalcedony flake, one flake identified as chipped stone, two obsidian flakes, three quartz crystals, six quartz flakes, three unidentified lithics, one groundstone, four groundstone fragments, six steatite rim fragments, one burnt fragment of a clay pipe, one pelican stone, one pestle, one quartzite projectile point, sixteen stone disc beads, and one incised animal bone fragment.

Based on archeological, ethnohistoric, and linguistic evidence, the human remains and associated funerary objects show a cultural affiliation with the Serrano peoples. The bead data suggest that the human remains from CA-Lan-1010 were interred during the Middle period (800 B.C. to A.D. 100). Linguistic and ethnohistoric evidence shows that at the beginning of the Middle period, Takic-speaking peoples, who include both Gabrielino/Tongva peoples and the Serrano peoples, moved into the area where the Angeles National Forest is today located. The two groups had a common heritage, but were diverging by the beginning of the Middle period. Analysis of historical records from missions in the area of the San Gabriel Mountains shows that at the time of mission recruitment, in the 16th and 17th centuries, the occupants of Chilao were descended from the Middle period, Phase 2a people of Chilao Flats. The present-day San Manuel Band of Serrano Mission Indians of the San Manuel Reservation, California traces a shared group identity with the Serrano cultural groups that inhabited the area around the site during the Middle period.

Officials of Angeles National Forest have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of at least one individual of Native American ancestry. Officials of Angeles National Forest also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 69 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of Angeles National Forest have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the San Manuel Band of Serrano Mission Indians of the San Manuel Reservation, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Jody N. Noiron, Forest Supervisor, Angeles National Forest, 701 North Santa Anita Avenue, Arcadia, CA 91006, telephone (626) 574-1613, before December 23, 2004. Repatriation of the human remains to the San Manuel Band of Serrano Mission Indians of the San Manuel Reservation, California may proceed after that date if no additional claimants come forward.

Angeles National Forest is responsible for notifying the San Manuel Band of Serrano Mission Indians of the San Manuel Reservation, California; Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation,

California; Native American Heritage Commission; and over 70 individuals representing nonfederally recognized Indian groups that this notice has been published.

Dated: September 27, 2004

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 04–25926 Filed 11–22–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Texas Archeological Research Laboratory, The University of Texas at Austin, Austin, TX

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Texas Archeological Research Laboratory, The University of Texas at Austin, Austin, TX. The human remains were removed from a site in Montezuma County, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Texas Archeological Research Laboratory professional staff, and the information was provided to the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

At an unknown date, human remains representing a minimum of two individuals were removed from private land in Montezuma County, CO. In 1960, the landowners donated the human remains to the Texas Memorial Museum, University of Texas. The human remains were transferred to the Texas Archeological Research Laboratory at a later unknown date. No known individuals were identified. No associated funerary objects are present.

Little is known about the site, except that it was apparently a large pueblo about 5 miles east of the present city of Mancos, CO, occupied between A.D. 750 and 1000. The site is within the historically documented territory of the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

Officials of the Texas Archeological Research Laboratory have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of two individuals of Native American ancestry. Officials of the Texas Archeological Research Laboratory also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Darrell Creel, Director, The University of Texas at Austin, Texas Archeological Research Laboratory, 1 University Station R7500, Austin, TX 78712–0714, telephone (512) 471–5960, before December 23, 2004. Repatriation of the human remains to the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The Texas Archeological Research Laboratory is responsible for notifying the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: October 25, 2004

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 04–25924 Filed 11–22–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Texas Archeological Research Laboratory, The University of Texas at Austin, Austin, TX

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Texas Archeological Research Laboratory, The University of Texas at Austin, Austin, TX. The human remains and associated funerary objects were removed from a site in Real County, TX.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Texas Archeological Research Laboratory professional staff and the information was provided to representatives of the Mescalero Apache Tribe of the Mescalero Reservation, New Mexico, who claim affiliation and who have requested specific handling and housing conditions for the remains. No other tribe was consulted due to the clarity of information on affiliation.

In 1962, human remains representing a minimum of 17 individuals were removed from beneath the floor of the San Lorenzo de la Santa Cruz Mission church (site 41 RE 1), Real County, TX, by the Texas Memorial Museum, University of Texas and subsequently transferred to the Texas Archeological Research Laboratory. No known individuals were identified. The 111 associated funerary objects are 3 crucifixes, 2 brass medallions, 93 glass beads, 7 alabaster beads, 1 coral bead, 1 amber bead, 1 vial of Opuntia seeds, and a minimum of 3 linen fragments.

The San Lorenzo de la Santa Cruz Mission was established specifically for the Lipan Apache. The mission was operated by the Franciscan missionaries of the Colegio de la Santa Cruz de Queretaro between 1762 and 1771 for the purpose of converting the Lipan Apache to Christianity. The Lipan Apache band became members of the Mescalero Apache Tribe of the Mescalero Reservation, New Mexico in 1936 under provisions of the Indian Reorganization Act.

Officials of the Texas Archeological Research Laboratory have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 17 individuals of Native American ancestry. Officials of the Texas Archeological Research Laboratory also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 111 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Texas Archeological Research Laboratory have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Mescalero Apache Tribe of the Mescalero Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Dr. Darrell Creel, Director, The University of Texas at Austin, Texas Archeological Research Laboratory, 1 University Station R7500, Austin, TX 78712–0714, telephone (512) 471–5960, before December 23, 2004. Repatriation of the human remains and associated funerary objects to the Mescalero Apache Tribe of the Mescalero Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The Texas Archeological Research Laboratory is responsible for notifying the Mescalero Apache Tribe of the Mescalero Reservation, New Mexico that this notice has been published.

Dated: October 25, 2004

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 04–25927 Filed 11–22–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Texas Archeological Research Laboratory, The University of Texas at Austin, Austin, TX

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Texas Archeological Research Laboratory, The University of Texas at Austin, Austin, TX. The human remains were removed from a site in San Jacinto County, TX.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Texas Archeological Research Laboratory professional staff in consultation with representatives of the Alabama-Coushatta Tribes of Texas. No other tribes were consulted.

In 1968 and 1969, human remains representing a minimum of four individuals were removed from the Arthur Patterson site, San Jacinto County, TX, during excavations by the Texas State Building Commission, the Texas Water Development Board, the Houston Archeological Society and students from Coldsprings High School. The human remains were acquired by the Texas Archeological Research Laboratory at an undocumented date. No known individuals were identified. The 93 associated funerary objects are 34 lots of beads, 2 ceramic cups, 2 ceramic saucers, 1 ceramic plate, 1 lot of glass bottle fragments, 1 glass goblet, 2 glass tumblers, 3 hawk bell fragments, 5 iron fragments, 1 lot of iron nail fragments, 1 lot of iron scissors fragments, 4 pieces of petrified wood, 7 sherds, 8 silver conchos, 6 white glass buttons, 1 metal bucket, 1 wood fragment, 5 pieces of quartzite, 1 bone-handled knife, 1 domesticated pig canine, 1 lot of feathers, 1 glass medicine bottle, 2 fragmented rings, 1 lot of sherds and flakes, and 1 lot of glass beads.

The Arthur Patterson site is a Native American cemetery that appears to have been in use from the 1840s to the 1870s based on the artifacts found with the human remains. The Alabama and Coushatta Indians were the only groups known historically in the area during that period. The nature of the site from which the human remains were obtained, the mode of interment, and the kinds of associated funerary objects are consistent with the practices of the Alabama-Coushatta Tribes of Texas.

Officials of the Texas Archeological Research Laboratory have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of four individuals of Native American ancestry. Officials of the Texas Archeological Research Laboratory also have determined that, pursuant to 25

U.S.C. 3001 (3)(A), the 93 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Texas Archeological Research Laboratory have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Alabama-Coushatta Tribes of Texas.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Dr. Darrell Creel, Director, The University of Texas at Austin, Texas Archeological Research Laboratory, 1 University Station R7500, Austin, TX 78712–0714, telephone (512) 471–5960, before December 23, 2004. Repatriation of the human remains and associated funerary objects to the Alabama-Coushatta Tribes of Texas may proceed after that date if no additional claimants come forward.

The Texas Archeological Research Laboratory is responsible for notifying the Alabama-Coushatta Tribes of Texas that this notice has been published.

Dated: October 25, 2004

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 04–25928 Filed 11–22–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Colorado Historical Society, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the Native American Graves Protection and Repatriation Act (NAGPRA), the Colorado Historical Society determined that the physical remains of 361 individuals of Native American ancestry and 345 associated funerary objects in the museum's collections, described below in Information about cultural items, are culturally affiliated with the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

The National Park Service publishes this notice on behalf of the museum as part of the National Park Service's administrative responsibilities under NAGPRA. The museum is solely responsible for information and determinations stated in this notice. The National Park Service is not responsible for the museum's determinations.

Information about NAGPRA is available online at www.cr.nps.gov/nagpra.

DATES: Repatriation of the cultural items to the Indian tribes listed above in Summary may proceed after December 23, 2004, if no additional claimants come forward. Representatives of any other Indian tribe that believes itself to be culturally affiliated with the cultural items should contact the museum before December 23, 2004.

SUPPLEMENTARY INFORMATION:

Authority. 25 U.S.C. 3001 *et seq.* and 43 CFR Part 10.

Contact. Contact Georgianna Contiguglia, President/SHPO/CPO, Colorado Historical Society, 1300 Broadway, Denver, CO 80203, telephone (303) 866–3355, regarding determinations stated in this notice or to claim the cultural items described in this notice.

Consultation. The museum identified the cultural items and cultural affiliation of the cultural items in consultation with representatives of the Apache Tribe of Oklahoma; Fort McDowell Mohave-Apache Indian Community of the Fort McDowell Indian Reservation, Arizona; Fort Sill Apache Tribe of Oklahoma; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Jicarilla Apache Nation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Paiute Indian Tribe of Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Tonto Apache Tribe of Arizona; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

Information about cultural items. Prior to 1882, human remains representing a minimum of one individual were removed by Charles R. Weise and Charles Mayer from an unidentified site near Aztec, San Juan County, NM. The human remains (O.1727.1) and associated funerary object (O.499.1) were transferred to the Colorado Historical Society by Dr. D.S. Griffith in 1882. No known individual was identified. The one associated funerary object is a black-on-white ceramic bowl. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Cultural items associated with the burials are diagnostic of Ancient Puebloan technological traditions. Ancient Puebloan occupation of San Juan County generally dates between approximately 1000 B.C. and A.D. 1300.

In 1887 or 1888, human remains representing a minimum of one individual were removed by Al Wetherill and C.C. Mason from the Mesa Verde area, Montezuma County, CO. The individual was then sold by B.K. Wetherill to Mr. and Mrs. James A. Chain, who later donated the individual to the Colorado Historical Society in approximately 1893. The human remains were accessioned by the Colorado Historical Society in 1921 (O.675.1). No known individual was identified. No associated funerary objects are present. While specific provenience for this individual is unknown, the Wetherills and Mason excavated numerous sites in the Mesa Verde region. Cranial morphology is consistent with physical features common to Ancient Puebloan

populations. Ancient Puebloan occupation of the Mesa Verde area generally dates from approximately 1000 B.C. to A.D. 1300.

In 1888, human remains representing a minimum of 15 individuals were removed by Richard Wetherill, Al Wetherill, and Charlie Mason from Cliff House, also known as Cliff Palace (site 5MV.625.1), Montezuma County, CO. The human remains (O.668.1, O.670.1, O.677.1, O.696.1, O.702.1, O.703.1, O.707.1, O.710.1, O.711.1, O.712.1, O.716.1, O.719.1, O.729.1, O.731.1, O.734.1) and associated funerary objects (O.188.1, O.1741.2) were initially sold to Charles McLoyd, who sold the collection to the Colorado Historical Society in 1890. No known individuals were identified. The two associated funerary objects are black-on-white ceramic bowls. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Cultural items associated with the burials are diagnostic of Ancient Puebloan technological traditions. Occupation of Cliff House dates from approximately A.D. 1250 to 1280.

Prior to 1890, human remains representing a minimum of two individuals were removed by Richard Wetherill, Al Wetherill, and Charlie Mason from unidentified sites in the Mesa Verde area, Montezuma County, CO. The human remains (O.701.1, O.2249.1) were initially sold to Charles McLoyd, who sold the collection to the Colorado Historical Society in 1890. No known individuals were identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Ancient Puebloan occupation of the Mesa Verde area dates from approximately 1000 B.C. to A.D. 1300.

Prior to 1890, human remains representing a minimum of two individuals were removed by Richard Wetherill, Al Wetherill and/or Charlie Mason from the Mesa Verde area, Montezuma County, CO. The Wetherills excavated numerous sites in the Mesa Verde area, the material from which they sold to Charles McLoyd, who in turn sold the collection to the Colorado Historical Society in 1890 (O.695.1, O.672.1). No known individuals were identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Ancient Puebloan occupation of the Mesa Verde area generally dates from approximately 1000 B.C. to A.D. 1300.

Prior to 1892, human remains representing a minimum of one individual were removed by either Arthur Wilmarth or Al and Richard Wetherill from a site in Johnson Canyon, Montezuma County, CO. The human remains (O.678.1) were accessioned by the Colorado Historical Society in 1892. No known individuals were identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Ancient Puebloan occupation of the Mesa Verde area generally dates from approximately 1000 B.C. to A.D. 1300.

Prior to 1892, human remains representing a minimum of one individual were removed by Richard Wetherill, Al Wetherill, and Charlie Mason from a site in ''Navajo [Canyon]'' in the Mesa Verde area, Montezuma County, CO. The human remains (O.685.1) were initially sold to Charles McLoyd, who sold the collection to the Colorado Historical Society in 1890. No known individuals were identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Ancient Puebloan occupation of the Mesa Verde area generally dates from approximately 1000 B.C. to A.D. 1300.

Prior to 1892, human remains representing a minimum of 22 individuals were removed by either Arthur Wilmarth or Al and Richard Wetherill from the Mesa Verde area in Montezuma County, CO. The human remains (O.680.1, O.683.1, O.690.1, O.713.1, O.715.1, O.720.1, O.721.1, O.722.1, O.1731.1, O.1733.2, O.1734.1, O.1735.1, O.1736.1, O.1741.1, O.735.1, O.673.1, O.674.1, O.676.1, O.2252.1, O.2267.1, O.6017.1, UHR.171) were accessioned by the Colorado Historical Society in 1892. The 12 associated funerary objects (O.432.1, O.285.1, O.1733.3, O.1733.2.a, O.1733.1, O.1729.1, O.1736.1.b, O.188.2, O.1741.1.b, O.7405.5A& B, O.935.1) are a black-on-white ceramic mug, two black-on-white ceramic bowls, a black-on-white ceramic pitcher, a cotton shirt, a buckskin shirt, a feather blanket, and three single sandals. The original provenience within the Mesa Verde region from which these human remains were removed is unknown. Arthur Wilmarth, Al and Richard Wetherill and D.W. Ayers excavated numerous sites in the Mesa Verde area (including Tower House, Balcony House, Cliff Palace, Mug House, Mummy House, Step House, and Spruce Tree House) at different times. Items recovered from earlier excavations led by the Wetherills were sold to Charles McLoyd, who sold the collection to the Colorado Historical Society in 1890. Later excavations led by Arthur Wilmarth were funded by the Colorado State Legislature and items from the excavations were displayed at the Columbian Exposition at the Chicago World's Fair in 1893. These items were transferred to the Colorado Historical Society later the same year. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Ancient Puebloan occupation of the Mesa Verde area generally dates from approximately 1000 B.C. to A.D. 1300.

In 1892, human remains representing a minimum of 30 individuals were removed by Arthur Wilmarth, D.W. Ayers, and Al and/or Richard Wetherill from the Mesa Verde area, Montezuma County, CO. The human remains (O.664.1, O.1738.1, O.1740.1, O.665.1, O.666.1, O.667.1, O.669.1, O.671.1, O.681.1, O.687.1, O.689.1, O.691.1, O.692.1, O.693.1, O.694.1, O.717.1, O.723.1, O.724.1, O.725.1, O.726.1, O.727.1, O.728.1, O.730.1, O.733.1O.1742.1, O.1743.1, O.1744.1, O.1745.1, O.2247.1, O.2250.1) were accessioned by the Colorado Historical Society between 1893 and 1921. No known individuals were identified. The 26 associated funerary objects (O.1738.1.a-d, O.1740.1.a, O.1742.1.a-c, O.214.1, O.293.1, O.383.1, O.1742.2, O.1742.3, O.428.1, O.1743.1.a-b, O.1744.1.a-b, O.1745.1.a, O.1745.2, O.1745.3, O.1745.4, O.1745.5, O.1745.6, O.1745.7, O.1745.8) are a sewn hide, five feather blankets, two fragments of cotton cloth, three scirpus mats, two hide wraps, a grayware kiva jar, a black-on-white bowl, a black-on-white jar, a grayware bowl, a grayware pitcher, a black-on-white mug, four grayware jars, and three hammerstones. Using funds approved by the Colorado State Legislature, Mr. Wilmarth developed an exhibit for the Columbian Exposition at the Chicago World's Fair in 1893 and transferred the artifacts to the Colorado Historical Society in 1893 after the fair. While specific provenience for these individuals is unknown, Mr. Wilmarth, Al and Richard Wetherill, and D.W. Ayers excavated Tower House, Balcony House, Cliff Palace, Mug House, Mummy House, Step House, and Spruce Tree House to assemble the collection. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Cultural items associated with the burials are diagnostic of Ancient Puebloan technological traditions. Ancient Puebloan occupation of the Mesa Verde

area generally dates from approximately 1000 B.C. to A.D. 1300.

Prior to 1893, human remains representing a minimum of 10 individuals were removed by either Arthur Wilmarth or Al and Richard Wetherill from Cliff House (site 5MV.625.1) in Johnson Canyon, Montezuma County, CO. The human remains (O.679.1. O.697.1, O.704.1, O.705.1, O.706.1, O.708.1, O.709.1, O.718.1, O.720.1, O.732.1) were accessioned by the Colorado Historical Society in 1893. No known individuals were identified. No associated funerary objects are present. Mr. Wilmarth, Al and Richard Wetherill, and D.W. Ayers excavated Cliff House at different times. Items recovered from earlier excavations led by the Wetherills were sold to Charles McLoyd, who sold the collection to the Colorado Historical Society in 1890. Later excavations led by Arthur Wilmarth were funded by the Colorado State Legislature and items from the excavations were displayed at the Columbian Exposition at the Chicago World's Fair in 1893. These items were transferred to the Colorado Historical Society later that same year. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Cultural items associated with the burials are diagnostic of Ancient Puebloan technological traditions. Occupation of Cliff House dates to the Pueblo III period, from approximately A.D. 1250 to 1280.

Prior to 1893, human remains representing a minimum of four individuals were removed by either Arthur Wilmarth or Al and Richard Wetherill from Mummy House (5MV524), Montezuma County, CO. It is likely that these individuals were removed during excavations funded by the Colorado State Legislature and led by Wilmarth, along with the Wetherill brothers and D.W. Ayers, to develop an exhibit for the Columbian Exposition at the Chicago World's Fair in 1893 and the individuals were transferred to the Colorado Historical Society that same year. (O.714.1, O.1732.1, O.1737.1 [1–2]). The six associated funerary objects (O.4903.1.a-f) are a feather blanket, cotton cloth, a piece of cotton twine, a hide, and two wooden objects. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Cultural items associated with the burials are diagnostic of Ancient Puebloan technological traditions. Ancient Puebloan occupation of the Mesa Verde area generally dates from approximately 1000 B.C. to A.D. 1300.

In the early 1900s, human remains representing a minimum of one individual were removed by the family of Mrs. Margery Stanley from an unknown location in Arizona. The human remains (OAHP Case Number 211) were transferred by the Denver Office of the Medical Examiner to the Colorado Office of Archaeology and Historic Preservation (OAHP, part of the Colorado Historical Society) in 2003. No known individual was identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Ancient Puebloan sites in the southwestern United States generally date between approximately 1000 B.C. and A.D. 1300.

In 1904, human remains representing a minimum of one individual were removed by an unknown individual from an unidentified cliff dwelling near Mancos, Montezuma County, CO. The human remains (O.7337.1) were accessioned by the Colorado Historical Society in the 1960s. No known individual was identified. No associated funerary objects are present. Occupation of Ancient Puebloan cliff dwellings in the Mancos area generally date from 1000 B.C. to A.D. 1300.

In 1905, human remains representing a minimum of two individuals were removed by Cecil A. Deane from an Ancient Puebloan architectural site in northwestern New Mexico. Mr. Deane sold the human remains (O.684.1, O.698.1) to the Colorado Historical Society in 1905. No known individuals were identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Ancient Puebloan occupation of northwestern New Mexico generally dates from approximately 1000 B.C. to A.D. 1300.

In 1908, human remains representing a minimum of one individual were removed by a collaborative team from the Colorado Historical Society, University of Colorado, and Archaeological Institute of America from Cannonball Ruins (site 5MT338), Montezuma County, CO. The human remains (O.6016.1) were transferred to the Colorado Historical Society by Carl E. Guthe in 1931. No known individual was identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Occupation of Cannonball Ruins dates to the Pueblo II/III period, from approximately A.D. 1250 to 1280.

Prior to 1912, human remains representing a minimum of one individual were removed by an unknown individual from an unknown location. The human remains (O.688.1) were accessioned by the Colorado Historical Society in 1912. No known individual was identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Ancient Puebloan occupation of the southwestern United States generally dates from approximately 1000 B.C. to A.D. 1300.

In 1928 and 1929, human remains representing a minimum of five individuals were removed by Paul Martin from Little Dog Ruin (site 5MT13403), Montezuma County, CO. The human remains (O.2233.1, O.2234.1, O.2235.1, O.2236.1, O.2239.1) were accessioned by the Colorado Historical Society in 1929. No known individual was identified. The three associated funerary objects (O.2159.1, O.2233.B, O.2233.C) are a black-on-white bowl, a basket fragment, and a pine needle brush. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. The cultural items associated with the burials are diagnostic of Ancient Puebloan technological traditions. Occupation of Little Dog Ruin dates to the Pueblo III period, from approximately A.D. 1140 to 1300.

In 1928, human remains representing a minimum of two individuals were removed by Paul Martin from the Herren site (5MT2516), Montezuma County, CO. The human remains (O.2237.1, O.2238.1) were accessioned by the Colorado Historical Society in 1928. No known individuals were identified. No associated funerary objects are present. Cranial morphology is consistent with physical characteristics common to Ancient Puebloan populations. Occupation of the Herren site dates to the Pueblo II period, from approximately A.D. 1150 to 1250.

In 1928, human remains representing a minimum of one individual were removed by Paul Martin from the Charnel House Tower, Montezuma County, CO. The human remains (O.2239.1) were accessioned by the Colorado Historical Society in 1928. No known individual was identified. No associated funerary objects are present. Cranial morphology is consistent with physical characteristics common to Ancient Puebloan populations. Occupation of Charnel House Tower dates to the Pueblo II period, from approximately A.D. 1175 to 1225.

Prior to 1930, human remains representing a minimum of two individuals were removed by the Colorado Historical Society from an unidentified site in Pagosa/Piedra region, Archuleta County, CO. The human remains (O.2243.1, O.2260.1) were accessioned by the Colorado Historical Society in 1930. No known individuals were identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Ancient Puebloan occupation of the Pagosa/Piedra region generally dates from approximately 1000 B.C. to A.D. 1300.

Prior to 1930, human remains representing a minimum of one individual were removed by Frank Hoder from site 5MT13290, Montezuma County, CO. Mr. Hoder willed the human remains to Red Morey, who transferred them to the custody of the U.S. Department of the Interior, Bureau of Land Management, Anasazi Heritage Center in 1992. The Bureau of Land Management transferred the human remains to the Colorado Office of Archaeology and Historic Preservation in 1992 (OAHP Case Number 72). No known individual was identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Ancient Puebloan occupation of the Mesa Verde area generally dates from approximately 1000 B.C. to A.D. 1300.

Prior to 1930, human remains representing a minimum of three individuals were removed by Jean A. Jeancon and Frank H.H. Roberts from unidentified sites on Stollsteimer Mesa, Archuleta County, CO. The human remains (O.2240.1, O.2241.1, O.2242.1) were accessioned by the Colorado Historical Society in 1930. No known individuals were identified. One associated funerary object (O.7359.19) is a black-on-white ceramic sherd. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. The cultural item associated with the burials is diagnostic of Ancient Puebloan technological traditions. Ancient Puebloan occupation of Stollsteimer Mesa generally dates from approximately 1000 B.C. to A.D. 1300.

In approximately 1930, human remains representing a minimum of one individual were removed from an unidentified site in Montezuma County, CO. The human remains (OAHP Case Number 64) were acquired by Joyce Barnett, who donated them to the Colorado Historical Society in 1992. No known individuals were identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Ancient Puebloan occupation of Montezuma County generally dates from approximately 1000 B.C. to A.D. 1300.

In 1935, human remains representing a minimum of six individuals were removed by Harold Westesen from an unknown location on Dove Creek, Dolores County, CO. Mr. Westesen donated the human remains (O.7359.1, O.7360.1.A, O.7360.2, O.7360.3, O.7360.4.A, O.7360.4.B) to the Montrose Chamber of Commerce, who transferred them to the Colorado Historical Society in 1956. No known individuals were identified. The one associated funerary object (O.7359.19) is a black-on-white ceramic sherd. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. The cultural item associated with the burials is diagnostic of Ancient Puebloan technological traditions. Ancient Puebloan occupation of the Dove Creek area generally dates from approximately 1000 B.C. to A.D. 1300.

In 1940, human remains representing a minimum of one individual were removed by a rancher from an unidentified location in the Shavanno Valley, Montrose County, CO. The human remains (O.7450.1) were donated to the Colorado Historical Society by Mr. R.J. Yarberry and Mr. Frank Hovery in 1964. No known individuals were identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Ancient Puebloan occupation of the Montrose County generally dates from approximately 1000 B.C. to A.D. 1300.

Prior to 1944, human remains representing a minimum of 134 individuals were removed by avocational collector James Mellinger from unspecified sites in Colorado, New Mexico, Arizona, or Utah. Mr. Mellinger donated the human remains to the Colorado Historical Society between 1944 and 1951 (CHS accession numbers 78.98.1, 3–10, 13–17, 19, 21–22, 24–35, 38–39, 42–45, 48–51, 53–70, 72–80, 82–96, 98–100; 78.99.2–49; JS.2; O.1728.1). No known individuals were identified. The one associated funerary object (O.1728.3) is a woven mat. Mr. Mellinger is known to have collected primarily in the Four Corners region of the southwestern United States. The morphology of the human remains is consistent with physical features common to Ancient Puebloan populations. The cultural item associated with the burials is diagnostic of Ancient Puebloan technological traditions. Ancient Puebloan occupation of the southwestern Unites States generally dates from approximately 1000 B.C. to A.D. 1300.

In the 1940s and 1950s, human remains representing a minimum of three individuals were removed by unknown persons from unidentified sites near Cortez, Montezuma County, CO. The human remains (OAHP Case Number 170) were sent to the Colorado Office of Archaeology and Historic Preservation in 1999. No known individuals were identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Ancient Puebloan sites in Montezuma County generally date between approximately 1000 B.C. and A.D. 1300.

Prior to 1961, human remains representing a minimum of one individual were removed by William Allen from an unidentified site near Durango, La Plata County, CO. The human remains (OAHP Case Number 177) were transferred to the control of the Colorado Office of Archaeology and Historic Preservation in 2000. No known individual was identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Ancient Puebloan occupation of southwestern United States generally dates from approximately 1000 B.C. to A.D. 1300.

Prior to 1963, human remains representing a minimum of one individual were removed from an unknown location. The human remains (O.7402.1) were accessioned by the Colorado Historical Society in 1963. No known individual was identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Ancient Puebloan occupation of southwestern United States generally dates from approximately 1000 B.C. to A.D. 1300.

In approximately 1965, human remains representing a minimum of one individual were removed by an unknown individual from an unknown location in Montezuma County, CO. The human remains (OAHP Case Number 210) were later transferred to a student, who transferred them to Pueblo Community College, who transferred them to the Colorado Office of Archaeology and Historic Preservation in 2003. No known individual was identified. No associated funerary objects are present. Cranial morphology is consistent with physical features

common to Ancient Puebloan populations. Ancient Puebloan sites in Montezuma County generally date between approximately 1000 B.C. to A.D. 1300.

In 1970, human remains representing a minimum of one individual were removed by an unknown person from Dolores County, CO. Robert A. Marra sent the human remains to the Office of Archaeology and Historic Preservation (part of the Colorado Historical Society) in 1992 (OAHP Case Number 74). No known individual was identified. The 78 associated funerary objects are 41 pottery sherds, 1 daub fragment, 30 chipped stone items, 1 shaped sandstone fragment (possibly a pot lid), and 5 fossilized bivalve shells. Pottery types include Mesa Verde, San Juan, and Kayenta whitewares; La Plata black-on-red, La Plata whitewares, La Plata black-on-red, and Mesa Verde graywares. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. The associated funerary objects are diagnostic of Ancient Puebloan technology. Ancient Puebloan occupation of Dolores County generally dates from approximately 1000 B.C to A.D. 1300.

In 1977, human remains representing a minimum of two individuals were removed by the University of Colorado from the Tamarron site (5LP326), La Plata County, CO. The removal was done pursuant to a state permit. The University of Colorado, Boulder transferred the individuals to OAHP in 1991 (OAHP Case Numbers 59 and 60). No known individuals were identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Occupation of the Pueblo I component of the Tamarron Site generally dates from approximately A.D. 750 to 900.

Prior to 1980, human remains representing a minimum of two individuals were removed by unknown persons from unknown sites near Cortez, Montezuma County, CO. The human remains (OAHP Case Number 165) were given to the Cortez Public Library, which sent them to the Colorado Office of Archaeology and Historic Preservation in 1999. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Ancient Puebloan sites around Cortez generally date between approximately A.D. 400 and 1300.

Prior to 1981, human remains representing a minimum of 10 individuals were identified during a collections inventory at the Colorado Historical Society conducted by James Hummert. The human remains (UHR.3, 5, 56, 57, 104, 157, 175, 176, 183, O.663.1) were accessioned by the Colorado Historical Society in 1981. No known individuals were identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Ancient Puebloan occupation of southwestern United States generally dates from approximately 1000 B.C. to A.D. 1300.

Prior to 1990, human remains representing a minimum of one individual were removed by an unknown person from site Montezuma County, CO. Peggy Bullard initially gave the human remains to the U.S. Department of the Interior, Bureau of Land Management, Anasazi Heritage Center, which subsequently transferred them to the Colorado Office of Archaeology and Historic Preservation in 1991 (OAHP Case Number 33). No known individual was identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. The remains are estimated to date to the Pueblo I-III periods, from approximately A.D. 750 to 1300.

Prior to 1990, human remains human remains representing a minimum of one individual were removed by J. Dean Larson from Hartman Draw, Montezuma County, CO. The human remains (OAHP Case Number 76) were transferred to the U.S. Department of the Interior, Bureau of Land Management, Anasazi Heritage Center in 1990, and were later transferred to the Colorado Office of Archaeology and Historic Preservation in 1993. No known individual was identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Sites in this locality date from approximately A.D. 400 to 1300.

In 1991, human remains representing a minimum of one individual were removed by Complete Archaeological Service's Associates from site 5MT9105, Montezuma County, CO. The human remains (OAHP Case Number 28) were initially transferred to the U.S. Department of Interior, Bureau of Reclamation, which subsequently transferred them to the Colorado Office of Archaeology and Historic Preservation in 1993. At the time of removal, site 5MT9105 was located on private land. No known individual was identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Occupation of site 5MT9105 dates to the Basketmaker III period, from approximately A.D. 500 to 750.

In 1991, human remains representing a minimum of two individuals were removed by vandals from Bob Hampton Ruin (site 5DL859), Dolores County, CO. The human remains (OAHP Case Number 32) were transferred by the Dolores County Sheriff to the Colorado Office of Archaeology and Historic Preservation in 1992. No known individuals were identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Occupation of site 5DL859 dates to the Pueblo I-III periods from approximately A.D. 750 to 1300.

In 1991, human remains representing a minimum of two individuals were removed by OAHP staff from site 5LP2740, La Plata County, CO. The removal was done pursuant to a state permit (OAHP Case Number 36). No known individuals were identified. The 21 associated funerary objects are 17 lithic flakes and 4 plain grayware sherds. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. The associated funerary objects are diagnostic of Ancient Puebloan technology. Occupation of site 5LP2740 dates to the Basketmaker II/III and Pueblo I-III periods, from approximately 1000 B.C. to A.D. 1300.

In 1991, human remains representing a minimum of two individuals were removed by Complete Archaeological Service's Associated from site 5MT10963, Montezuma County, CO. The human remains (OAHP Case Number 37) were transferred to the Colorado Office of Archaeology and Historic Preservation in 1993. The removal was done pursuant to a state permit. No known individuals were identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Occupation of site 5LP2740 dates to the Basketmaker III period, from approximately A.D. 500 to 750.

Prior to 1992, human remains representing a minimum of one individual were removed by the Gullatt family from an unknown location in the Four Corners region of the southwestern United States. The human remains (OAHP Case Number 77) were transferred to the U.S. Department of the Interior, Bureau of Land Management, Anasazi Heritage Center in 1992 and were later transferred to the Colorado

Office of Archaeology and Historic Preservation 1993. No known individual was identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Ancient Puebloan occupation of southwestern United States generally dates from approximately 1000 B.C. to A.D. 1300.

In 1992, human remains representing a minimum of one individual were removed by Rice Reavis from site 5AA2011, Archuleta County, CO. The human remains (OAHP Case Number 65) were examined by staff at San Juan College and were transferred to the Colorado Office of Archaeology and Historic Preservation in 1992. At the time of removal, site 5AA2011 was located on private land. No known individual was identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Occupation of site 5AA2011 dates to the Pueblo I period, from approximately A.D. 750 to 900.

In 1992, the Denver Coroner transferred human remains representing a minimum of one individual to the Denver Museum of Natural History, which in turn transferred them to the Colorado Office of Archaeology and Historic Preservation the same year (OAHP Case Number 67). No known individual was identified. The 19 associated funerary objects are pottery sherds. Pottery types are Mancos graywares, Cortez and Mancos whitewares and plainwares. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. The associated funerary objects are diagnostic of Ancient Puebloan technology dating to the Pueblo I/II period, from approximately A.D. 750 to 1150.

Prior to 1993, human remains representing a minimum of one individual were removed by an unknown individual from site 5MT13292, Montezuma County, CO. The human remains (OAHP Case Number 78) were transferred to Janice Smith Olson, who later transferred them to the Colorado Office of Archaeology and Historic Preservation in 1993. No known individual was identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Occupation of site 5MT13292 dates from approximately A.D. 400 to 1300.

Prior to 1993, human remains representing a minimum of one individual were removed by an unknown individual from an unknown site in southwestern Colorado. The human remains (OAHP Case Number 91) were donated to the La Puente Valley Historical Society in California, who sent the human remains to the Colorado Office of Archaeology and Historic Preservation in 1993. No known individual was identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Ancient Puebloan sites in southwestern Colorado generally date from approximately 1000 B.C. to A.D. 1300.

In 1993, human remains representing a minimum of six individuals were removed by Southwest Cultural Associates from sites 5MT5168, 5MT9343, 5MT11861, and 5MT7522, Montezuma County, CO. The human remains (OAHP Case Number 88) were transferred to Janice Smith Olson, who later transferred them to the Colorado Office of Archaeology and Historic Preservation in 1993. The removal was done pursuant to a state permit. No known individuals were identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Occupation of sites 5MT9168, MT11861, and 5MT9343 dates to the Basketmaker III period, from approximately A.D. 500 to 750. Occupation of 5MT7522 dates from the Basketmaker III to the Pueblo II periods, from approximately A.D. 500 to 1100.

In 1994, human remains representing a minimum of six individuals were removed by Woods Canyon Archaeological Consultants from the Seed Jar site (5MT3892), Montezuma County, CO. The human remains (OAHP Case Number 94) were transferred to the Colorado Office of Archaeology and Historic Preservation in 1996. The removal was done pursuant to a state permit. At the time of removal, site 5MT3892 was located on private land. No known individuals were identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Occupation of the Seed Jar site dates to the Pueblo III period, from approximately A.D. 1150 to 1300.

In 1995, human remains representing a minimum of two individuals were removed by Woods Canyon Archaeological Consultants from the Ladle House site (5MT3873), Montezuma County, CO. The human remains (OAHP Case Number 117) were transferred to the Colorado Office of Archaeology and Historic Preservation in 1995. The removal was done pursuant to a state permit. At the time of removal, site 5MT3873 was located on private land. No known individual was identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Occupation of the Ladle House site dates to the Pueblo II period, from approximately A.D. 900 to 1150.

In 1995, human remains representing a minimum of two individuals were removed by Fort Lewis College from site 5LP4553, La Plata County, CO. The human remains (OAHP Case Number 110) were transferred to the Colorado Office of Archaeology and Historic Preservation in 1995. The removal was done pursuant to a state permit. No known individual was identified. The 26 associated funerary objects are one stone, one piece of unworked hematite, one obsidian biface, seven Olivella sp. beads, two bone awls, two shell pendants, one biface, and 11 antler or bone gaming pieces. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Cultural items associated with the burials are diagnostic of Ancient Puebloan technological traditions. Occupation of site 5LP4553 dates to the Basketmaker III period, from approximately A.D. 500 to 750.

In 1995, human remains representing a minimum of three individuals were removed by Fort Lewis College from site 5LP117, La Plata County, CO. The human remains were transferred to the Colorado Office of Archaeology and Historic Preservation in 1995 (OAHP Case Number 112). The removal was done pursuant to a state permit. No known individual was identified. The 16 associated funerary objects are 12 grayware ceramic sherds, one black-on-white sherd, one Fugitive Redware black-on-white sherd, one Fugitive Redware ceramic sherd, and one tubular bone bead. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Cultural items associated with the burials are diagnostic of Ancient Puebloan technological traditions. Occupation of site 5LP117 dates to the Basketmaker II /III, from approximately 1000 B.C. to A.D. 750.

In 1997, human remains representing a minimum of one individual were removed by Centennial Archaeology from site 5LP678, La Plata County, CO. The human remains were transferred to the Colorado Office of Archaeology and Historic Preservation in 2001 (OAHP Case Number 188). No known individual was identified. No associated funerary objects are present. Occupation of site 5LP678 dates to the Basketmaker

III and Pueblo I periods, from approximately A.D. 400 to 1100.

In 1997, human remains representing a minimum of one individual were removed by Alpine Archaeological Consultants from site 5LP695, La Plata County, CO. The human remains were transferred to the Colorado Office of Archaeology and Historic Preservation in 2001 (OAHP Case Number 189). No known individual was identified. No associated funerary objects are present. Occupation of site 5LP695 dates to the Basketmaker II and Pueblo I/II periods, from approximately A.D. 100 to 1100.

In 1997, human remains representing a minimum of one individual were removed by Alpine Archaeological Consultants from site 5LP696, La Plata County, CO. The human remains (OAHP Case Number 190) were transferred to the Colorado Office of Archaeology and Historic Preservation in 2001. No known individual was identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Occupation of site 5LP696 dates from approximately 1000 B.C. to A.D. 1300

In 1998, human remains representing a minimum of one individual were removed by Alpine Archeological Consultants from site 5LP5084, La Plata County, CO. The human remains (OAHP Case Number 158) were transferred to the Colorado Office of Archaeology and Historic Preservation in 2001. No known individual was identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Occupation of site 5LP5084 dates to the Basketmaker III and Pueblo I periods, from approximately A.D 400 to A.D. 1100.

In 1998, human remains representing a minimum of one individual were removed by Alpine Archaeological Consultants from site 5LP2820, La Plata County, CO. The human remains (OAHP Case Number 159) were transferred to the Colorado Office of Archaeology and Historic Preservation in 2001. No known individual was identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Occupation of site 5LP2820 dates to the Basketmaker III period, from approximately A.D. 500 to 750.

In 1998, human remains representing a minimum of three individuals were removed by La Plata Archaeological Consultants from site 5LP425, La Plata County, CO. The human remains (OAHP Case Number 139) were transferred to the Colorado Office of Archaeology and Historic Preservation in 1999. The removal was done pursuant to a state permit. No known individual was identified. The one associated funerary object is a grayware sherd. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. The cultural item associated with the burials is diagnostic of Ancient Puebloan technological traditions. Occupation of site 5LP425 dates from approximately 1000 B.C. to A.D. 750.

In 1998, human remains representing a minimum of one individual were removed by the Montezuma County Sheriff's Department from site 5MT13240, Montezuma County, CO. The human remains (OAHP Case Number 140) were transferred to the Colorado Office of Archaeology and Historic Preservation in 1998. No known individual was identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Occupation of site 5MT13240 dates from approximately A.D. 750 to 1300.

In 1998, human remains representing a minimum of one individual were removed by Ed Daniels from site 5MT13241, Montezuma County, CO. The human remains (OAHP Case Number 141) were transferred to the Colorado Office of Archaeology and Historic Preservation in 1998. At the time of removal, site 5MT13241 was located on private land. No known individuals were identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Occupation of site 5MT13241 dates to the Pueblo II/II period, from approximately A.D. 900 to 1300.

In 1998, human remains representing a minimum of five individuals were found by Lyle Dennison in the trunk of an abandoned vehicle in Montezuma County, CO. The human remains (OAHP Case Number 142) were reported to the Montezuma County Coroner's Office, who transferred the human remains to the Colorado Office of Archaeology and Historic Preservation the same year. No known individuals were identified. The 14 associated funerary objects are seven lithic flakes, four animal bone fragments and three ceramic sherds. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. The cultural items associated with the burials are diagnostic of Ancient Puebloan technological traditions. Ancient Puebloan sites in Montezuma County generally date from approximately A.D. 400 to 1300.

In 1999, human remains representing a minimum of one individual were removed by Woods Canyon Archaeological Consultants from site 5LP379, La Plata County, CO. Excavations of site 5LP379 were conducted pursuant to a state permit. The human remains (OAHP Case Number 160) were transferred to the Colorado Office of Archaeology and Historic Preservation in 2002. No known individual was identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Occupation of site 5LP379 dates to the Pueblo I period, from approximately A.D. 750 to 900.

In 1999, human remains representing a minimum of five individuals were removed by Complete Archaeological Service's from Stix and Leaves Pueblo (site 5MT11555), Montezuma County, CO. The human remains (OAHP Case Number 161) were transferred to the Colorado Office of Archaeology and Historic Preservation in 2002. Excavations at Stix and Leaves Pueblo were conducted pursuant to a state permit. At the time of removal, site 5MT11555 was located on private land. No known individuals were identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Occupation of Stix and Leaves Pueblo dates to the Pueblo I-II periods, from approximately A.D. 750 to 1300.

Between 1999 and 2002, human remains representing a minimum of 28 individuals were removed by staff from Fort Lewis College from the Dark Mold site (5LP4991), La Plata County, CO. Excavations at the Dark Mold site were conducted pursuant to a state permit. At the time of removal, site 5LP4991 was located on private land. The human remains and associated funerary objects (OAHP Case Number 156) were transferred to the Colorado Office of Archaeology and Historic Preservation in 2002. No known individuals were identified. The 113 associated funerary objects are 84 Olivella beads, four Haliotis pendants, one chlorite schist pipe, one chlorite schist pendant, one bone bead, four bone awls, one mano, one biface, one bone tool, one bone bead, one utilized flake, one lithic core, one lithic tool, one lithic serrated tool, two manos, one lithic core, one lithic copper, one groundstone, one shell, one notched animal rib, and three stone beads. Cranial morphology is consistent

with physical features common to Ancient Puebloan populations. Cultural items associated with the burials are diagnostic of Ancient Puebloan technological traditions. Occupation of the Dark Mold dates to the Basketmaker II period, from 1000 B.C. to A.D. 500.

Prior to 2000, human remains representing a minimum of one individual were removed by staff from the University of Colorado from an unspecified site in southwestern Colorado. The human remains (OAHP Case Number 176) were transferred to the Colorado Office of Archaeology and Historic Preservation in 2000. No known individual was identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Ancient Puebloan sites in southwestern Colorado generally date between approximately A.D. 400 and 1300.

In 2000, human remains representing a minimum of one individual were removed by staff from Fort Lewis College from site 5LP5980, La Plata County, CO. The human remains (OAHP Case Number 183) were transferred to the Colorado Office of Archaeology and Historic Preservation in 2002. Excavations at site 5LP5980 were conducted pursuant to a state permit. At the time of removal, site 5LP5980 was located on private land. No known individual was identified. The three associated funerary objects are two small gray ceramic pots and one deer scapula hoe. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Occupation of site 5LP5980 dates to the Basketmaker II/III period from approximately 1500 B.C. to A.D. 750.

In 2003, human remains representing a minimum of one individual were removed by Charles Wheeler from site 5LP7347 on the grounds of Fort Lewis College, La Plata County, CO. The human remains (OAHP Case Number 208) were transferred to the Colorado Office of Archaeology and Historic Preservation in 2003. No known individual was identified. No associated funerary objects are present. Occupation of 5LP7347 dates to the Basketmaker II/III period, from approximately 1500 B.C. to A.D. 750.

On an unknown date, human remains representing a minimum of one individual were removed from an unidentified site in Jefferson County, CO. The human remains (OAHP Case Number 149) were seized by the Arvada Police Department as part of a criminal investigation and subsequently transferred to the Colorado Office of Archaeology and Historic Preservation in 1999. No known individual was identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Ancient Puebloan sites in the southwestern United States generally date between approximately 1000 B.C. and A.D. 1300.

On an unknown date, human remains representing a minimum of two individuals were removed by an unknown individual from an unknown site in Montezuma County, CO. The human remains (OAHP Case Number 115) were received by the Colorado Office of Archaeology and Historic Preservation in 1996. An anonymous note accompanying the human remains states that the human remains came from Cow Canyon in Montezuma County, CO. No known individual was identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Ancient Puebloan sites in Montezuma County generally date between approximately A.D. 400 and 1300.

On an unknown date, human remains representing a minimum of one individual were removed by an unknown person from a site in Dolores County, CO. Bill Wagner of Dolores, CO, gave the human remains to Mrs. Odom, who subsequently transferred them to the U.S. Department of the Interior, Bureau of Land Management, Anasazi Heritage Center. The Anasazi Heritage Center transferred the human remains to the Colorado Office of Archaeology and Historic Preservation in 1991 (OAHP Case Number 34). At the time of removal, site 5DL1989 was on private land. No known individual was identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Ancient Puebloan sites in the southwestern United States generally date between approximately 1000 B.C. and A.D. 1300.

The cultural affiliation of the human remains and associated funerary objects described above with present-day Native American tribes was determined through the use of the following lines of evidence: geographical, kinship, biological, archeological, anthropological, linguistic, oral tradition, historical, and expert opinion. Evidence was gathered from consultations with the Indian tribes listed above in Consultation, physical examination, survey of acquisitional history, review of pertinent archeological, ethnographic, historic, anthropological and linguistic literature, and artifact analysis. Similarities in site architecture and material culture associated with the human remains are consistent with Ancient Puebloan occupation of the southwestern United States from the Basketmaker I period through the Pueblo III period (between approximately 1000 B.C. and A.D. 1300). The archeological literature refers to this widespread cultural tradition as ''Anasazi,'' ''Ancestral Puebloan,'' or ''Ancient Puebloan.'' Cranial modification is common to many Ancient Puebloan remains and is believed to reflect their widespread use of cradleboards to carry infants. Ancient Puebloan ceramic typologies help to identify chronological and geographical technological traditions. After approximately A.D. 1300, climatic changes evidently caused pueblo populations to leave the Four Corners region and resettle in Pueblos along the Rio Grande and in the Pueblos of Acoma, Zuni, and Hopi. Extant oral traditions corroborate dynamic population movements within the region during this time.

Determinations. Under 25 U.S.C. 3003, museum officials have determined that the human remains represent the physical remains of 361 individuals of Native American ancestry. Museum officials determined that the 345 cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Museum officials determined that the human remains and associated funerary objects are culturally affiliated with the Indian tribes listed in Summary.

Notification. The museum is responsible for sending copies of this notice to the consulted Indian tribes listed above in Consultation.

Dated: October 12, 2004

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 04–25918 Filed 11–22–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Guadalupe Mountains National Park, Salt Flat, TX

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, National Park Service, Guadalupe Mountains National Park, Salt Flat, TX (the Federal agency that has control of the cultural items), determined that the physical remains of 10 individuals of Native American ancestry in Guadalupe Mountains National Park's collections, described below in Information about cultural items, are culturally unidentifiable. The Native American Graves Protection and Repatriation Review Committee (Review Committee) recommended that Guadalupe Mountains National Park repatriate the human remains to the Apache Tribe of Oklahoma; Comanche Nation, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Zia, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

The National Park Service publishes this notice on behalf of Guadalupe Mountains National Park as part of the National Park Service's administrative responsibilities under NAGPRA. The superintendent of Guadalupe Mountains National Park is solely responsible for information and determinations stated in this notice.

Information about NAGPRA is available online at www.cr.nps.gov/nagpra.

DATES: Repatriation of the cultural items to the Indian tribes listed above in Summary may proceed after December 23, 2004, if no additional claimants come forward. Representatives of any other Indian tribe that believes itself to be culturally affiliated with the cultural items should contact Guadalupe Mountains National Park before December 23, 2004.

SUPPLEMENTARY INFORMATION:

Authority. 25 U.S.C. 3001 *et seq.* and 43 CFR Part 10.

Contact. Contact John Lujan, Superintendent, Guadalupe Mountains National Park, HC 60, Box 400, Salt Flat, TX 79847–9400, telephone (915) 828–3251, regarding determinations stated in this notice or to claim the cultural items described in this notice.

Consultation. Guadalupe Mountains National Park identified the cultural items and assessed the cultural affiliation of the cultural items in consultation with representatives of the Apache Tribe of Oklahoma; Comanche Nation, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Zia, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

Information about cultural items. In 1934–35, human remains representing a minimum of six individuals were removed from Williams Cave in Culberson County, TX. At the time, the land on which Williams Cave is located was privately owned. The excavations were conducted under the auspices of the University Museum of Philadelphia and the Philadelphia Academy of Natural Sciences. Items found at the site indicate the human remains were buried during the Archaic period (3,000 B.C. to A.D. 500). Following the excavation, the human remains from Williams Cave were curated by several institutions, including the Philadelphia Academy of Natural Sciences, Carlsbad Municipal Museum, and University of Nebraska-Lincoln. In 1998, the human remains curated by the Carlsbad Municipal Museum and the University of Nebraska-Lincoln were donated to Guadalupe Mountains National Park. No known individuals were identified.

In 1965–67, human remains representing a minimum of four individuals were recovered from Pratt Cave in Culberson County, TX. At the time, the land on which Pratt Cave was located was under Federal jurisdiction. Items found at the site indicate the human remains were buried during the Late Archaic period (600 B.C. to A.D. 500). No known individuals were identified.

On September 30, 1972, the lands on which both Williams Cave and Pratt Cave are located became part of Guadalupe Mountains National Park.

Guadalupe Mountains National Park officials determined that a relationship of shared group identity could not reasonably be traced between the human remains and any present-day Indian tribe.

According to the Review Committee's charter, the Review Committee is responsible for recommending specific actions for disposition of culturally unidentifiable human remains. In December 1998, Guadalupe Mountains National Park requested that the Review Committee recommend repatriation of the 10 culturally unidentifiable human remains to a group of 12 Indian tribes that had requested the human remains and that demonstrated a cultural relationship to the region. The Review Committee considered the proposal at its December 1998 meeting in Santa Fe, NM, and recommended repatriation of the human remains to the 12 Indian tribes. A May 25, 1999, letter from the Departmental Consulting Archeologist on behalf of the chair of the Review Committee to the superintendent of Guadalupe Mountains National Park summarized the Review Committee's consideration of the park's request and transmitted the Review Committee's recommendation that the park repatriate the human remains to all the tribes listed above in Summary except the Pueblo of Isleta, New Mexico, which did not join the consultation until after the Review Committee's December 1998 meeting

In 2000, the human remains from the 1934–35 Williams Cave excavations that were curated by the Philadelphia Academy of Natural Sciences were donated to Guadalupe Mountains National Park. The fragmentary human remains had been cataloged in Philadelphia as part of the paleontological collections and were not included in the December 1998 repatriation request to the NAGPRA Review Committee. Based on documentation from the 1934–35 excavations, it is believed that the fragmentary human remains represent some of the six individuals removed during the 1934–35 excavations.

In November 2000, the superintendent of Guadalupe Mountains National Park requested that the Review Committee recommend repatriation of the culturally unidentifiable human remains donated to the park by the Philadelphia Academy of Natural Sciences to a group of 13 Indian tribes that had requested the human remains and that demonstrated a cultural relationship to the region. The Review Committee considered the request at its December 2000 meeting in Nashville, TN, and recommended repatriation of the human remains to the 13 Indian tribes. A February 15, 2001, letter from the Assistant Director, Cultural Resources on behalf of the chair of the Review Committee to the superintendent of Guadalupe Mountains National Park summarized the Review Committee's consideration of the park's request and transmitted the Review

Committee's recommendation that the park repatriate the human remains to the tribes listed above in Summary.

In 2001, an additional human bone was discovered in the Guadalupe Mountains National Park collection during a review of cataloged mammal bones. This bone was originally collected from Pratt Cave in 1967 and is believed to represent one of the individuals previously considered by the Review Committee.

Disposition of funerary objects associated with culturally unidentifiable human remains is not addressed by the Native American Graves Protection and Repatriation Act and no associated funerary objects are included in this notice.

Determinations. Under 25 U.S.C. 3003, Guadalupe Mountains National Park officials determined that the human remains represent the physical remains of 10 individuals of Native American ancestry. Guadalupe Mountains National Park officials determined that the human remains are culturally unidentifiable.

Notification. Guadalupe Mountains National Park is responsible for sending copies of this notice to the Indian tribes listed above in Consultation.

Dated: September 28, 2004

Sherry Hutt,

Manager, National NAGPRA program

[FR Doc. 04–25922 Filed 11–22–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Indians Affairs, Washington, DC, and Milwaukee Public Museum, Milwaukee, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC, and in the possession of the Milwaukee Public Museum, Milwaukee, WI. The human remains and associated funerary objects were removed from the Navajo Indian Reservation.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Bureau of Indian Affairs and Milwaukee Public Museum professional staff and contract specialists in physical anthropology in consultation with representatives of the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Laguna, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

In 1925, human remains representing a minimum of one individual were removed from the vicinity of Inscription House, Navajo Canyon, in Arizona, on the Navajo Indian Reservation by museum curator, Samuel A. Barrett, during a Milwaukee Public Museum expedition. No known individual was identified. The one associated funerary object is a potsherd.

On the basis of stylistic attributes, the associated funerary object can be identified as dating to circa post- A.D. 1300, the Pueblo IV or Pueblo V period of Anasazi culture.

At an unknown date, human remains representing a minimum of one individual were removed from ruins in Navajo, AZ, on the Navajo Indian Reservation, by A.J. Newcomb, a trading post operator in Tohatchi, NM. Mr. Newcomb donated the human remains to the Milwaukee Public Museum in 1925. No known individual was identified. No associated funerary objects are present.

The human remains were removed from a refuse heap outside a kiva wall associated with ruins in Navajo, AZ, on the Navajo Indian Reservation. Objects found in the ruins but not donated to the Milwaukee Public Museum indicate that the formation of the refuse heap dates to circa A.D. 900–1600. The human remains exhibit lamboid cranial deformation, which is associated with the Pueblo II through Pueblo IV periods of Anasazi culture.

At an unknown date, human remains representing three individuals were removed from ''Ruin #2, Silent City,'' presumed to be located near Tohatchi, NM, on the Navajo Indian Reservation by A.J. Newcomb. Mr. Newcomb donated the remains to the Milwaukee Public Museum in 1921. No known individuals were identified. The one associated funerary object is an earthenware pot.

One of the individuals from the Silent City site was removed from a refuse heap outside a kiva wall associated with the ruins. Stylistic attributes of the pot identify the occupation as affiliated with the Anasazi culture. Stylistic attributes of the pot also date the burial of one of the other individuals to circa A.D. 900–1300, Pueblo II-III period of the archeologically defined Anasazi culture.

Based on cranial morphology, dental traits, and associated funerary objects, the human remains are identified as Native American. Consultation evidence provided by the Hopi Tribe of Arizona indicates that Navajo Canyon in Arizona, and Navajo, AZ, both on the Navajo Indian Reservation, are part of the aboriginal territory of the Hopi culture, despite current occupation by the Navajo Nation, Arizona, New Mexico and Utah. Consultation evidence provided by representatives of the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Laguna, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico indicates that these groups are descended from Anasazi people living in the vicinity of the present-day Navajo Indian Reservation.

Officials of the Bureau of Indians Affairs and the Milwaukee Public Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of at least five individuals of Native American ancestry. Officials of the Bureau of Indian Affairs and Milwaukee Public Museum also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the two objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Bureau of Indian Affairs and Milwaukee Public Museum have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Laguna, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Dr. Alex Barker, Anthropology Section Head, Milwaukee Public Museum, 800 West Wells Street, Milwaukee, WI 53233, telephone (414) 278–2786, before December 23, 2004. Repatriation of the human remains and associated funerary objects to the Hopi

Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Laguna, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico may begin after that date if no additional claimants come forward.

The Bureau of Indian Affairs is responsible for notifying the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Laguna, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: October 7, 2004

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 04–25921 Filed 11–22–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Milwaukee Public Museum, Milwaukee, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Milwaukee Public Museum, Milwaukee, WI. The human remains and associated funerary objects were removed from Fond du Lac, Green Lake, and Winnebago Counties, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Milwaukee Public Museum professional staff and contract specialists in physical anthropology in consultation with representatives of the Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Otoe-Missouria Tribe of Indians, Oklahoma; and Winnebago Tribe of Nebraska.

In 1926, human remains representing a minimum of one individual were removed from a grave near Luco Creek (site 47–FD–242), Fond du Lac, Fond du Lac County, WI, during sewer construction. In 1926, Robert Weeks donated a glazed ceramic perfume bottle from this grave to the Milwaukee Public Museum. No known individual was identified. The one associated funerary object is a glazed ceramic perfume bottle.

The presence of the perfume bottle dates the burial to the 19th century. The human remains from this burial are currently in the possession of the Wisconsin Historical Society.

In 1931, human remains representing a minimum of one individual were removed from a location on the south shore of Lake Puckaway, Green Lake County, WI, by Rudolf Boettger. Mr. Boettger donated the human remains and an associated funerary object to the Milwaukee Public Museum in the same year. No known individuals were identified. The one associated funerary object is a copper alloy bracelet.

The presence of the bracelet dates the burial to circa A.D. 1770–1900.

In 1931 and 1932, human remains representing a minimum of two individuals were removed from the McCauley Campsite (47–WN–222), Oshkosh, Winnebago County, WI, by Arthur P. Kannenberg. The McCauley Campsite is located at the point where the Fox River flows into Lake Winnebago, between Frankfort and Eveline Streets, Oshkosh, WI. No known individuals were identified. No associated funerary objects are present.

Archeological evidence indicates that the McCauley site was inhabited during the historic period.

Based on cranial morphology and dental characteristics, the human remains are determined to be Native American. Archeological evidence and oral historical evidence provided during consultations indicate that Luco Creek, Lake Puckaway, and Lake Winnebago, WI, are located within the historic territory of the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska. The dates of occupation of the sites are consistent with the time period during which the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska inhabited the area.

Officials of the Milwaukee Public Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of at least three individuals of Native American ancestry. Officials of the Milwaukee Public Museum also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the two objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Milwaukee Public Museum have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Dr. Alex Barker, Anthropology Section Head, Milwaukee Public Museum, 800 West Wells Street, Milwaukee, WI 53233, telephone (414) 278–2786, before December 23, 2004. Repatriation of the human remains and associated funerary objects to the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska may proceed after that date if no additional claimants come forward.

The Milwaukee Public Museum is responsible for notifying the Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Otoe-Missouria Tribe of Indians, Oklahoma; and Winnebago Tribe of Nebraska that this notice has been published.

Dated: October 7, 2004

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 04–25919 Filed 11–22–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Milwaukee Public Museum, Milwaukee, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Milwaukee Public Museum, Milwaukee, WI. The human remains and associated funerary objects were removed from Maricopa County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native

American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Milwaukee Public Museum professional staff and contract specialists in physical anthropology, in consultation with representatives of the Gila River Indian Community of the Gila River Indian Reservation, Arizona; the Hopi Tribe of Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico.

At an unknown date prior to 1965, cremated human remains representing a minimum of two individuals and the vessels containing the human remains were removed from an unknown site two miles northwest of Mesa, Maricopa County, AZ, by E.K. Petrie, Burlington, WI. Mr. Petrie sold the vessels containing the human remains to the Milwaukee Public Museum in 1965. No known individuals were identified. The associated funerary objects are the two vessels that contained the cremated human remains.

On the basis of the mode of mortuary treatment, the human remains are identified as Native American. Stylistic attributes of the mortuary vessels suggest that the remains are affiliated with the archeologically defined Hohokam culture. On the basis of stylistic analysis, one mortuary vessel can be dated to circa A.D. 500-1100, the Colonial-Sedentary period. The other mortuary vessel is dated to circa A.D. 900-1100, the Sedentary period.

Consultation evidence provided by representatives of the Gila River Indian Community of the Gila River Indian Reservation, Arizona indicates that the Hohokam culture is ancestral to the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and Tohono O'odham Nation of Arizona. Consultation evidence provided by representatives of the Hopi Tribe of Arizona and the Zuni Tribe of the Zuni Reservation, New Mexico indicates that the Hohokam culture is ancestral to the Hopi Tribe of Arizona and the Zuni Tribe of the Zuni Reservation, New Mexico, as clans in both of the above groups originated in the Salt River and Gila River area of Arizona.

Officials of the Milwaukee Public Museum have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of at least two individuals of Native American ancestry. Officials of the Milwaukee Public Museum also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the two objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Milwaukee Public Museum have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Dr. Alex Barker, Anthropology Section Head, Milwaukee Public Museum, 800 West Wells Street, Milwaukee, WI 53233, telephone (414) 278-2786, before December 23, 2004. Repatriation of the human remains and associated funerary objects to Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The Milwaukee Public Museum is responsible for notifying the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: October 7, 2004

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 04–25920 Filed 11–22–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. The human remains were removed from the vicinity of Kayenta, Navajo County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; and Pueblo of Laguna, New Mexico.

In 1916, human remains representing one individual were removed from a surface location near Kayenta, Navajo County, AZ, by Samuel Guernsey and John Wetherill. The human remains were donated to the Peabody Museum of Archaeology and Ethnology, Harvard University the same year. No known individual was identified. No associated funerary objects are present.

Museum documentation describes the human remains as ''probably Navajo.'' The attribution of such a specific cultural affiliation to the human remains indicates that the interment postdates sustained contact between indigenous groups and Europeans beginning in the 17th century. Cranial morphology also supports that the human remains are of Navajo ancestry. Oral tradition and historic documentation support the conclusion that the geographic area of Kayenta falls within the historic homelands of the Navajo Nation. Based on this evidence, the age of the human remains and the occupation of the area by the Navajo Nation coincide.

Officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Navajo Nation, Arizona, New Mexico & Utah.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, before December 23, 2004. Repatriation of the human remains to the Navajo Nation, Arizona, New Mexico & Utah may proceed after that date if no additional claimants come forward.

The Peabody Museum of Archaeology and Ethnology is responsible for notifying the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; and Pueblo of Laguna, New Mexico that this notice has been published.

Dated: September 30, 2004

Sherry Hutt

Manager, National NAGPRA Program

[FR Doc. 04–25925 Filed 11–22–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: University of Massachusetts, Department of Anthropology, Amherst, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the University of Massachusetts, Department of Anthropology, Amherst, MA. The human remains were removed from the Fort Neck Burying Ground in Charlestown, Washington County, RI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the University of Massachusetts, Department of Anthropology professional staff in consultation with representatives of the Narragansett Indian Tribe of Rhode Island.

In September of 1912, human remains representing a minimum of eight individuals were removed from the Fort Neck Burying Ground, on the grounds of the James S. Kenyon estate in Charlestown, RI, by Dr. Harris Hawthorne Wilder, his wife Dr. Inez Whipple Wilder, and two assistants. No known individuals were identified among the remains excavated. The Wilders' field notes indicate that there were wooden and metal coffin fragments, small cloth fragments, and shroud pins associated with some of the burials, but there is no indication that these items were collected with the burials. The University of Massachusetts is not in possession of either associated or unassociated funerary objects from these burials.

The human remains collected from the Fort Neck Burying Ground were originally exhibited in the ''Smith Anthropological and Zoological Museum'' at Burton Hall, Smith College, Northampton, MA. Each of the individual bones was marked in black Indian ink, with identification numbers, letters, and Roman numerals that matched up to the Wilders' site map, excavation schedule, and collections storage system; each set of human remains was originally numbered 1, 2, 5, 6, 7, 8, 9, and 10, based on their location in the row. In 1966, Smith College transferred, as an extended loan, the human remains from the Fort Neck Burying Ground, along with other Native American remains, to the Anthropology Department of the University of Massachusetts, Amherst, where they were accessioned as part of the ''Wilder Collection,'' and incorporated into the existing teaching and research collections. In 1987, the University of Massachusetts assigned new accession numbers to the individuals from the Fort Neck Burying Ground as follows: 1987–019 (Wilder #1), 1987–006 (Wilder #2), 1987–015 (Wilder #5), 1987–004 (Wilder #6), 1987–007 (Wilder #7), 1987–018 (Wilder #8), 1987–016 (Wilder #9), and 1987–014 (Wilder #10).

The location of the Fort Neck Burying Ground was described in a 1912 newspaper article: ''The ancient burial place is beautifully located on Fort Neck, near Cross Mills in Charlestown, at the head of Powaget, or Charlestown pond. It lies near the old Indian trail, later known in Colonial days as the King's or Queen's highway, as chanced to be at the time the ruler of England. Later it was called the country road, and then again the Post road'' (The Sun, Providence, RI, September 8, 1912). The Wilders got permission to excavate from the owners of the land, heirs of the late James S. Kenyon, and the town council of Charlestown. The Wilders' site map of ''Fort Neck Burying Ground - Charlestown, R.I. Excavation of September 1912'' plots the location of 10 burials in the one row targeted for study, and at least four additional rows. The site had been previously excavated on at least two occasions. In 1859, Charlestown citizens collected several skeletal elements and artifacts from this and other Narragansett burial sites that were apparently sent to Brown University. Dr. Usher Parsons of Providence later re-opened this graveyard and other sites to supply his own ''repository of scientific curiosities'' (Wilder Field Notebook #1, Charlestown, R.I., summer 1912, stored in Wilder Collection Series VI: Professional Activities, Box 29, Folder 6, Smith College Archives).

An entry in the Smith College Zoology Department Accession Book describes the remains as follows: ''Collection of Skeletons from Charlestown, R.I. Fort Neck Burying ground. People from Narragansett Reservation, buried perhaps between 1750–1840. Ten bodies. Excavated 1912 by the Wilders. These not accessioned yet. (March 1919)'' (Smith College Zoology Department Accession Book II, page 29, on file at University of Massachusetts, Amherst). The Wilders' field notes indicate that two out of the ten graves they selected for excavation showed signs of previous disturbance, and the bodies were already missing. One empty grave had a marked headstone: ''Here lieth ye Body of George ye son of Charles Ninigret, King of ye Natives and his wife Hannah''; the footstone read: ''Ninigret, George. 1731c - 22 Dec 1732.'' The Ninigret family is identified as Niantic and Narragansett in Narragansett tribal genealogical records. No materials were removed from the two empty graves by the Wilders. The University of Massachusetts is now in possession of eight sets of human remains from the Fort Neck Burying

Ground, none of which have been identified by name.

Based on Narragansett Indian tribal written and oral histories; colonial, local, and regional historic documentation; documents in the Wilder Collection at the University of Massachusetts and the Smith College Archives; Dr. Wilder's reconstruction of genealogical information for the Narragansett peoples based on ethnographic interviews at the time of excavation; Narragansett Indian tribal genealogical records; geography; and proximity of the cemetery to the Narragansett Indian Tribal Reservation, it has been determined that the human remains described in this notice are affiliated with the Narragansett Indian Tribe of Rhode Island.

Officials of the University of Massachusetts, Department of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of eight individuals of Native American ancestry. Officials of the University of Massachusetts, Department of Anthropology also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Narragansett Indian Tribe of Rhode Island.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Ralph Faulkingham, Chair, Department of Anthropology, University of Massachusetts, Room 215 Machmer Hall, Amherst, MA 01003, telephone (413) 545–0028, before December 23, 2004. Repatriation of the human remains to the Narragansett Indian Tribe of Rhode Island may proceed after that date if no additional claimants come forward.

The University of Massachusetts, Department of Anthropology is responsible for notifying the Narragansett Indian Tribe of Rhode Island that this notice has been published.

Dated: October 22, 2004

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 04–25923 Filed 11–22–04; 8:45 am]

BILLING CODE 4312–50–S

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–282 (Second Review)]

Petroleum Wax Candles From China

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct a full five-year review concerning the antidumping duty order on petroleum wax candles from China.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty order on petroleum wax candles from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the review will be established and announced at a later date. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: November 5, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On November 5, 2004, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response to its notice of institution (69 F.R. 46182, August 2, 2004) was adequate and that the respondent interested party group response to its notice of institution was inadequate. The Commission also found that other circumstances warranted conducting a full review. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: November 17, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–25894 Filed 11–22–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,945; TA–W–54,945A]

Amcor Plastube, Inc., Breinigsville, Pennsylvania; Amcor Plastube, Inc., Lake in the Hills, Illinois; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on June 16, 2004, applicable to workers of Amcor Plastube, Inc., Breinigsville, Pennsylvania. The notice was published in the **Federal Register** on July 7, 2004 (69 FR 40984).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that a separation occurred involving an employee of Amcor Plastube, Inc., Breinigsville, Pennsylvania, working in Lake in the Hills, Illinois. Mr. James Sonsalla provided support services for the production of plastic squeeze tubes and polyfoil tubes for the cosmetic industry that are produced by the firm.

Based on these findings, the Department is amending this certification to extend coverage to the employee of the Breinigsville, Pennsylvania facility of Amcor Plastube, Inc., working in Lake in the Hills, Illinois.

The intent of the Department's certification is to include all workers of Amcor Plastube, Inc., Breinigsville, Pennsylvania, who were adversely

affected by a shift in production to Canada.

The amended notice applicable to TA–W–54,945 is hereby issued as follows:

''All workers of Amcor Plastube, Inc., Breinigsville, Pennsylvania (TA–W–54,945), and Amcor Plastube, Inc., Lake in the Hills, Illinois (TA–W–54,945A), who became totally or partially separated from employment on or after May 17, 2003, through June 16, 2006, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC, this 10th day of November 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–3292 Filed 11–22–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,894]

Delta Mills, Plant 3; Wallace, SC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on November 1, 2004 in response to a petition filed on behalf of workers at Delta Mills, Plant 3, Wallace, South Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 8th day of November, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–3295 Filed 11–22–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,679]

General Cable, Taunton, MA; Notice of Negative Determination on Reconsideration on Remand

The United States Court of International Trade (USCIT) granted the Department of Labor's request for voluntary remand of the negative determination on reconsideration in *United Electrical, Radio and Machine Workers of America (General Cable)* v. *U.S. Secretary of Labor,* Court No. 04–00390.

The Department's denial of Trade Adjustment Assistance (TAA) for the workers of General Cable, Taunton, Massachusetts was issued on January 13, 2004 and was published in the **Federal Register** on February 6, 2004 (69 FR 5866). The workers produce copper wire and polyvinylchloride (PVC) plastic compounds and are separately identifiable by product line.

The subject company and the United Electrical, Radio and Machine Workers of America, District Council 2 (''Union'') filed a joint primary- and secondarily-affected petition, claiming that the subject company lost sales to customers importing and that the subject company lost business as a supplier, assembler or finisher of products or components for a trade-affected primary company (General Cable, Montoursville, Pennsylvania).

The initial investigation revealed that during the relevant time period, the subject company did not supply a component to a primary firm engaged in production whose workers were currently certified as trade impacted. The primary firm ceased production in 2001 and the TAA certification of workers at that facility expired November 9, 2003. The investigation also revealed that sales and production at the subject company increased in 2003 from 2002 levels.

By application dated February 4, 2004, the Union requested administrative reconsideration of the negative determination, stating that the relevant period investigated by the Department is not an accurate measure in determining workers' eligibility for TAA and suggests that the Department should extend the investigation back to the beginning of 2000. The Notice of Negative Determination Regarding Application for Reconsideration was issued on March 23, 2004 and was published in the **Federal Register** on June 8, 2004 (69 FR 32046).

The request for reconsideration was denied because the closure of the primary company occurred before the relevant time period (November 20, 2002 through November 20, 2003). The TAA statute established the investigatory period as the twelve full months prior to the petition date (November 20, 2003).

By application of July 31, 2004, the Union sought judicial review from the USCIT. In response to the petitioner's appeal, the Department requested, and was granted, a voluntary remand. The Order was issued on September 16, 2004.

In its remand investigation, the Department determined that the workers of the firm are separately identifiable as to whether they are engaged in the production of copper wire or PVC compound.

The Department contacted the company for sales, production, and import figures for copper wire and PVC compound produced at the subject facility during 2002, 2003, January–November 2002 and January–November 2003 as well as information regarding the subject company's customers.

The investigation on remand determined that the subject firm did not import copper wire or PVC compound during 2002, 2003, January–November 2002 and January–November 2003.

The remand investigation determined that there was no loss of business with customers purchasing copper wire during the relevant period. Production of copper wire increased at the subject facility in 2003 from 2002 levels and increased during January–November 2003 from January–December 2002 levels.

To support its findings on remand, the Department also conducted a new customer survey of the subject company's major customers regarding their purchases of copper wire during 2002, 2003, January–November 2002 and January–November 2003. The investigation revealed that the customers did not increase import purchases (direct or indirect) of copper wire during 2002, 2003, January–November 2002 and January–November 2003.

The Department determined on its remand investigation that PVC compound production at the subject firm decreased in 2003 from 2002 levels and decreased during January–November 2003 from January–December 2002 levels.

The Department conducted a new customer survey of the subject company's major customers regarding their purchases of PVC compound during 2002, 2003, January–November 2002 and January–November 2003. The investigation revealed that the customers did not increase import purchases (direct or indirect) of PVC compound during 2002, 2003, January–November 2002 and January–November 2003. Therefore, the Department determined that the workers of the firm producing PVC compound are not impacted by imports of PVC compound.

The remand investigation also confirmed that workers of General Cable, Taunton, Massachusetts, cannot be considered secondarily affected because sales of copper wire and PVC compound to the primary firm ceased in

2001 (copper wire in August 2001 and PVC compound in September 2001). As previously determined, the primary firm ceased its production in 2001.

Conclusion

After reconsideration on remand, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance for workers and former workers of General Cable, Taunton, Massachusetts.

Signed at Washington, DC, this 16th day of November 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–3291 Filed 11–22–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,889]

The Glass Group, Inc., Park Hills, MO; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 27, 2004 in response to a worker petition filed on behalf of workers at The Glass Group, Inc., Park Hills, Missouri.

This petition is a duplicate of a petition instituted on October 27, 2004 (TA–W–55,864), which is the subject of an ongoing investigation. Consequently, further investigation in this case would serve no purpose, and the petition investigation has been terminated.

Signed at Washington, DC, this 5th day of November, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–26017 Filed 11–22–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigation Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 3, 2004.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 3, 2004.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 29th day of October 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 10/18/2004 and 10/29/2004]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
55,810	Honeywell/Hobbs Corp. (Wkrs)	Springfield, IL	10/18/2004	10/14/2004
55,811	Goza Manufacturing (Comp)	Fort Payne, AL	10/18/2004	10/15/2004
55,812	Circuit Images, Inc. (Comp)	Boulder, CO	10/18/2004	10/18/2004
55,813	NUVO Corporation (NPW)	Minnetonka, MN	10/18/2004	10/12/2004
55,814	United Receptacle (Wkrs)	Pottsville, PA	10/18/2004	10/13/2004
55,815	Philips Consumer Electronics (Comp)	Knoxville, TN	10/18/2004	09/29/2004
55,816	Tek Industries (Wkrs)	Fremont, NE	10/18/2004	10/06/2004
55,817	Celanese (Wkrs)	Bishop, TX	10/18/2004	09/19/2004
55,818	Vishay Dale Electronics (State)	Norfolk, NE	10/18/2004	10/14/2004
55,819	Coats American (Comp)	Old Fort, NC	10/19/2004	10/19/2004
55,820	Delphi Safety and Interior (USWA)	Vandalia, OH	10/19/2004	10/18/2004
55,821	Lear Corporation (UAW)	Hazelwood, MO	10/19/2004	10/12/2004
55,822	ZLB Behring (Formerly Aventis) (Wkrs)	Bradley, IL	10/19/2004	10/18/2004
55,823	Haldex Brake Products Corp. (Comp)	Iola, KS	10/19/2004	10/18/2004
55,824	Naturally Knits, Inc. (Comp)	Gastonia, NC	10/19/2004	10/12/2004
55,825A	Jockey International, Inc.	Mt. Sterling, KY	10/19/2004	10/18/2004
55,825	Jockey International, Inc. (Comp)	Carlisle, KY	10/19/2004	10/18/2004
55,826	Dendrite International (Wkrs)	Stroudsburg, PA	10/19/2004	10/11/2004
55,827	Sanmina-SCI (Comp)	Carrolton, TX	10/19/2004	10/18/2004
55,828	Ross Mould, Inc. (USWA)	Washington, PA	10/19/2004	10/12/2004
55,829	Ex-Cell Home Fashions, Inc. (Comp)	Goldsboro, NC	10/19/2004	10/14/2004
55,830	Modine Manufacturing (Comp)	Euphoria, KS	10/20/2004	10/18/2004
55,831	Cardinal Health (State)	Springhill, UT	10/20/2004	10/19/2004
55,832	Davlyn Manufacturing Co., Inc. (Comp)	Spring City, PA	10/20/2004	10/19/2004
55,833	Brooks-Pri Automation Co. (State)	Chelmsford, MA	10/20/2004	10/19/2004
55,834	DreamTime, Inc. (State)	Santa Cruz, CA	10/20/2004	10/12/2004
55,835	ITT Industries (State)	Newton, MA	10/20/2004	10/18/2004
55,836	Frito Lay, Inc. (BCTGM)	Allen Park, MI	10/20/2004	10/15/2004

APPENDIX—Continued

[Petitions instituted between 10/18/2004 and 10/29/2004]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
55,837	Highland Clinic, APMC (NPS)	Shreveport, LA	10/20/2004	10/19/2004
55,838	Carolinia Steel (Wkrs)	Lynchburg, VA	10/20/2004	10/14/2004
55,839	Lindsay Claire Designs, Ltd. (Comp)	Niagara Falls, NY	10/20/2004	10/18/2004
55,840	Sun Microsystems, Inc. (State)	Burlington, MA	10/20/2004	10/15/2004
55,841	Owens Corning (Wkrs)	Duncan, SC	10/21/2004	10/18/2004
55,842	Upholstry Felt (State)	Portland, OR	10/21/2004	10/15/2004
55,843	H.E. Services Co. (State)	Saginaw, MI	10/21/2004	10/15/2004
55,844	Stauffer Glove and Safety Company (Comp)	Pittston, PA	10/22/2004	09/28/2004
55,845	MAHA USA, LLC (Comp)	Pinckard, AL	10/22/2004	10/15/2004
55,846	Hewlett-Packard (Comp)	Vancouver, WA	10/22/2004	10/22/2004
55,847	Whitewater Mold, Inc. (State)	Traverse City, MI	10/22/2004	10/18/2004
55,848	Crotty Corp. (Wkrs)	Quincy, MI	10/22/2004	10/20/2004
55,849	Eaton Corporation (State)	Three Rivers, MI	10/22/2004	10/11/2004
55,850	Hill Fastener (Wkrs)	Rock Falls, IL	10/22/2004	10/20/2004
55,851	Quebecor World (Wkrs)	Effingham, IL	10/22/2004	10/14/2004
55,852	Guide Corp (State)	Monroe, LA	10/25/2004	10/22/2004
55,853	Avery Dennison (Wkrs)	Greensboro, NC	10/25/2004	10/22/2004
55,854	Amcor PET Packaging (Comp)	Merrimack, NH	10/25/2004	10/22/2004
55,855	Van De Weile—IRO, Inc. (State)	Charlotte, NC	10/26/2004	09/30/2004
55,856	Teepak, LLC (Comp)	Summerville, SC	10/26/2004	10/20/2004
55,857	Kamei Garment Co., Inc. (Wkrs)	San Francisco, CA	10/26/2004	09/29/2004
55,858	Orion Sewing Co. (Wkrs)	San Francisco, CA	10/26/2004	09/29/2004
55,859	C and H Fashions, Inc. (Wkrs)	San Francisco, CA	10/26/2004	09/29/2004
55,860	United States Ceramic Tile Co. (USWA)	East Sparta, OH	10/26/2004	10/21/2004
55,861	Northwest Pipe Co. (Wkrs)	Portland, OR	10/26/2004	10/19/2004
55,862	Piedmont home Textiles Corp. (Comp)	Walhalla, SC	10/27/2004	10/22/2004
55,863	Dorby-Frocks (UNITE)	New York, NY	10/27/2004	10/27/2004
55,864	Glass Group, Inc. (The) (Wkrs)	Park Hills, MO	10/27/2004	10/02/2004
55,865	Saint Gobain Container (State)	Maywood, CA	10/27/2004	10/27/2004
55,866	SCP Global Technologies, Inc. (Wkrs)	Boise, ID	10/27/2004	10/06/2004
55,867	Blue River Consulting, Inc. (NPS)	Denver, CO	10/27/2004	10/25/2004
55,868	TMT Picture Display Corp. of America (Comp)	Troy, OH	10/27/2004	10/26/2004
55,869	Teleplan International (Comp)	Norcross, GA	10/27/2004	10/01/2004
55,870	Philadelphia Binding and Trimming (Comp)	Philadelphia, PA	10/27/2004	10/20/2004
55,871	Merrow Machine Co. (IUE)	Newington, CT	10/27/2004	10/16/2004
55,872	Renfro Corporation (Comp)	Mr. Airy, NC	10/27/2004	10/21/2004
55,873	Santee Print Works (Comp)	Sumter, SC	10/27/2004	10/25/2004
55,874A	Evansville Veneer (Comp)	High Point, NC	10/27/2004	10/22/2004
55,874	Evansville Veneer (Comp)	Chandler, IN	10/27/2004	10/22/2004
55,875	Hedstrom Corporation (Wkrs)	Hazlehurst, GA	10/27/2004	10/13/2004
55,876	Frito Lay, Inc. (BCTGM)	Beaverton, OR	10/27/2004	10/22/2004
55,877	EDS MAXTOR Subcontractor (State)	Longmont, CO	10/27/2004	10/21/2004
55,878	Jumpking (Comp)	Mesquite, TX	10/27/2004	10/20/2004
55,879	Sun Microsystems (Wkrs)	Newark, CA	10/27/2004	10/25/2004
55,880	Pitney Bowes (State)	Stamford, CT	10/27/2004	10/22/2004
55,881	Landis and Gyr, Inc. (Comp)	Lafayette, IN	10/28/2004	10/27/2004
55,882	Federal-Mogul Corporation (Comp)	Frankfort, IN	10/28/2004	10/21/2004
55,883	Hitachi Electronic Devices (USA), Inc. (Comp)	Greenville, SC	10/28/2004	10/17/2004
55,884	Jordan Fashions (UNITE)	Westbury, NY	10/28/2004	10/20/2004
55,885	Garner Automotive Electrical, Inc. (Comp)	Whiteville, TN	10/28/2004	10/27/2004
55,886	Whiting Manufacturing Co., Inc. (Comp)	Fairfield, OH	10/28/2004	09/28/2004
55,887	Woodbridge Corp. (State)	Whitmore Lake, MI	10/29/2004	10/28/2004
55,888	Trimtex Co., Inc. (Comp)	Williamsport, PA	10/29/2004	10/29/2004
55,889	The Glass Group Inc. (Wkrs)	Park Hills, MO	10/29/2004	10/21/2004
55,890	Gwinnett Medical Center (Wkrs)	Lawrenceville, GA	10/29/2004	10/19/2004
55,891	Wilsonart International Inc. (State)	Temple, TX	10/29/2004	10/21/2004

[FR Doc. 04–25908 Filed 11–22–04; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,952]

VF Intimates, LP, Johnstown, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at VF Intimates, LP, Johnstown, Pennsylvania. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–54,952; VF Intimates, LP Johnstown, Pennsylvania (October 8, 2004)

Signed at Washington, DC, this 15th day of October 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E4–3293 Filed 11–22–04; 8:45 am]

BILLING CODE 4510–30–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–20681]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for E.I. Du Pont de Nemours and Company, Inc.'s Facility in Newark, DE

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Kathy Dolce Modes, Materials Security & Industrial Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, telephone (610) 337–5251, fax (610) 337–5269; or by e-mail: *kad@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to E. I. du Pont de Nemours and Company, Inc. for Materials License No. 07–13441–02, to authorize release of its Delaware Technology Park facility in Newark, Delaware for unrestricted use. NRC has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this Notice.

II. EA Summary

The purpose of the proposed action is to authorize the release of the licensee's Delaware Technology Park facility in Newark, Delaware for unrestricted use. The licensee's Delaware Technology Park facility was added to their NRC license on August 8, 1997, to use radioactive materials for research and development purposes. On July 16, 2004, E.I. du Pont de Nemours and Company, Inc. requested that NRC release the Delaware Technology Park facility for unrestricted use. E.I. du Pont de Nemours and Company, Inc. has conducted surveys of the facility and determined that the facility meets the license termination criteria in subpart E of 10 CFR part 20. E.I. du Pont de Nemours and Company, Inc. will continue licensed activities at another location, as authorized by the license.

The NRC staff has prepared an EA in support of the proposed license amendment. The facility was remediated and surveyed prior to the licensee requesting the license amendment. The NRC staff has reviewed the information and final status survey submitted by E.I. du Pont de Nemours and Company, Inc. Based on its reviews, the staff has determined that there are no additional remediation activities necessary to complete the proposed action. Therefore, the staff considered the impact of the residual radioactivity at the facility and concluded that since the residual radioactivity meets the requirements in subpart E of 10 CFR part 20, a Finding of No Significant Impact is appropriate.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of the proposed license amendment to release the facility for unrestricted use. The NRC staff has evaluated E. I. du Pont de Nemours and Company, Inc.'s request and the results of the surveys and has concluded that the completed action complies with the criteria in subpart E of 10 CFR part 20. The staff has found that the environmental impacts from the proposed action are bounded by the impacts evaluated by NUREG–1496, Volumes 1–3, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities' (ML042310492, ML042320379, and ML042330385). On the basis of the EA, the NRC has concluded that the environmental impacts from the proposed action are expected to be insignificant and has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

Documents related to this action, including the application for the license amendment and supporting documentation, are available electronically at the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this Notice are: ML043000055 (the Environmental Assessment), ML042110242 (Initial Request), ML042660405 (Decommissioning Report), and ML042790369 (Decommissioning Report—Revision 1). On October 25, 2004, the NRC terminated public access to ADAMS and initiated an additional security review of publicly available documents to ensure that potentially sensitive information is removed from the ADAMS database accessible through the NRC's web site. Interested members of the public may obtain copies of the referenced documents for review and/or copying by contacting the Public Document Room (PDR) pending resumption of public access to ADAMS. The NRC Public Documents Room is located at NRC Headquarters in Rockville, MD, and can be contacted at (800) 397–4209, (301) 415–4737 or by e-mail to: *pdr@nrc.gov*.

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at King of Prussia, Pennsylvania, this 16th day of November, 2004.

For The Nuclear Regulatory Commission.

John D. Kinneman,

Chief, Materials Security & Industrial Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. 04–25904 Filed 11–22–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 29, 2004, through November 12, 2004. The last biweekly notice was published on November 9, 2004 (69 FR 64984).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. (Note: Public access to ADAMS has been temporarily suspended so that security reviews of publicly available documents may be performed and potentially sensitive information removed. Please check the NRC Web site for updates on the resumption of ADAMS access.) The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. (**Note:** Public access to ADAMS has been temporarily suspended so that security reviews of publicly available documents may be performed and potentially sensitive information removed. Please check the NRC Web site for updates on the resumption of ADAMS access.) If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases

for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* (**Note:** Public access to ADAMS has been temporarily suspended so that security reviews of publicly available documents may be performed and potentially sensitive information removed. Please check the NRC Web site for updates on the resumption of ADAMS access.) If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, Pennsylvania

Date of amendment request: October 20, 2004.

Description of amendment request: The proposed change would revise Technical Specification (TS) Table 4.1–1 functional testing surveillance interval from monthly to semi-annually for the following reactor protection system instrument channels: Table 4.1–1, Item No. 4, ''Power Range Channel,'' Item No. 7, ''Reactor Coolant Temperature Channel,'' Item No. 8, ''High Reactor Coolant Pressure Channel,'' Item No. 9, ''Low Reactor Coolant Pressure Channel,'' Item No. 10,'' Flux-Reactor Coolant Flow Comparator,'' Item No. 11, ''Reactor Coolant Pressure-Temperature Comparator,'' Item No. 12, ''Pump Flux Comparator,'' Item No. 13, ''High Reactor Building Pressure Channel,'' Item No. 45, ''Loss of Feedwater Reactor Trip,'' and Item No. 46, ''Turbine Trip/Reactor Trip.'' The TS Section 4.1 Bases would be revised to reflect the proposed change from monthly to semi-annually and to specify that one channel is being tested every 46 days on a continual sequential rotation, which is consistent with the calculations of BAW–10167A, Supplement 1, and associated Nuclear Regulatory Commission Safety Evaluation Report that indicate that the reactor protection system retains a high level of reliability for this test interval. The proposed change would also revise TS Table 4.1–1 functional testing surveillance interval from monthly to quarterly for the following reactor protection system reactor trip devices: Table 4.1–1, Item No. 1, ''Protection Channel Coincidence Logic,'' and Item No. 2, ''Control Rod Drive Trip Breaker and Regulating Rod Power SCRs.'' The TS Section 4.1 Bases would be revised to reflect the proposed change from monthly to quarterly testing and to specify that one channel is being tested every 23 days on a continual sequential rotation, which is consistent with the calculations of BAW–10167A, Supplement 3, February 1998, and the NRC SER for BAW–10167A, Supplement 3, dated January 7, 1998, that indicate that the reactor trip system retains a high level of reliability for this test interval.

Basis for proposed valuated no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The reactor protection system monitors parameters related to safe operation and trips the reactor to protect the reactor core against fuel cladding damage. It also assists in protecting against reactor coolant system damage caused by high system pressure by limiting energy input to the system through reactor trip action. Therefore, this change has no impact on the probability of an accident previously evaluated. The results of the reliability analyses conducted in accordance

with NRC [Nuclear Regulatory Commission] approved methodology and criteria show that the test interval extension of the reactor protection system instrument channels and reactor trip devices is not a significant contributor to trip system unavailability or the risk of core damage. The reactor protection system instrument channel and reactor trip device functional test surveillance program will continue to ensure that the reactor protection system is capable of performing its intended safety function during a design basis accident.

Therefore, this change has no effect on the consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change involves the reactor protection system instrument channel and reactor trip device surveillance test interval, which is not, in and of itself, considered to be an accident initiator. Postulated failure of the reactor protection system instrument channel or reactor trip device to function is an analyzed condition and does not constitute a new or different kind of accident. The proposed change does not create any new failure modes not bounded by previously analyzed accidents.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The results of the reliability analysis conducted in accordance with NRC approved methodology and criteria show that the test interval extension of the reactor protection system instrument channels and reactor trip devices is not a significant contributor to trip system unavailability or the risk of core damage. The Technical Specifications will continue to require the reactor protection system trip setpoints to remain within the assumptions of the accident analysis and that adequate reliability of the reactor protection system trip devices is maintained, thus preserving existing margins of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas S. O'Neill, Associate General Counsel, AmerGen Energy Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Section Chief: Richard J. Laufer.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: August 20, 2004.

Description of amendment request: The proposed amendment would revise the Allowable Values for the following Reactor Protection System (RPS) instrumentation functions: Intermediate Range Neutron Flux, Reactor Coolant Flow—Low, Steam Generator Water Level—Low Coincident with Steam Flow/Feedwater Flow Mismatch, and Intermediate Range Neutron Flux (P–6) Interlock. Additionally, these changes revise the Allowable Value for the Engineered Safety Feature Actuation System Instrumentation function for High Steam Flow in Two Steam Lines Coincident with Steam Line Pressure—Low. Also the proposed amendment would delete an unnecessary footnote associated with the applicability for the Automatic Trip Logic RPS instrumentation function.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposal to revise the Allowable Values for the affected reactor protection and engineered safety feature actuation functions was developed in accordance with the current setpoint methodology for HBRSEP [H. B. Robinson Steam Electric Plant], Unit No. 2, thus ensuring that the probability and consequences of previously evaluated accidents are not significantly increased. The proposed deletion of the unnecessary footnote associated with the Automatic Trip Logic reactor protection instrumentation function does not change the requirements for operability of this function. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated, because the factors that are used to determine the probability and consequences of accidents are not being affected.

2. Do the proposed changes create the possibility of a new or different kind of accident from any previously evaluated?

The proposed changes will continue to ensure that the operability of the previously described functions will be appropriately maintained. No physical changes to the HBRSEP, Unit No. 2, systems, structures, or components are being implemented. There are no new or different accident initiators or sequences being created by the proposed Technical Specifications changes. Therefore, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in the margin of safety?

The proposed changes, as previously described, ensure that the margin of safety for the applicable fission product barriers that are protected by these functions will continue to be maintained. This conclusion is based on the use of a valid setpoint methodology for determining the Allowable Values for the reactor protection and engineered safety feature actuation functions. Therefore, these changes do not involve a significant reduction in the margin of safety.

Based on the preceding discussion, the requested changes do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Steven R. Carr, Associate General Counsel—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Michael L. Marshall.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina; Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1and 2, Mecklenburg County, North Carolina; Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: September 28, 2004.

Description of amendment request: The proposed amendment would delete Technical Specification (TS) 5.6.1, ''Occupational Radiation Exposure Report,'' and TS 5.6.4, ''Monthly Operating Reports.''

The NRC staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on June 23, 2004 (69 FR 35067). The licensee affirmed the applicability of the model NSHC determination in its application dated September 28, 2004.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change eliminates the TS reporting requirements to provide a monthly operating report of shutdown experience and operating statistics if the equivalent data is submitted using an industry electronic database. It also eliminates the TS reporting requirement for an annual occupational radiation exposure report, which provides information beyond that specified in NRC regulations. The proposed change involves no changes to plant systems or accident analyses. As such, the change is administrative in nature and does not affect initiators of analyzed events or assumed mitigation of accidents or transients. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The proposed change does not involve a significant reduction in a margin of safety?

This is an administrative change to reporting requirements of plant operating information and occupational radiation exposure data, and has no effect on plant equipment, operating practices or safety analyses assumptions. For these reasons, the proposed change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above, the requested change does not involve significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: Mary Jane Ross-Lee, Acting.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and 2), Beaver County, Pennsylvania

Date of amendment request: October 5, 2004.

Description of amendment request: The proposed amendments would revise Technical Specifications (TSs) 3/4.3.1, ''Reactor Trip System Instrumentation,'' and 3/4.3.2, ''Engineered Safety Feature Actuation System Instrumentation,'' to modify steam generator (SG) level allowable value setpoints. The proposed changes address recent generic issues involving new SG level uncertainty considerations and margins associated with Westinghouse-designed SGs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The SG water level-low-low setpoint and allowable value have been revised to address Westinghouse Nuclear Safety Advisory Letter NSAL–03–9 and other considerations on steam generator water level uncertainties. The revised setpoint and allowable value calculations continues to follow the setpoint methodology previously approved for BVPS Unit No. 1 and No. 2 while addressing newly identified level uncertainty considerations. The proposed changes to the SG water level-low-low Allowable Value for BVPS Unit No. 1 and No. 2 and to the SG water level-high-high Allowable Value for BVPS Unit No. 2 continue [to] maintain the validity of the safety analysis limits used in the safety analyses that credit the actuations based on SG water level.

The proposed changes do not alter the causes for any accident described in the Updated Final Safety Analysis Report (UFSAR) that credit the SG water level setpoint actuations. Therefore, they do not involve a significant increase in the probability of an accident previously evaluated.

The proposed changes do not alter the accident analyses that credit the SG water level-low-low setpoint actuation or the associated accident acceptance criteria. Therefore, they do not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The SG water level-low-low setpoint and allowable value have been revised to address Westinghouse Nuclear Safety Advisory letter NSAL–03–9 and other considerations on steam generator water level uncertainties. Implementation of the proposed setpoint changes have no significant effect on either the configuration of the plant, or the manner in which the plant is operated. The proposed changes to the SG water level-low-low allowable value for BVPS Unit No. 1 and No. 2 and to the SG water level-high-high allowable value for BVPS Unit No. 2 continue to maintain the validity of the safety analysis limits used in the safety analyses that credit the actuations based on SG water level.

Therefore, since the plant configuration is not adversely changed and the proposed changes do not alter the accident analyses that credit actuation based on SG water level, the proposed change does not create the possibility of a new or different [kind of] accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The Reactor Trip System and Engineered Safety Feature Actuation System setpoint analysis methodology and acceptance criteria provide the margin of safety. The SG water level-low-low and SG water level-high-high actuation setpoint and allowable value have been calculated using the same methodology as previously approved for the BVPS Unit No. 1 and No. 2 while addressing newly identified considerations needed to protect the limits used in the safety analyses. The applicable safety analyses have been performed and show acceptable results. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary O'Reilly, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Richard J. Laufer.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: October 25, 2004.

Description of amendment request: The proposed amendment would revise Technical Specification 2.1.1.2 for the dual recirculation loop and single recirculation loop Safety Limit Minimum Critical Power Ratio (SLMCPR) values to reflect results of a cycle specific calculation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The probability of an evaluated accident is derived from the probabilities of the individual precursors to that accident. Changing the SLMCPR does not increase the probability of an evaluated accident. The change does not require any physical plant modifications, physically affect any plant components, or entail changes in plant

operation. Therefore, no individual precursors of an accident are affected.

The consequences of an evaluated accident are determined by the operability of plant systems designed to mitigate those consequences. Limits have been established, consistent with NRC approved methods, to ensure that fuel performance during normal, transient, and accident conditions is acceptable. The proposed change conservatively establishes the safety limit for the minimum critical power ratio (SLMCPR) for Cooper Nuclear Station Cycle 23 such that the fuel is protected during normal operation and during any plant transients or anticipated operational occurrences.

The proposed change revises the SLMCPR to protect the fuel during normal operation as well as during any transients or anticipated operational occurrences. Operational limits Minimum Critical Power Ratio (MCPR) are established based on the proposed SLMCPR to ensure that the SLMCPR is not violated during all modes of operation. This will ensure that the fuel design safety criteria (*i.e.,* that at least 99.9% of the fuel rods do not experience transition boiling during normal operation and anticipated operational occurrences) is met. Since the operability of plant systems designed to mitigate any consequences of accidents has not changed, the consequences of an accident previously evaluated are not expected to increase.

Based on the above NPPD [Nebraska Public Power District] concludes that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Creation of the possibility of a new or different kind of accident would require the creation of one or more new precursors of that accident. New accident precursors may be created by modifications of the plant configuration or changes in allowable modes of operation. The proposed change does not involve any modifications of the plant configuration or allowable modes of operation. The proposed change to the SLMCPR assures that safety criteria are maintained for Cycle 23.

Based on the above NPPD concludes that the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The value of the proposed SLMCPR provides a margin of safety by ensuring that no more than 0.1% of the rods are expected to be in boiling transition if the MCPR limit is not violated. The proposed change will ensure the appropriate level of fuel protection is maintained. Additionally, operational limits are established based on the proposed SLMCPR to ensure that the SLMCPR is not violated during all modes of operation. This will ensure that the fuel design safety criteria (*i.e.,* that at least 99.9% of the fuel rods do not experience transition boiling during normal operation as well as anticipated operational occurrences) are met.

Based on the above NPPD concludes that the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Acting Section Chief: Michael K. Webb.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: April 15, 2004.

Description of amendment request: The proposed change would modify the Salem Updated Final Safety Analysis Report (UFSAR) with respect to fire protection requirements for the 4160 Volt Switchgear Rooms, 460 Volt Switchgear Rooms, and the Lower Electrical Penetration Area Rooms. Specifically, the amendment would reduce the UFSAR description of the Carbon Dioxide Tank volume from being able to provide two full discharges to an affected room to one full and one partial discharge to an affected room. Additionally, the assumed ability of the Carbon Dioxide system would be reduced from an ability to produce a CO_2 concentration of 50% for 30 minutes to an ability to produce a CO_2 concentration of 27.6% for a length of time sufficient to suppress a fire and allow the PSEG Nuclear Fire Department to respond.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The likelihood of a fire event is not increased since the proposed change does not alter the fire hazards contained in the plant. The ability to achieve and maintain safe shutdown in the event of a fire is not impacted by the reduction of CO_2 concentration, since the Fire Brigade will respond in ample time and extinguish a fire using alternate means. In addition, the proposed changes to the UFSAR would not change any response to a fire event. Also, the probability of occurrence or the consequences for an accident or malfunction of equipment is not increased by the proposed changes since the response to a fire event would not change and the fire brigade would continue to respond rapidly to any fires or fire alarms. Further, the proposed changes do not alter the way any structure, system, or component (SSC) functions, do not modify the manner in which the plant is operated, and do not significantly alter equipment out-of-service time. Changing the CO_2 concentration requirement in the 4160 Volt Switchgear Rooms, 460 Volt Switchgear Rooms and Lower Penetration Area Rooms at Salem Units 1 and 2 does not change the probability or consequences of any accident and dose consequences are unaffected. No changes to the design of structures, systems, or components (SSC) are made and there are no effects on accident mitigation.

Therefore, the proposed changes do not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The possibility of a new or different kind of accident from any accident or malfunction in the Salem Updated Final Safety Analysis Report (UFSAR) is not created. The design basis event applicable to the proposed change is a fire in the 4160 Volt Switchgear Rooms, 460 Volt Switchgear Rooms and Lower Penetration Area Rooms at Salem Units 1 and 2. Therefore a different accident is not created. In addition, the proposed changes cannot initiate an accident. Further, the proposed changes to the UFSAR do not change the design function or operation of any SSCs.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Response: No.

The reduction in CO_2 concentration provides ample response time for the onsite dedicated fire brigade to respond to a fire event and a 20% safety factor in CO_2 concentration remains. The proposed changes do not affect the ability to safely shutdown and maintain the shutdown conditions of either unit following a fire in the affected areas. The proposed changes do not rely on compensatory measures or actions deviating from the licensing or design basis. In addition, the proposed changes do not change the margin of safety since no SSCs are changed. The results of accident analysis remain unchanged by the proposed changes to the UFSAR.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three

standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: September 17, 2004.

Description of amendment request: The amendment is to support the replacement of the steam generators (SGs) at Callaway during the refueling outage in the Fall of 2005. The amendment would (1) change the affected technical specifications (TSs) such as the reactor core safety limits (TS 2.1.1), reactor trip system (RTS) and engineered safety feature actuation system (ESFAS) instrumentation (TSs 3.3.1 and 3.3.2), reactor coolant system (RCS) limits (TS 3.4.1), RCS loops (TSs 3.4.5, 3.4.6, and 3.4.7), RCS operational leakage (TS 3.4.13), SG tube integrity (new TS 3.4.17), main steam safety valves (TS 3.7.1), SG surveillance program (TS 5.5.9), containment integrated leakage rate testing (ILRT) program (TS 5.5.16), and SG inspection report (TS 5.6.10); (2) revise the affected transient analyses such as excessive increase in secondary steam flow event, loss of normal feedwater event, transient mass and energy releases, radiological consequences of associated events, and containment pressure/temperature responses; and (3) revise nuclear steam and supply system (NSSS) design parameters and transients, and fatigue usage factors and stresses for the replacement SGs. The amendment involves the following areas of change to the license: nuclear steam supply system evaluations for the replacement steam generators, trip time delay (TTD) elimination for certain RTS and ESFAS functions, the SG surveillance program in Technical Specification Task Force (TSTF) No. 449 (TSTF–449), and the post-modification containment ILRT exception.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration for the above areas of review, which is presented below (with the terms defined in the plant Technical Specifications capitalized):

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Nuclear Steam Supply System Evaluations for Replacement Steam Generators

As discussed in the NSSS Licensing Report (Appendix A to this amendment application), all acceptance criteria continue to be met. All major NSSS components (*e.g.*, Reactor Vessel, Pressurizer, RCPs [(reactor coolant pumps)], Steam Generators, etc.) have been assessed with respect to bounding conditions expected for replacement steam generator (RSG) conditions. In all cases operation has been found to be acceptable. Major systems and subsystems (*e.g.*, safety injection, RHR [residual heat removal], etc.) have been reviewed and acceptable performance has been verified for their normal operation and, as applicable, for their safety-related functions. All reactor trip and ESFAS actuation setpoints have been assessed, and the proposed setpoint modifications will assure adequate protection is afforded for all design basis events.

The reactor core safety limits have been revised based on the RSG project parameters. All of the acceptance criteria for the accident analyses (*e.g.*, DNBR [departure from nucleate boiling ratio] limits, fuel centerline temperatures, etc.) continue to be met with the revised safety limit lines. Therefore, the revised core safety limit line changes are acceptable. The proposed changes to the reactor core safety limits will not initiate any accidents; therefore, they do not increase the probability of an accident previously evaluated in the FSAR [Callaway Final Safety Analysis Report]. The comprehensive analytical efforts performed to support the proposed RSG conditions include a reanalysis or evaluation of all accident analyses that are impacted by the revised reactor core safety limits.

The changes in various SG-related RTS and ESFAS Allowable Values have resulted from the analyses performed to support plant operation at the proposed RSG conditions. Setpoint uncertainty calculations confirm the acceptability of these revised Allowable Values. The affected RTS and ESFAS Allowable Values have been modified to reflect the results of updated setpoint calculations based on plant-specific uncertainties, calibration practices, calibration equipment, and installed hardware and procedures. The Allowable Values were calculated using the same Westinghouse setpoint methodology used for the current trip setpoints, but improved in a conservative fashion to include refinements that better reflect plant calibration practices and equipment performance. These refinements include the incorporation of a sensor reference accuracy term to address repeatability effects when performing a single pass calibration (*i.e.*, one up and one down pass at several points verifies linearity and hysteresis, but not repeatability). In addition, sensor and rack error terms for calibration accuracy and drift are grouped in the Channel Statistical Allowance equation with their dependent measurement and test equipment (M&TE) terms, then combined with the other independent error terms using the square root sum of the squares (SRSS) methodology. This improved setpoint methodology has been previously review[ed] and approved by the NRC. The proposed RTS and ESFAS Allowable Value changes will not initiate any accidents; therefore, they do not increase the probability of an accident previously evaluated in the FSAR. The comprehensive analytical effort performed to support the proposed RSG conditions included a reanalysis or evaluation of all accident analyses that are impacted by the revised RTS and ESFAS Allowable Values. All systems will function as designed.

The decrease in the Maximum Allowable Power for 3 OPERABLE MSSVs [main steam safety valves] per SG from < 49% of Rated Thermal Power to < 45% of Rated Thermal Power resulted from the analyses and evaluations performed to support plant operation at the proposed RSG conditions. The accident analysis acceptance criteria continue to be met with these changes. These proposed plant system changes do not increase the probability of an accident previously evaluated in the FSAR. The comprehensive analytical effort performed to support the proposed RSG conditions has included a review and evaluation of all components and systems (including interface systems and control systems) that could be affected by this change. All systems will function as designed. The change in the manner in which the Reactor Coolant Flow—Low Allowable Value is defined (while retaining the same numerical value), the change in the manner in which RCS average temperature is defined and the reduced upper limit for nominal T-avg [average temperature] at full power conditions in the Overtemperature ΔT [delta temperature] and Overpower ΔT setpoint equations, and the changes to the pressurizer pressure and RCS average temperature limits in the DNB LCO [departure from nucleate boiling limiting condition for operation] [TS] 3.4.1 have also been evaluated. None of these proposed changes will initiate any accidents; therefore, the probability of an accident has not been increased.

The potential dose consequences have been analyzed with respect to the above changes collectively. The dose increases are less than minimal (*i.e.*, <10% of the margin between the regulatory limits and the currently reported doses). The applicable dose acceptance criteria continue to be met.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Trip Time Delay Elimination

This design change will eliminate only the Trip Time Delay portion of the SG Water Level Low-Low trip functions and return that portion of the design to condition that existed prior to Callaway Amendment 43 dated April 14, 1989. The coincidence logic in the Solid State Protection System will be unaffected. In all other regards, the design of the RTS and ESFAS instrumentation will be unaffected. These protection systems will continue to function in a manner consistent with the plant design basis. All design, material, and construction standards that were applicable prior to this amendment request are maintained.

The probability and consequences of accidents previously evaluated in the FSAR are not adversely affected because the removal of the trip time delay circuitry assures a faster response by the affected trip functions, consistent with the safety analysis acceptance criteria and the original plant licensing basis.

The proposed change will not affect the probability of any event initiators. There will be no degradation in the performance of, or an increase in the number of challenges imposed on, safety-related equipment assumed to function during an accident situation. There will be no change to normal plant operating parameters or accident mitigation performance.

The proposed change will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the FSAR.

Therefore, the proposed TTD elimination does not involve a significant increase in the probability or consequences of an accident previously evaluated.

TSTF–449 Generic Licensing Change Package

This proposed change requires a Steam Generator Program that includes performance criteria that will provide reasonable assurance that the steam generator (SG) tubing will retain integrity over the full range of operating conditions (including startup, operation in the power range, hot standby, cooldown, and all anticipated transients included in the design specification). The SG performance criteria are based on tube structural integrity, accident induced leakage, and operational LEAKAGE.

A steam generator tube rupture (SGTR) event is one of the design basis accidents that are analyzed as part of a plant's licensing basis. In the analysis cases for the SGTR event at Callaway Plant, a primary to secondary LEAKAGE rate of 1 gallon per minute (gpm) to the unaffected SGs is assumed, in excess of the RCS Operational LEAKAGE rate limit in TS 3.4.13, and the LEAKAGE rate associated with a double-ended rupture of a single tube in the ruptured SG is also assumed. For other design basis accidents such as main steam line break (MSLB), rod ejection, and reactor coolant pump locked rotor, the SG tubes are assumed to retain their structural integrity (*i.e.*, they are assumed not to rupture). These additional analyses for Callaway Plant assume, as an initial condition, that primary to secondary LEAKAGE for all SGs is 1 gpm. The accident induced leakage criterion introduced by the proposed change to TS 5.5.9 accounts for tubes that may leak during design basis accidents. The accident induced leakage criterion limits this leakage to no more than the 1 gpm value assumed in the accident analyses.

The SG performance criteria added to TS 5.5.9 identify the standards against which tube integrity is to be measured. Meeting the performance criteria provides reasonable assurance that the SG tubing will remain capable of fulfilling its specific safety function of maintaining reactor coolant pressure boundary integrity throughout each operating cycle and in the unlikely event of a design basis accident. The performance criteria are only a part of the Steam Generator Program required by the proposed change to TS 5.5.9. The program, defined by NEI [Nuclear Energy Institute] 97–06, Steam Generator Program Guidelines, includes a framework that incorporates a balance of prevention, inspection, evaluation, repair, and leakage monitoring.

The consequences of design basis accidents are, in part, functions of the DOSE EQUIVALENT I–131 in the primary coolant and the primary to secondary LEAKAGE rates resulting from an accident. Therefore, limits are included in TS 3.4.13 for RCS Operational leakage and in TS 3.4.16 for DOSE EQUIVALENT I–131 in the primary coolant to ensure the plant is operated within its analyzed condition. The radiological consequence analyses at Callaway Plant assume that the primary to secondary LEAKAGE rate is 1 gpm (more conservative than the limit in TS 3.4.13), and that the reactor coolant activity levels of DOSE EQUIVALENT I–131 are at the TS 3.4.16 limits.

The proposed TSTF–449 changes reflect the design of the replacement SGs, but do not affect their method of operation or primary or secondary coolant chemistry controls. The proposed changes update the TS and enhance the requirements for SG inspections. The proposed changes do not adversely impact the conclusions of any previously evaluated design basis accident and are an improvement over the existing TS.

Therefore, this proposed change to implement TSTF–449 does not affect the consequences of a SGTR accident and the probability of such an accident is reduced. In addition, this proposed change does not affect the consequences of an MSLB, rod ejection, reactor coolant pump locked rotor, or any other accident event involving the potential release of radioactive fluids from the secondary side of Callaway Plant. [Therefore, this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.]

Post-Modification ILRT Exception

This proposed change would provide Callaway Plant with an exception from performing a post-modification containment integrated leak rate test following the replacement of the steam generators during Refuel [Outage] 14.

Integrated leak rate tests are performed to assure the leak-tightness of the primary containment boundary system, and as such they are not accident initiators. Therefore, not performing an integrated leak rate test will not affect the probability of an accident previously evaluated. The intent of post-modification integrated leak rate testing requirements is to assure the leak-tight integrity of the area affected by the modification. For the Callaway Plant steam generator replacement modification, this intent will be satisfied by performing the American Society of Mechanical Engineers code required inspections and tests. Since the leak-tightness integrity of the primary containment boundary affected by the steam generator replacement will be assured, there is no change in the containment boundary's ability to confine radioactive materials during an accident. Therefore, adding a Technical Specification exception from the steam generator replacement post-modification integrated leak rate testing requirements does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Nuclear Steam Supply System Evaluations for Replacement Steam Generators

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this amendment. There will be no adverse effect or challenges imposed on any safety-related system as a result of this amendment.

This amendment does not alter the safe performance of the plant protection systems to trip the reactor when necessary or actuate ESF [engineered safety feature] systems.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Trip Time Delay Elimination

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this amendment. There will be no adverse effect or challenges imposed on any safety-related system as a result of this amendment.

This amendment does not alter the safe performance of the plant protection systems to trip the reactor when necessary or actuate ESF systems.

Therefore, this proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

TSTF–449 Generic Licensing Change Package

The proposed performance based requirements are an improvement over the requirements imposed by the existing TS.

Implementation of the proposed Steam Generator Program will not introduce any adverse changes to the plant design basis or postulated accidents resulting from potential tube degradation. The result of the implementation of the Steam Generator Program will be an enhancement of SG tube performance. Primary to secondary LEAKAGE that may be experienced during all plant conditions will be monitored to ensure it remains within current accident analysis assumptions.

This proposed change does not impact the method of SG operation or primary or secondary coolant chemistry controls. In addition, this proposed change does not impact any other plant system or component. The change enhances SG inspection requirements.

Therefore, this proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

Post-Modification ILRT Exception

The proposed change would provide Callaway Plant with an exception from performing a post-modification containment

integrated leak rate test following the replacement of the steam generators during Refuel 14. Providing an exception from performing a test does not involve a physical change to the plant nor does it change the operation of the plant. Thus it cannot introduce a new failure mode. Therefore adding a Technical Specification requirement that provides an exception from the steam generator replacement post-modification integrated leak rate testing requirement does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

Nuclear Steam Supply System Evaluations for Replacement Steam Generators

The analyses and evaluations supporting the proposed RSG conditions reflect the reactor core safety limits. All acceptance criteria continue to be met.

The analyses supporting the proposed RSG conditions reflect the proposed RTS and ESFAS Allowable Values. Setpoint calculations demonstrate that margin exists between these Allowable Values and the corresponding safety analysis limits used in the RSG analyses. The calculations are based on plant instrumentation and calibration/functional test methods and include allowances for the RSG conditions. All analyses and evaluations supporting the proposed RSG core safety limits, decrease in maximum allowable power level for 3 operable MSSVs per SG, the change in the manner in which the Reactor Coolant Flow—Low Allowable Value is defined (while retaining the same numerical value), the change in the manner in which RCS average temperature is defined and the reduced upper limit for nominal T-avg at full power conditions in the Overtemperature ΔT and Overpower ΔT setpoint equations, and the changes to the pressurizer pressure and RCS average temperature limits in the DNB LCO [TS] 3.4.1 are acceptable. All acceptance criteria continue to be met. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

Trip Time Delay Elimination

This proposed change does not eliminate any RTS or ESFAS surveillances or alter the frequency of those surveillances as required by the TS. The SG Water Level Low—Low safety analysis limit of 0% span assumed in the analyses supporting the approval of the TTD design in Callaway Amendment 43 dated April 14, 1989 is also used in the RSG analyses discussed above. None of the acceptance criteria for any accident analysis is changed for TTD elimination.

There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. The radiological dose consequence acceptance criteria will continue to be met.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

TSTF–449 Generic Licensing Change Package

The SG tubes in pressurized water reactors are an integral part of the reactor coolant pressure boundary and, as such, are relied upon to maintain the primary system's pressure and inventory. As part of the reactor coolant pressure boundary, the SG tubes are unique in that they are also relied upon as a heat transfer surface between the primary and secondary systems such that residual heat can be removed from the primary system. In addition, the SG tubes also isolate the radioactive fission products in the primary coolant from the secondary system. In summary, the safety function of a SG is maintained by ensuring the integrity of its tubes.

Steam generator tube integrity is a function of the design, environment, and the physical condition of the tube. This proposed change to implement TSTF–449 does not, of itself, affect tube design or operating environment. The proposed change is expected to result in an improvement in the tube integrity by implementing the Steam Generator Program to manage SG tube inspection, assessment, repair (only under NRC-approved methods, none of which currently apply to the RSGs), and plugging. The requirements established by the Steam Generator Program are consistent with those in the applicable design codes and standards and are an improvement over the requirements in the existing TS.

For the above reasons, the margin of safety is not changed and overall plant safety will be enhanced by this proposed change.

Post-Modification ILRT Exception

The proposed change would provide Callaway Plant with an exception from performing a post-modification containment integrated leak rate test following the replacement of the steam generators during Refuel 14. The intent of post-modification integrated leak rate testing requirements is to assure the leak-tight integrity of the area affected by the modification. This intent will be satisfied by performing American Society of Mechanical Engineers code required inspections and tests. The acceptance criterion for American Society of Mechanical Engineers code system pressure testing for the base metal and welds is no leakage. In addition, the test pressure for the system pressure test will be several times that required during an integrated leak rate test. Since the leak-tight integrity of the primary containment boundary affected by the steam generator replacement will be assured, there is no change in the primary containment boundary's ability to confine radioactive materials during an accident. Therefore, adding a Technical Specification requirement that provides an exception from the steam generator replacement post-modification integrated leak rate testing requirements does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Robert A. Gramm.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: September 15, 2004.

Description of amendment request: The proposed changes will change the Administrative Controls Section of the Technical Specifications (TS) in order to incorporate title changes, change the location where the plant-specific titles and TS titles are correlated, and relocate the unit staff requirements to the Quality Assurance Program. These proposed changes will support the implementation of proposed Virginia Electric and Power Company Topical Report DOM–QA–1, ''Nuclear Facility Quality Assurance Program Description,'' currently under U.S. Nuclear Regulatory Commission (NRC) staff review.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of North Anna Units 1 and 2 in accordance with the proposed license amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is administrative in nature and does not affect plant systems, structures or components (SSCs) or plant operation during normal or accident conditions. The proposed change only affects the designated titles of personnel, the location of the TS title and plant-specific title correlation, and the location of the unit staff qualification requirements. Therefore, this change has no bearing on the probability of an accident. Management organizational structure and safety and operational reviews have not changed and there is no change in the method of plant operation, operation review, or system design review. As such, this change does not alter the conclusions of the existing safety analyses and therefore does not alter the consequences of an accident previously evaluated.

2. Operation in accordance with the proposed license amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed administrative change continues to ensure that adequate management oversight exists at the plant in accordance with the existing Technical

Specifications. The proposed change only affects the designated titles of personnel, the location of the TS title and plant-specific title correlation, and the location of the unit staff qualification requirements. This change does not impact plant SSCs or plant operation. Management organizational structure and safety and operational reviews have not changed and there is no change in the method of plant operation, operation review, or system design review. There are no new or different accident scenarios, accident initiators, nor failure mechanisms that will be introduced due to this change. Therefore, the proposed change does not create the possibility of an accident of a different type than evaluated previously.

3. Operation in accordance with the proposed license amendments would not involve a significant reduction in a margin of safety.

The proposed change only affects the designated titles of personnel, the location of the TS title and plant-specific title correlation, and the location of the unit staff qualification requirements. This change does not impact plant design, plant operation or any safety margin. Therefore, the proposed change does not significantly reduce a margin of safety.

This evaluation concludes that the proposed amendments to the North Anna Units 1 and 2 Technical Specifications do not involve a significant increase in the probability or consequences of a previously evaluated accident, do not create the possibility of a new or different kind of accident and do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lillian M. Cuoco, Esq., Senior Counsel, Dominion Resources Services, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385.

NRC Section Chief: Mary Jane Ross-Lee (Acting).

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: October 7, 2004.

Description of amendment request: The proposed change would revise Technical Specification (TS) 5.3, ''Unit Staff Qualifications,'' to reinstate the qualification requirements for the shift manager and control room supervisor positions that were inadvertently eliminated through Amendment No. 150. Also, TS 5.3 would be revised to reference this amendment application for the use of the National Academy for Nuclear Training guideline, ACAD 00–003, Revision 1, ''Guidelines for Initial Training and Qualification of Licensed Operators.'' Various other TSs would be revised to make corrections that were identified by the NRC staff in its letter dated January 28, 2004, and additional reviews performed by the licensee.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Unit Staff Qualifications

The proposed change is an administrative change to reinstate the qualification requirements for specific control room positions that were inadvertently eliminated through the issuance of Amendment No. 150 and utilize Revision 1 to ACAD 00–003, ''Guidelines for Initial Training and Qualification of Licensed Operators.'' The proposed change does not directly impact accidents previously evaluated. WCNOC's [Wolf Creek Nuclear Operating Corporation's] licensed operator training program is accredited by the National Academy for Nuclear Training and is based on a systems approach to training consistent with the requirements of 10 CFR 55. Although licensed operator qualifications and training may have an indirect impact on accidents previously evaluated, the NRC considered this impact during the rulemaking process, and by promulgation of the revised 10 CFR 55 rule, concluded that this impact remains acceptable as long as the licensed operator training program is certified to be accredited and is based on a systems approach to training.

Corrections

The proposed change involves corrections to the Technical Specifications that are either associated with the issuance of the Improved Technical Specifications (Amendment No. 123) or subsequent amendments. The changes are considered administrative changes and do not modify, add, delete, or relocate any technical requirements of the Technical Specifications. As such, administrative changes do not effect initiators of analyzed events or assumed mitigation of accident or transient events.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Unit Staff Qualifications

The proposed change is an administrative change to reinstate the current requirements of specific control room positions and allow the use of Revision 1 of ACAD 00–003 for initial training and qualification of licensed operators. WCNOC's licensed operator training program is accredited by the National Academy for Nuclear Training and is based on a systems approach to training consistent with the requirements of 10 CFR 55. Although licensed operator qualifications and training may have an indirect impact on accidents previously evaluated, the NRC considered this impact during the rulemaking process, and by promulgation of the revised 10 CFR 55 rule, concluded that this impact remains acceptable as long as the licensed operator training program is certified to be accredited and is based on a systems approach to training.

Corrections

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods of governing normal plant operation. The proposed change will not impose any new or eliminate any old requirements.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Unit Staff Qualifications

The proposed change is an administrative change to reinstate the current requirements of specific control room positions and allow the use of Revision 1 of ACAD 00–003 for initial training and qualification of licensed operators. As noted previously, WCNOC's licensed operator training program is accredited and is based on a systems approach to training consistent with the requirements of 10 CFR 55. Licensed operator qualifications and training can have an indirect impact on the margin of safety. However, the NRC considered this impact during the rulemaking process, and by promulgation of the revised 10 CFR 55 rule, determined that this impact remains acceptable when licensees maintain a licensed operator training program that is accredited and based on a systems approach to training.

Corrections

The proposed change will not reduce a margin of safety because they have no effect on any safety analysis assumptions. The change is administrative in nature.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Robert Gramm.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: October 22, 2004.

Description of amendment request: The proposed amendment would revise the allowed outage times of Technical Specification 3.3.3.6, ''Accident Monitoring Instrumentation,'' to be consistent with the completion times in the related specification in NUREG–1431, Revision 3, ''Standard Technical Specifications Westinghouse Plants.''

*Date of publication of individual notice in **Federal Register:*** November 2, 2004 (69 FR 63560).

Expiration date of individual notice: December 2, 2004 (public comments) and January 3, 2005 (hearing requests).

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*. (**Note:** Public access to ADAMS has been temporarily suspended so that security reviews of publicly available documents may be performed and potentially sensitive information removed. Please check the NRC Web site for updates on the resumption of ADAMS access.)

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: December 23, 2003, as supplemented by letter dated June 16, 2004.

Brief description of amendment: The amendment revised Section 4.5.D of the Technical Specifications to specify testing the main steam isolation valves at a pressure lower than Pa, the calculated peak containment internal pressure related to the design-basis loss-of-coolant accident.

Date of Issuance: November 2, 2004.

Effective date: November 2, 2004 and shall be implemented within 30 days of issuance

Amendment No.: 250.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** February 17, 2004 (69 FR 7518).

The June 16, 2004, letter provided clarifying information within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated November 2, 2004.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: January 15, 2004, as supplemented by letter dated March 15, 2004.

Brief description of amendments: The amendments revise the Technical Specifications associated with the control rod drive trip devices. The amendments are needed to support implementation of the reactor trip breaker replacement.

Date of Issuance: November 2, 2004.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: 341, 343, 342.

Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** April 13, 2004 (69 FR 19566). The supplement dated March 15, 2004, provided clarifying information that did not change the scope of the January 15, 2004, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 2, 2004.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and 2), Beaver County, Pennsylvania

Date of application for amendments: March 22, 2004, as supplemented July 23 and October 11, 2004.

Brief description of amendments: The amendments modified Technical Specification (TS) requirements to adopt the provisions of Industry/TS Task

Force (TSTF) change TSTF–359, ''Increased Flexibility in Mode Restraints.''

Date of issuance: November 4, 2004.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 263 and 144.

Facility Operating License Nos. DPR–66 and NPF–73: Amendments revised the TSs.

Date of initial notice in ***Federal Register:*** August 31, 2004 (69 FR 53108). The supplemental letters dated July 23 and October 11, 2004, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 4, 2004.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket Nos. 50–220, and 50–410, Nine Mile Point Nuclear Station, Unit Nos. 1 and 2, Oswego County, New York

Date of application for amendments: January 8, 2004 (2 letters), as supplemented by letter dated June 17, 2004.

Brief description of amendments: The amendments approve implementation of the Boiling Water Reactor Vessel and Internals Project Reactor Pressure Vessel Integrated Surveillance Program as the basis for demonstrating the units' compliance with the requirements of appendix H to Title 10 of the Code of Federal Regulations. Specifically, the amendments approved the wording proposed by the licensee to update the units' Updated Safety Analysis Reports. In addition, the Unit 1 amendment also revised the Technical Specifications to delete any reference to plant-specific surveillance requirements.

Date of issuance: November 8, 2004.

Effective date: As of the date of issuance. Integrated Surveillance Program shall be implemented within 90 days of issuance. The units' Final Safety Analysis Report (Updated) shall be updated in accordance with 10 CFR 50.71(e).

Amendment Nos.: 184 and 114.

Facility Operating License Nos. DPR–63 and NPF–69: Amendments revise the Technical Specifications (for Unit 1), the operating license (for Unit 2), and approve revision of licensing basis for both units.

Date of initial notice in ***Federal Register:*** February 17, 2004 (69 FR 7524). The June 17, 2004, letter provided clarifying information within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in two Safety Evaluations, both dated November 8, 2004.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: December 23, 2003, as supplemented June 21, 2004.

Brief description of amendment: The amendment changes Technical Specification (TS) Limiting Condition for Operation (LCO) Tables 3.2.1 and 3.2.4 to (1) eliminate the reactor head cooling containment isolation function from the TSs, (2) correct and clarify the description of the number of instrument channels per trip system as defined in the TSs, and (3) revise an existing LCO for radiation monitors used to isolate reactor building ventilation and initiate the standby gas treatment system.

Date of issuance: November 2, 2004.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 140.

Facility Operating License No. DPR–22. Amendment revised the TSs.

Date of initial notice in ***Federal Register:*** March 30, 2004 (69 FR 16621).

The supplemental letter contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 2, 2004.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: March 18, 2004, and its supplements dated August 18 and 20, and September 17, 2004.

Brief description of amendments: The amendments authorize revisions to the Final Safety Analysis Report (FSAR) Update to incorporate the NRC approval of a permanently revised steam generator voltage-based repair criteria probability of detection (POD) method. The revised POD method is referred to as the probability of prior cycle detection method. In addition, a reporting requirement is added to the DCPP Technical Specifications as TS 5.6.10.i.

Date of issuance: October 28, 2004.

Effective date: October 28, 2004, and shall be implemented within 30 days of the date of issuance. The implementation of the amendment includes the incorporation into the FSAR Update the changes discussed above, as described in the licensee's application dated March 18, 2004, and its supplements dated August 18 and 20, and September 17, 2004, and evaluated in the staff's Safety Evaluation attached to the amendments.

Amendment Nos.: Unit 1–177; Unit 2–179.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the FSAR Update and the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 22, 2004 (69 FR 34704).

The August 18 and 20, and September 17, 2004, supplemental letters provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 28, 2004.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2 (SSES 1 and 2), Luzerne County, Pennsylvania

Date of application for amendments: December 22, 2003, as supplemented by letters dated June 18, July 15, and September 8, 2004.

Brief description of amendments: The amendment added TS 3.3.1.3, ''Oscillation Power Range Monitor (OPRM) Instrumentation,'' and changed TS 3.4.1, ''Recirculation Loops Operating,'' and TS 5.6.5, ''Core Operating Limits Report,'' to remove specifications and information related to current stability specifications which will no longer be needed with the operation of the OPRM system.

Date of issuance: November 9, 2004.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment Nos.: 217 and 192.

Facility Operating License Nos. NPF–14 and NPF–22: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 20, 2004 (69 FR 2745). The supplements dated June 18, July 15, and September 8, 2004, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 9, 2004.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: March 31, 2003, as supplemented by letter dated July 30, 2004.

Brief description of amendment: The amendment revised the reactor pressure vessel pressure-temperature limits and extends their validity to 32 effective full power years.

Date of issuance: November 1, 2004.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 157.

Facility Operating License No. NPF–57: This amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 8, 2004 (69 FR 32076). The July 30, 2004 letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 1, 2004.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.* (**Note:** Public access to ADAMS has been temporarily suspended so that security reviews of publicly available documents may be performed and potentially sensitive information removed. Please check the NRC Web site for updates on the resumption of ADAMS access.)

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to

intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. (**Note:** Public access to ADAMS has been temporarily suspended so that security reviews of publicly available documents may be performed and potentially sensitive information removed. Please check the NRC Web site for updates on the resumption of ADAMS access.) If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applications.
2. Environmental—primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.
3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a petitioner/requestor seeks to adopt the contention of another sponsoring petitioner/requestor, the petitioner/requestor who seeks to adopt the contention must either agree that the sponsoring petitioner/requestor shall act as the representative with respect to that contention, or jointly designate with the sponsoring petitioner/requestor a representative who shall have the authority to act for the petitioners/requestors with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *hearingdocket@nrc.gov;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer or the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

STP Nuclear Operating Company, Docket No. 50–499, South Texas Project, Unit 2, Matagorda County, Texas

Date of amendment request: September 30, 2004.

Description of amendment request: The amendment changes Technical Specification 4.4.4.2 to expand the range of conditions under which quarterly testing of block valves for the pressurizer power operated relief valves would be unnecessary.

Date of issuance: October 21, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 153.

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

Facility Operating License No. NPF–80: Amendment revises the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes. October 6, 2004 (69 FR 59969). The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided an opportunity to request a hearing by December 6, 2004, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated October 21, 2004.

Attorney for licensee: Mr. John E. Matthews, Morgan, Lewis & Bokius, LLP, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Section Chief: Michael K. Webb, Acting.

Nuclear Management Company, LLC, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: November 2, 2004.

Description of amendment request: The amendment revises Technical Specification Limiting Condition for Operation 3.4.3, ''Primary Coolant System (PCS) Pressure and Temperature (P/T) Limits'' to add restrictions to the cooldown rate limits. This amendment supports plant restart following repairs of two reactor vessel closure head control rod drive nozzle penetrations at the Palisades Nuclear Power Plant.

Date of issuance: November 8, 2004.

Effective date: As of the date of issuance and shall be implemented immediately.

Amendment No.: 218.

Facility Operating License No. DPR–20: Amendment revises the Technical Specification.

Public comments requested as to proposed no significant hazards consideration (NSHC):

The Commission's related evaluation of the amendment, finding of emergency circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated November 8, 2004.

Attorney for licensee: Jonathan Rogoff, Esquire, Vice President, Counsel & Secretary, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016.

NRC Section Chief: L. Raghavan.

Tennessee Valley Authority, Docket No. 50–327, Sequoyah Nuclear Plant, Unit 1, Hamilton County, Tennessee

Date of amendment request: November 4, 2004.

Description of amendment request: The proposed amendment extended the implementation period for License Amendment 294 to May 15, 2005.

Date of issuance: November 9, 2004.

Effective date: As of date of issuance, to be implemented by May 15, 2005.

Amendment No.: 297.

Facility Operating License No. DPR–77: Amendment revises the implementation date for License Amendment No. 294.

Public comments requested as to proposed no significant hazards consideration (NSHC):

The Commission's related evaluation of the amendment, finding of emergency circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated November 9, 2004.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: Michael L. Marshall, Jr.

Dated at Rockville, Maryland, this 15th day of November, 2004.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–25664 Filed 11–22–04; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B and C in the excepted service as required by 5 CFR 6.6 and 213.103.

FOR FURTHER INFORMATION CONTACT: Hughes Turner, Deputy Associate Director, Center for Leadership and Executive Resources Policy, Division for Strategic Human Resources Policy, 202–606–1811.

SUPPLEMENTARY INFORMATION: Appearing in the listing below is one Schedule A appointment, no Schedule B appointments, and Schedule C appointments established between October 1, 2004 and October 31, 2004. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

Schedule A

Department of Homeland Security 213.3111

Up to 15 Senior Level and General Schedule (or equivalent) positions within the Homeland Security Labor Relations Board and the Homeland Security Mandatory Removal Panel. Effective October 15, 2004.

Schedule B

No Schedule B appointments for October 2004.

Schedule C

The following Schedule C appointments were approved for October 2004:

Section 213.3303 Executive Office of the President, Office of National Drug Control Policy

QQGS00083 Intergovernmental Affairs Liaison to the Chief of Staff. Effective October 19, 2004.

QQGS00086 Legislative Assistant to the Associate Director, Legislative Affairs. Effective October 19, 2004.

Section 213.3304 Department of State

DSGS60797 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective October 14, 2004.

DSGS60798 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective October 14, 2004.

DSGS60799 Foreign Affairs Officer to the Under Secretary for Global Affairs. Effective October 14, 2004.

DSGS60800 Staff Assistant to the Senior Advisor to the Secretary and White House Liaison. Effective October 28, 2004.

Section 213.3304 Department of Treasury

DYGS00434 Special Assistant to the Deputy Chief of Staff. Effective October 25, 2004.

Section 213.3306 Department of Defense

DDGS16831 Research Assistant to the Deputy Assistant Secretary of Defense (Strategic Communications Planning). Effective October 1, 2004.

DDGS16842 Staff Assistant to the Deputy Assistant Secretary of Defense (Special Operations and Combating Terrorism). Effective October 20, 2004.

Section 213.3307 Department of the Army

DWGS60053 Personal and Confidential Assistant to the Principal Deputy Assistant Secretary of the Army (Financial Management and Comptroller). Effective October 6, 2004.

Section 213.3309 Department of the Air Force

DFGS60007 Confidential Assistant to the Assistant Secretary (Financial Management and Comptroller). Effective October 28, 2004.

Section 213.3310 Department of Justice

DJGS00151 Special Assistant to the Administrator, Drug Enforcement Administration. Effective October 15, 2004.

Section 213.3311 Department of Homeland Security

DMGS00271 Deputy Assistant Secretary for Border and Transportation Security Policy to the Assistant Secretary for Border and Transportation Security Policy. Effective October 4, 2004.

DMGS00274 Writer-Editor to the Executive Secretary. Effective October 12, 2004.

DMGS00273 Special Assistant to the White House Liaison. Effective October 14, 2004.

DMGS00275 Special Assistant to the Chief of Staff. Effective October 15, 2004.

DMGS00276 Press Assistant to the Deputy Assistant Secretary for Public Affairs. Effective October 15, 2004.

DMGS00277 Writer-Editor to the Executive Secretary. Effective October 22, 2004.

Section 213.3313 Department of Agriculture

DAGS00727 Special Assistant to the Under Secretary for Natural Resources and Environment. Effective October 22, 2004.

DAGS00728 Special Assistant to the Under Secretary for Rural Development. Effective October 25, 2004.

Section 213.3314 Department of Commerce

DCGS00663 Executive Director, White House Initiative on Asian Americans and Pacific Islanders to the National Director, Minority Business Development Agency. Effective October 15, 2004.

Section 213.3315 Department of Labor

DLGS60105 Regional Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective October 6, 2004.

DLGS60234 Chief of Staff to the Assistant Secretary for Policy. Effective October 15, 2004.

Section 213.3316 Department of Health and Human Services

DHGS60187 Special Assistant to the Assistant Secretary for Public Affairs. Effective October 4, 2004.

DHGS60696 Confidential Assistant (Scheduling) to the Director of Scheduling. Effective October 12, 2004.

Section 213.3317 Department of Education

DBGS00206 Deputy Secretary's Regional Representative, Region IX to the Deputy Assistant Secretary for Regional Services. Effective October 27, 2004.

Section 213.3331 Department of Energy

DEGS00431 Senior Policy Advisor to the Assistant Secretary of Energy (Environmental Management). Effective October 22, 2004.

DEGS00432 Senior Scheduler to the Director, Office of Scheduling and Advance. Effective October 7, 2004.

DEGS00433 Special Assistant to the Executive Director, Secretary of Energy Advisory Board. Effective October 7, 2004.

Section 213.3332 Small Business Administration

SBGS00557 Deputy Associate Administrator for Communications and Public Liaison to the Associate Administrator for Communications/Public Liaison. Effective October 4, 2004.

SBGS60558 Legislative Assistant to the Associate Administrator for Congressional and Legislative Affairs. Effective October 14, 2004.

SBGS60559 Assistant Administrator for Congressional and Legislative Affairs to the Associate Administrator for Congressional and Legislative Affairs. Effective October 14, 2004.

SBGS60560 Press Secretary to the Associate Administrator for Communications/Public Liaison. Effective October 20, 2004.

Section 213.3396 National Transportation Safety Board

TBGS60106 Confidential Assistant to a Member. Effective October 7, 2004.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 04–25907 Filed 11–22–04; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 7d–1; SEC File No. 270–176; OMB Control No. 3235–0311.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget (''OMB'') for extension and approval.

Section 7(d) of the Investment Company Act of 1940 [15 U.S.C. 80a–7(d)] (the ''Act'' or ''Investment Company Act'') requires an investment company (''fund'') organized outside the United States (''foreign fund'') to obtain an order from the Commission allowing the fund to register under the Act before making a public offering of its securities through the United States mail or any means of interstate commerce. The Commission may issue an order only if it finds that it is both legally and practically feasible effectively to enforce the provisions of the Act against the foreign fund, and that the registration of the fund is consistent with the public interest and protection of investors.

Rule 7d–1 [17 CFR 270.7d–1] under the Act, which was adopted in 1954, specifies the conditions under which a Canadian management investment company (''Canadian fund'') may request an order from the Commission permitting it to register under the Act. Although rule 7d–1 by its terms applies only to Canadian funds, other foreign funds generally have agreed to comply with the requirements of rule 7d–1 as a prerequisite to receiving an order permitting those foreign funds' registration under the Act.

The rule requires a Canadian fund that wishes to register to file an application with the Commission that contains various undertakings and agreements by the fund. Certain of these undertakings and agreements, in turn, impose the following additional information collection requirements:

(1) The fund must file agreements between the fund and its directors, officers, and service providers requiring them to comply with the fund's charter and bylaws, the Act, and certain other obligations relating to the undertakings and agreements in the application;

(2) The fund and each of its directors, officers, and investment advisers that is not a U.S. resident, must file an irrevocable designation of the fund's custodian in the United States as agent for service of process;

(3) The fund's charter and bylaws must provide that (a) the fund will comply with

certain provisions of the Act applicable to all funds, (b) the fund will maintain originals or copies of its books and records in the United States, and (c) the fund's contracts with its custodian, investment adviser, and principal underwriter, will contain certain terms, including a requirement that the adviser maintain originals or copies of pertinent records in the United States;

(4) The fund's contracts with service providers will require that the provider perform the contract in accordance with the Act, the Securities Act of 1933 [15 U.S.C. 77a–77z–3], and the Securities Exchange Act of 1934 [15 U.S.C. 78a–78mm], as applicable; and

(5) The fund must file, and periodically revise, a list of persons affiliated with the fund or its adviser or underwriter.

Under section 7(d) of the Act the Commission may issue an order permitting a foreign fund's registration only if the Commission finds that ''by reason of special circumstances or arrangements, it is both legally and practically feasible effectively to enforce the provisions of the [Act].'' The information collection requirements are necessary to assure that the substantive provisions of the Act may be enforced as a matter of contract right in the United States or Canada by the fund's shareholders or by the Commission.

Certain information collection requirements in rule 7d–1 are associated with complying with the Act's provisions. These requirements are reflected in the information collection requirements applicable to those provisions for all registered funds.

The Commission believes that one fund is registered under rule 7d–1 and currently active. Apart from requirements under the Act applicable to all registered funds, rule 7d–1 imposes ongoing burdens to maintain records in the United States, and to update, as necessary, the fund's list of affiliated persons. The Commission staff estimates that the rule requires a total of three responses each year. The staff estimates that a respondent would make two responses each year under the rule, one response to maintain records in the United States and one response to update its list of affiliated persons. The Commission staff further estimates that a respondent's investment adviser would make one response each year under the rule to maintain records in the United States. Commission staff estimates that each recordkeeping response would require 6.25 hours each of secretarial and compliance clerk time at a cost of $21.10 and $21.50 per hour, respectively, and the response to update the list of affiliated persons would require 0.25 hours of secretarial time, for a total annual burden of 25.25 hours at a cost of $537.78. The estimated number of 25.25 burden hours is identical to the current allocation.

If a fund were to file an application under the rule, the Commission estimates that the rule would impose initial information collection burdens (for filing an application, preparing the specified charter, bylaw, and contract provisions, designations of agents for service of process, and an initial list of affiliated persons, and establishing a means of keeping records in the United States) of approximately 90 hours for the fund and its associated persons. The Commission is not including these hours in its calculation of the annual burden because no foreign fund has applied under rule 7d–1 to register under the Act in the last three years.

After registration, a foreign fund may file a supplemental application seeking special relief designed for the fund's particular circumstances. Because rule 7d–1 does not mandate these applications and the fund determines whether to submit an application, the Commission has not allocated any burden hours for the applications.

The estimates of burden hours are made solely for the purposes of the Paperwork Reduction Act. The estimates are not derived from a comprehensive or even a representative survey or study of Commission rules and forms.

The Commission believes that the active registrant and its associated persons may spend (excluding the cost of burden hours) approximately $540 per year in maintaining records in the United States. These estimated costs include fees for a custodian or other agent to retain records, storage costs, and the costs of transmitting records.

If a Canadian or other foreign fund in the future applied to register under the Act under rule 7d–1, the fund initially might have capital and start-up costs (not including hourly burdens) of an estimated $17,280 to comply with the rule's initial information collection requirements. These costs include legal and processing-related fees for preparing the required documentation (such as the application, charter, bylaw, and contract provisions), designations for service of process, and the list of affiliated persons. Other related costs would include fees for establishing arrangements with a custodian or other agent for maintaining records in the United States, copying and transportation costs for records, and the costs of purchasing or leasing computer equipment, software, or other record storage equipment for records maintained in electronic or photographic form.

The Commission expects that a fund and its sponsors would incur these costs immediately, and that the annualized cost of the expenditures would be $17,280 in the first year. Some expenditures might involve capital improvements, such as computer equipment, having expected useful lives for which annualized figures beyond the first year would be meaningful. These annualized figures are not provided, however, because, in most cases, the expenses would be incurred immediately rather than on an annual basis. The Commission is not including these costs in its calculation of the annualized capital/start-up costs because no foreign fund has applied under rule 7d–1 to register under the Act pursuant to rule 7d–1 in the last three years.

We request written comment on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: November 15, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3283 Filed 11–22–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–10996]

Issuer Delisting; Notice of Application of Aberdeen Global Income Fund, Inc., to Withdraw its Common Stock, $.001 Par Value, From Listing and Registration on the New York Stock Exchange, Inc.

November 17, 2004.

On October 28, 2004, Aberdeen Global Income Fund, Inc., a Maryland corporation (''Issuer''), filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.001 par value (''Security''), from listing and registration on the New York Stock Exchange, Inc. (''NYSE'').

The Board of Directors (''Board'') of the Issuer approved a resolution on June 9, 2004 to withdraw the Issuer's Security from listing on the NYSE and to list on the American Stock Exchange LLC (''Amex''). The Board stated that it determined to withdraw its Security from the NYSE and to list the Security on the Amex for the following reasons: (i) The Board considered that the Issuer will pay lower listing fees to the Amex than the listing fees that are currently paid to the NYSE; (ii) the Board considered that the two other closed-end investment companies (''funds''), in the same fund complex as the Issuer, have their common stock currently listed on the Amex; (iii) the Amex caps annual listing fees for multiple closed-end funds of the same sponsor, which will result in savings for both the Issuer and the other funds in the fund complex; and (iv) the Issuer also

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

considered the fact that monitoring compliance with one set of listing requirements, rather than monitoring compliance with the listing requirements of both the NYSE and the Amex, as is currently the case, would result in administrative efficiencies.

The Issuer represented in its application that it has complied with the NYSE's rules governing an issuer's voluntary withdrawal of a security and with all applicable laws in effect in the State of Maryland, the state in which it is incorporated. The Issuer's application relates solely to the withdrawal of the Security from listing on the NYSE, and shall not affect its continued listing on the Amex or its obligation to be registered under section 12(b) of the Act.[3]

Any interested person may, on or before December 13, 2004 comment on the facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1–10996 or;

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 1–10996. 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/delist.shtml*). Comments are also 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.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

[3] 3 15 U.S.C. 78*l*(b).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. E4–3296 Filed 11–22–04; 8:45 am]

BILLING CODE 8010–01–P

[4] 4 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27910]

Filing Under the Public Utility Holding Company Act of 1935, as Amended

November 16, 2004.

Notice is hereby given that the following filing(s) has/have been made with the Commission under provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 9, 2004, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 9, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

CenterPoint Energy, Inc., et al.

CenterPoint Energy, Inc. (''CenterPoint''), 1111 Louisiana, Houston, Texas, 77002, a registered holding company under the Act and Utility Holding, LLC, (''Utility Holding''), 200 West Ninth Street Plaza, Suite 411, Wilmington, Delaware, 19801, have filed with the Securities and Exchange Commission (''Commission'') a declaration (''Declaration'') under section 12(c) of the Act and rules 46 and 54 under the Act asking the Commission to authorize Utility Holding to declare and pay two dividends out of its capital account to CenterPoint consisting of the proceeds it receives from the first and second phase of the sale of its interest in Texas Genco Holdings, Inc. (''Texas Genco'').

CenterPoint holds its utility interests through Utility Holding, a Delaware limited liability company that is a conduit entity formed solely to minimize tax liability. Utility Holding is wholly-owned by CenterPoint and a registered holding company subsidiary. Utility Holding owns the stock of Texas Genco and CenterPoint Energy Houston Electric, LLC (''T&D Utility'').[1]

CenterPoint is in the process of completing the final steps in a restructuring process that began when Texas adopted legislation designed to deregulate and restructure the electric utility industry in the state. That legislation required integrated electric utilities to separate their generating, transmission and distribution, and retail sales functions in accordance with plans approved by the Public Utility Commission of Texas (''Texas Commission''). CenterPoint's predecessor, Reliant Energy Incorporated (''REI'') accomplished its restructuring in the fall of 2002, when after CenterPoint became the parent entity, CenterPoint distributed to its shareholders its remaining ownership interest in its merchant power generation and energy trading and marketing business.[2] In order to facilitate compliance with the Texas restructuring law, CenterPoint retained ownership of the Texas generating assets (which were placed in Texas Genco), pending determination of stranded costs by the Texas Commission.[3]

[1] Texas Genco is an associate company, and not a subsidiary of the T&D Utility.

[2] By order dated June 5, 2002, the Commission authorized the formation of CenterPoint as a new registered holding company and CenterPoint's distribution to shareholders of the remaining stock of Reliant Resources, Inc., a merchant power generation and energy trading and marketing business (Holding Company Act Release No. 27548).

[3] Under the Texas restructuring law, the T&D Utility would be allowed to recover, among other costs, the amount by which the market value of its generating assets, as determined by the Texas Commission under a formula prescribed by law, is below its regulatory book value for those assets as of the end of 2001 (otherwise known as stranded costs). Utility Holding has recorded an after-tax charge to earnings in the third quarter of 2004 of approximately $894 million. The charge was recorded before the Texas Commission rendered its final decision and was based on CenterPoint's understanding of the Texas Commission's deliberations during previous public meetings. On November 11, 2004, the Texas Commission issued a draft order and, based on that order, Utility Holding does not believe that it will be required to

On July 21, 2004, CenterPoint announced the sale of Texas Genco, which will be accomplished in two steps. The first step is expected to be completed in the fourth quarter of 2004 and will involve Texas Genco purchasing the approximately 19% of its shares owned by the public at a price of $47 per share, and then selling its fossil-fueled generating business to the buyer. In the second step, expected to take place in the first half of 2005 following receipt of approval by the Nuclear Regulatory Commission, Texas Genco will merge with a subsidiary of the buyer, thus transferring its remaining asset, an interest in a nuclear generating facility.

Total cash proceeds from both steps will be approximately $2.9 billion. CenterPoint intends to use the net after-tax proceeds of about $2.5 billion to retire debt. In the first stage of the sale transaction, Texas Genco will receive cash for the sale of its fossil generating business and will dividend $2.231 billion of those proceeds to Utility Holding. Utility Holding in turn will simultaneously dividend that amount to CenterPoint, which will repay bank debt and release a pledge that banks hold on the Texas Genco common stock. In the second step, Utility Holding will receive $700 million in cash for the sale of its stock in Texas Genco and will dividend that amount to CenterPoint.

Because it is the vehicle through which CenterPoint holds its utility interests, Utility Holding has recorded a substantial charge to its retained earnings account in connection with the extraordinary events of the sale of Texas Genco and the stranded cost proceeding. In addition, the magnitude of the expected proceeds from both phases of the sale of Texas Genco exceeds Utility Holding's ability to dividend to CenterPoint the proceeds from each phase of the sale out of retained earnings.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3286 Filed 11–22–04; 8:45 am]

BILLING CODE 8010–01–P

take any additional material charges to earnings in connection with the stranded cost proceeding.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50682; File No. SR–CBOE–2004–45]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to the Trading of Complex Orders on the CBOE Hybrid System

November 17, 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 July 19, 2004, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. On November 8, 2004, the CBOE: submitted Amendment No. 1 to the proposed rule change; withdrew Amendment No. 1; and submitted Amendment No. 2 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to adopt a complex order rule applicable to trading on the CBOE Hybrid System. The text of the proposed rule change is set forth below. Proposed new language is in *italics;* proposed deletions are in [brackets].

Rule 6.45 Priority of Bids and Offers—Allocations of Trades

* * * * *

(a)–(d) No change.

(e) Complex Order Priority Exception: A [member holding a] spread, straddle, combination, or ratio order (or a stock-option order or security future-option order, as defined in Rule 1.1(ii)(b) and Rule 1.1(zz)(b), respectively) *may be executed at* [and bidding (offering) on] a net debit or credit [basis] *price* (in a multiple of the minimum increment) [may execute the order] with another member without giving priority to equivalent bids (offers) in the trading crowd or in the book provided at least one leg of the order betters the corresponding bid (offer) in the book. Stock-option orders and security future-option orders, as defined in Rule 1.1(ii)(a) and Rule 1.1(zz)(a) respectively, have priority over bids (offers) of the trading crowd but not over bids (offers) of public customers in the limit order book.

* * * Interpretations and Policies * * *

No change.

Rule 6.45A Priority and Allocation of Trades for CBOE Hybrid System

* * * * *

(a) No change.

(b) (i)–(ii) No change.

(iii) Exception: Complex Order Priority:

A [member holding a] spread, straddle, combination, or ratio order (or a stock-option order or security future-option order, as defined in Rule 1.1(ii)(b) and Rule 1.1(zz)(b), respectively) *may be executed at* [and bidding (offering) on] a net debit or credit [basis] *price* (in a multiple of the minimum increment) [may execute the order] with another member without giving priority to equivalent bids (offers) in the trading crowd or in the book provided at least one leg of the order betters the corresponding bid (offer) in the book. Stock-option orders and security future-option orders, as defined in Rule 1.1(ii)(a) and Rule 1.1(zz)(a) respectively, have priority over bids (offers) of the trading crowd but not over bids (offers) of public customers in the limit order book.

(c)–(d) No change

* * * Interpretations and Policies

No change

RULE 6.53C COMPLEX ORDERS ON THE HYBRID SYSTEM

(a) Definition: A complex order is any order for the same account as defined below:

1. Spread Order: A spread order is as defined in Rule 6.53(d).

2. Straddle Order: A straddle order is as defined in Rule 6.53(f).

3. Strangle Order: A strangle order is an order to buy (sell) a number of call option contracts and the same number of put option contracts in the same underlying security, which contracts have the same expiration date (e.g., an order to buy two XYZ June 35 calls and to buy two XYZ June 40 puts).

4. Combination Order: A combination order is as defined in Rule 6.53(e).

5. Ratio Order: A spread, straddle or combination order may consist of legs that have a different number of contracts, so long as the number of contracts differs by a permissible ratio.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 2, CBOE replaced in its entirety the original proposed rule filing. Amendment No. 2 is incorporated into this notice.

For purposes of this section, a permissible ratio is any ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00). For example, a one-to-two (.5) ratio, a two-to-three (.667) ratio, or a two-to-one (2.00) ratio is permissible, whereas a one-to-four (.25) ratio or a four-to-one (4.0) ratio is not.

6. Butterfly Spread Order: A butterfly spread order is an order involving three series of either put or call options all having the same underlying security and time of expiration and, based on the same current underlying value, where the interval between the exercise price of each series is equal, which orders are structured as either (i) a ''long butterfly spread'' in which two short options in the same series offset by one long option with a higher exercise price and one long option with a lower exercise price or (ii) a ''short'' butterfly spread'' in which two long options in the same series are offset by one short option with a higher exercise price and one short option with a lower exercise price.

7. Box/Roll Spread Order: Box spread means an aggregation of positions in a long call option and short put option with the same exercise price (''buy side'') coupled with a long put option and short call option with the same exercise price (''sell side'') all of which have the same aggregate current underlying value, and are structured as either: A) a ''long box spread'' in which the sell side exercise price exceeds the buy side exercise price or B) a ''short box spread'' in which the buy side exercise price exceeds the sell side exercise price.

8. Collar Orders and Risk Reversals: A collar order (risk reversal) is an order involving the sale (purchase) of a call (put) option coupled with the purchase (sale) of a put (call) option in equivalent units of the same underlying security having a lower (higher) exercise price than, and same expiration date as, the sold (purchased) call (put) option.

9. Conversions and Reversals: A conversion (reversal) order is an order involving the purchase (sale) of a put option and the sale (purchase) of a call option in equivalent units with the same strike price and expiration in the same underlying security, and the purchase (sale) of the related instrument.

(b) Types of Complex Orders: Complex orders may be entered as fill-or-kill, immediate or cancel, or as all-or-none orders as defined in Rule 6.53, or as good-'til-cancelled.

(c) Complex Order Book

(i) Routing of Complex Orders: Complex orders will route either to PAR or the Complex Order Book (''COB''), as determined by the appropriate Exchange committee on a class by class basis. All pronouncements regarding routing procedures will be announced to the membership via Regulatory Circular. The appropriate Exchange committee also will determine whether to allow complex orders from non-broker-dealer public customers and from broker-dealers that are not market makers or specialists on an options exchange to route from PAR to the COB.

(ii) Priority of Complex Orders in the COB: Orders from public customers have priority over orders from non-public customers. Multiple public customer complex orders at the same price are accorded priority based on time.

(iii) Execution of Complex Orders in the COB: Complex orders resting in the COB may be executed without consideration to prices of the same complex orders that might be available on other exchanges. Complex orders resting in the COB may trade in the following way:

(1) Orders in the Electronic Book (''EBook''): A complex order in the COB will automatically execute against individual orders or quotes residing in EBook provided the complex order can be executed in full (or in a permissible ratio) by the orders in EBook.

(2) Orders in COB: Complex orders in the COB that are marketable against each other will automatically execute.

(3) Market participants, as defined in CBOE Rule 6.45A, may submit orders to trade against orders in the COB. The allocation of complex orders among market participants shall be done pursuant to CBOE Rule 6.45A(c).

(iv) Complex orders in the COB may be designated as day orders or good-til-cancelled orders. Only those complex orders with no more than four legs and having a ratio of one-to-three or lower, as determined by the appropriate Exchange committee, are eligible for placement into the COB.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange 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

Complex orders typically involve multiple option orders (which may be coupled with stock) executed simultaneously as part of the same strategy. Currently, these orders route to the PAR terminal in the trading crowd where they are announced to the trading crowd and are traded in open outcry. As an enhancement to the CBOE Hybrid System (''Hybrid''), the Exchange intends to develop a complex order book (''COB''), which will facilitate more automated handling of complex orders.[4] Additionally, the Exchange proposes to adopt a separate complex order rule applicable solely to the Hybrid system.

1. Definitional

Proposed paragraph (a) of CBOE Rule 6.53C is a definitional section. The first five order types in that section (spread order, straddle order, strangle order, combination order, and combination order with non-equity option legs) are defined in other CBOE rules (most notably CBOE Rule 6.53, Certain Types of Orders Defined) but for ease of reference, the Exchange includes them in this new rule. The next four order type definitions (ratio order, butterfly spread order, box/roll spread order, collar order) are new but are substantially identical to those contained in International Securities Exchange, Inc. (''ISE'') Rule 722(a)(6–9). The last order type definitions are for conversions and reversals, which are a type of stock-option order as defined in CBOE Rule 1.1(ii). They are included here merely for ease of reference.

2. Complex Order Book

A. Routing Complex Orders: Proposed paragraph (c) governs the COB. Proposed paragraph (i) governs routing and provides that the appropriate Exchange committee will determine whether complex orders should route to PAR or the COB on a class by class basis. Anytime the committee changes or amends its routing procedures, it will announce such changes to the membership via Regulatory Circular. This will provide that all Exchange members will have access to all current information regarding the routing of complex orders.

With respect to the handling of orders that route to PAR, the PAR operator will

[4] This new proposed rule will not apply to complex order trading in non-Hybrid classes.

announce the order to the trading crowd. Any member of the trading crowd will then have the ability to trade the order at the limit price or he/she may offer price improvement. Alternatively, trading crowd members may choose not to trade the order, in which case it will reside on PAR until the PAR operator ''books it.'' If a complex order becomes marketable while it is on PAR, the Exchange sends a notification to the PAR operator. Proposed paragraph (c)(iii) governs execution of orders in the COB and is described below.

As stated in the introductory paragraph of this rule filing, complex orders currently route to, and continue to reside on, PAR until they are traded in open outcry. Accordingly, manual intervention is necessary before complex orders will execute. The proposal enhances the treatment of complex orders by making them eligible for placement into an electronic format (*i.e.*, into the COB). Once these orders rest in the COB, they may trade electronically (as described below), which means that they may trade more quickly than they otherwise may have in an open outcry environment. Moreover, orders residing on PAR are not displayed. When orders are routed into the COB, members with an interface connection to CBOE will have the ability to view complex orders resting in the COB, which enhances transparency. For these reasons, the Exchange believes routing complex orders into the COB will enhance the treatment these orders currently receive and allow the Exchange to compete more effectively for this type of order flow.

Finally, the appropriate Exchange committee also will determine whether to allow complex orders from non-broker-dealer public customers and from broker-dealers that are not market makers or specialists on an options exchange to route from PAR to the COB. Proposed paragraph (c)(iv) provides that only those complex orders with no more than four legs and having a ratio of one-to-three or lower, as determined by the appropriate Exchange committee, are eligible for placement into the COB.

B. Trading Complex Orders: When the PAR operator ''books'' the order, it will route directly into the COB. Once in the COB, the order may trade in one of three ways. If individual orders or quotes in the Exchange's electronic book (''EBook'') ''line-up'' against the legs of the complex order, an automatic execution occurs, provided the complex order can be executed in full (or in a permissible ratio) by the orders in EBook. Second, if a subsequent incoming complex order is marketable against the resting complex order in the COB, it will automatically execute against the resting complex order in the COB upon being ''booked.'' Finally, market participants as defined in CBOE Rule 6.45A will have the ability to submit orders to trade against the order in the COB. Under this option, the complex order in the COB would be allocated to market participants in accordance with the allocation procedures described in CBOE Rule 6.45A(c).[5] Proposed paragraph (c)(iii) provides that complex orders resting in the COB may be executed without consideration to prices of the same complex orders that might be available on other exchanges. This is similar to ISE Rule 722(b)(3).[6]

C. Priority and Complex Orders: This rule filing does not negatively affect the existing priority rules. In this regard, proposed paragraph (c)(ii) explicitly provides that orders from public customers have priority over orders from non-public customers. For example, if members of the trading crowd wish to trade a complex order resting on PAR that is marketable against individual public customer orders in the electronic book, public customers would have priority. Multiple public customer complex orders at the same price are accorded priority based on time. The current complex order priority exception contained in CBOE Rules 6.45 and Rule 6.45A(b)(iii) will continue to be applicable. The complex order priority exception generally states that a member holding a qualifying complex order may trade ahead of the book on one leg of the order provided the other leg of the order betters the corresponding bid (offer) in the limit order book. For example, assume a complex order rests in the COB (priced at a net debit or credit). If this resting complex order was marketable against both legs in EBook, the resting complex order would have already traded automatically. This makes it impossible for a marketable incoming complex order to trade ahead of resting orders in Ebook that are marketable against all legs of the resting complex order. Accordingly, when a marketable incoming complex order trades against a resting complex order, it is only because the resting complex order is at a better price than the orders in Ebook. Finally, because the existing complex order priority rules as written envision open outcry trading, the Exchange makes minor changes to the text such that the rules will be applicable to electronic trading.[7]

Adoption of a complex order rule for Hybrid trading provides a framework for the trading of complex orders on Hybrid. This, in turn, should provide investors with greater certainty in the routing of their complex orders. The Exchange believes that the development of a complex order trading book will provide deeper and more liquid markets for complex orders and will provide order entry firms with a trading platform the exchange believes is more conducive to satisfying their best execution and due diligence obligations with respect to these types of orders.

2. Statutory Basis

For these reasons, the Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

[5] Interpretations and Policies .01 and .02 to CBOE Rule 6.45A apply to complex orders on the Hybrid System.

[6] The Options Price Reporting Authority does not disseminate complex order prices, which eliminates market participants' ability to know what pricing is available on other exchanges.

[7] As amended, the proposed rule mirrors ISE's complex order priority rule (Rule 722(b)(2)).

[8] 15 U.S.C. 78(f)(b).

[9] 15 U.S.C. 78(f)(b)(5).

(ii) as to which the CBOE consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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–CBOE–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–CBOE–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. Copies of the filing also will be available for inspection and copying at the principal office of the CBOE. 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–CBOE–2004–45 and should be submitted on or before December 14, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3284 Filed 11–22–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50671; File No. SR–FICC–2004–08]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Provide Interpretive Guidance to Members Regarding the Criteria Used To Place Members on Surveillance Status

November 16, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 29, 2004, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FICC is seeking to provide interpretive guidance regarding an approved rule change that amended the criteria used to place members on surveillance status.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

FICC is seeking to provide interpretive guidance to members pertaining to the member surveillance rules of the Government Securities Division (''GSD'') and the Mortgage-Backed Securities Division (''MBSD'') of FICC.

1. Background

Prior to the Commission's approval of SR–FICC–2003–03,[4] the GSD had the ability to place a member in a surveillance status class depending on whether the member satisfied one or more of the enumerated financial and operational criteria in the specific class. Upon approval of SR–FICC–2003–03, FICC implemented new criteria for placing members on surveillance. Specifically, all domestic broker-dealers and banks that are GSD netting members and/or MBSD clearing members are now assigned a rating that is generated by entering financial data of the member into a matrix (''Matrix''). Members who receive a low rating are placed on an internal ''watch list'' and are monitored more closely. All other types of netting and clearing members (those who are not domestic banks or broker-dealers) are not included in the Matrix process but are monitored by FICC's credit risk staff using financial criteria deemed relevant by FICC.

2. Clarification of Rules Provisions

In describing the process by which Credit Risk staff would review members and implement the Matrix process, FICC included in SR–FICC–2003–03 several explanatory footnotes. Specifically, in footnotes 2 and 3 of Amendment I of the filing, FICC explained that members would be placed on the Matrix after a thorough review had been performed of various quantitative factors. FICC also stated that members would be evaluated for certain parameter breaks based on applicable monthly or quarterly reports generated by credit risk staff.[5] FICC at

---

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 49158 (January 30, 2004), 69 FR 5624 (February 5, 2004) [File No. SR–FICC–2003–03].

[3] The Commission has modified the text of the summaries prepared by FICC.

[4] Supra at 2.

[5] In Amendment I to FICC–2003–03, footnote 2 stated, ''FICC's approach to the analysis of members will be based on a thorough quantitative analysis. A member's rating on the Matrix will be based on factors including (for broker/dealers): Size (total excess net capital), capital, leverage, liquidity and profitability. Banks will be reviewed based on: size, capital, asset quality, earnings and liquidity.'' Footnote 3 stated, ''Members will also be evaluated based on their compliance with certain ''parameter breaks'' which will be determined based on applicable monthly and/or quarterly exception reports generated by Credit Risk. A member may be placed on the Watch List for failure to fall within, for example, prescribed excess net capital, excess

this time wishes to clarify its procedures in this regard.

Credit risk staff approaches its analysis of members pursuant to the new procedures in the following manner. First, as mentioned above, domestic broker-dealers and domestic banks are run through the Matrix and assigned a rating. Low-rated members are placed on the watch list. At this point, credit risk staff may downgrade a particular member's score based on various qualitative factors. For example, one qualitative factor might be that the member in question received a qualified audit opinion on its annual audit. In order to protect FICC and its other members, it is important that credit risk staff maintain the discretion to downgrade a member's rating on the Matrix and thus subject the member to closer monitoring. Members who receive a downgraded rating which makes them eligible for the watch list are also placed on the watch list. All rated members, including those on the watch list, are monitored monthly or quarterly, depending upon the member's financial filing frequency, against basic minimum financial requirements and other parameters.

All broker-dealer members included on the watch list are monitored more closely. This means that they are also monitored for various parameter breaks, which may include but are not limited to, a defined decline in excess net capital over a one month or three month period, a defined period loss, a defined aggregate indebtedness/net capital ratio, a defined net capital/aggregate debit items ratio, and a defined net capital/regulatory net capital ratio. All bank members included on the watch list are also monitored more closely for watch list parameter breaks, which may include but are not limited to, a defined quarter loss, a defined decline in equity, a defined tier one leverage ratio, a defined tier one risk-based capital ratio, and a defined total risk-based capital ratio. FICC wishes to make clear that monitoring for the above more stringent parameter breaks is only applicable to those members placed on the watch list.

In addition, FICC would like to address footnote 5 of Amendment I to rule filing SR–FICC–2003–03. That footnote stated that credit risk staff would monitor those members not included in the Matrix process (this includes netting and clearing members who are not domestic banks and broker dealers) using the same criteria as those used for members included on the Matrix. FICC wishes to make clear that credit risk staff will not be reviewing the same criteria for these members but will use similar criteria. As stated in the narrative of SR–FICC–2003–03, these criteria may include failure to meet minimum financial requirements, experiencing a significant decrease in equity or net asset value, or a significant loss. This class of members may be placed on the watch list based on credit risk staff's analysis of this information.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[6] and the rules and regulations thereunder applicable to FICC because it will facilitate the safeguarding of securities and funds which are in its custody or control or for which it is responsible and in general will protect investors and the public interest by improving FICC's member surveillance process.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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–FICC–2004–08 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–FICC–2004–08. 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 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 FICC and on FICC's Web site at *http://www.ficc.com*. 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–FICC–2004–08 and should be submitted on or before December 14, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3285 Filed 11–22–04; 8:45 am]

BILLING CODE 8010–01–P

liquid capital, aggregate indebtedness, leverage ratio or financial membership requirement parameters.''

[6] 15 U.S.C. 78q–1.

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50678; File No. SR–NASD–2004–156]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Related to ECN Response Time Measurement in the Nasdaq Market Center

November 16, 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 November 3, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. 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 the Substance of the Proposed Rule Change

Nasdaq proposes to change NASD Rule 4710 pertaining to the measurement of Electronic Communication Network (''ECN'') response times and will provide ECNs participating in the Nasdaq Market Center the option to receive and respond to order match delivery traffic using a direct, dedicated point-to-point communication linkage.[3] The text of the proposed rule change is below. Proposed new language is in italics.

* * * * *

4710. Participant Obligations in the Nasdaq Market Center

(a) No Change.

(b) Non-Directed Orders

(1) General Provisions—A Quoting Market Participant in a Nasdaq Market Center eligible security, as well as Order Entry Firms, shall be subject to the following requirements for Non-Directed Orders:

(A)–(B) No Change.

(C) Decrementation Procedures—The size of a Quote/Order displayed in the order display service and/or the quotation montage of the Nasdaq Market Center will be decremented upon the delivery of a Liability Order or the delivery of an execution of a Non-Directed Order or Preferenced Order in an amount equal to the system-delivered order or execution.

(i) through (iii) No Change.

(iv) If a Nasdaq ECN regularly fails to meet a 5-second response time (as measured by the ECN's Service Delivery Platform *if linked to the Nasdaq Market Center by an application programming interface; or as measured by timestamps generated by the Nasdaq Market Center if linked to the system by a direct connection*) over a period of orders, such that the failure endangers the maintenance of a fair and orderly market, Nasdaq will place that ECN's quote in a closed-quote state. Nasdaq will lift the closed-quote state when the Nasdaq ECN certifies that it can meet the 5-second response time requirement with regularity sufficient to maintain a fair and orderly market.

(v) No Change.

(D) No Change.

(2)–(8) No Change.

(c) through (e) No Change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ECNs have two options when participating in the Nasdaq Market Center. They can be ''Auto-Ex'' ECNs, in which case their quotes/orders are subject to automatic execution, or they can elect to be ''Order-Delivery,'' where the system instead delivers a buy or sell trading message to the ECN that, in response, either executes or rejects the message. Today, all ECNs in the Nasdaq Market Center participate as order-delivery ECNs.

Under current Nasdaq Market Center rules, order-delivery ECNs must respond to messages sent to them by the system within 5 seconds on average, and in no event later than 30 seconds for any one message. The 5-second average response standard is measured by timestamps generated by the ECN's Service Delivery Platform (''SDP'') at the ECN's trading location. In this filing, Nasdaq is proposing the adoption of an alternative method to measure the 5-second response time for ECNs that voluntarily elect to link to Nasdaq using a direct, dedicated point-to-point communication linkage to receive and respond to order matches delivered to them.[4] Since use of the dedicated linkage obviates the need for the SDP to process order match and response traffic, Nasdaq proposes to measure directly-linked ECN response times using data generated by the Nasdaq Market Center's host computers. In short, Nasdaq will calculate and monitor, on a real-time basis, the difference between two time stamps: (1) The time the Nasdaq Market Center host dispatched a message to the ECN, and (2) the time the Nasdaq Market Center received a response back from the ECN. On an ongoing basis, Nasdaq will monitor individual directly-linked ECN response times and provide those ECNs with its own order responsiveness time statistics, which will not be made public. As before, if an ECN regularly fails to meet the 5-second response time over a number of orders, Nasdaq will place that ECN's quote in a closed quote state and the closed quote state will be lifted when the ECN can certify that it can meet the 5-second response time requirement.

By providing ECNs the option to use a dedicated linkage, Nasdaq expects to significantly reduce response delays that can be encountered in the current environment where order delivery messages directed to ECNs use existing Nasdaq Market Center application programming interfaces (''APIs'') to reach their destination and are commingled, and compete with, other Nasdaq Market Center messaging (executions, cancels, etc.) for bandwidth to reach the ECN's SDP. All messaging other than ECN match order delivery and response traffic (*e.g.*, quote updates/order deliveries, cancels, and executions

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Pursuant to a telephone conversation on November 15, 2004, between Thomas Moran, Associate General Counsel, Nasdaq, and Marc McKayle, Special Counsel, Division of Market Regulation (''Division''), Commission, the above language was changed to clarify that an ECN's use of the direct, dedicated point-to-point communication linkage is voluntary under the proposed rule change.

[4] This proposed rule change replaces File No. SR–NASD–2004–66, which was published for comment, and subsequently withdrawn. *See respectively*, Securities Exchange Act Release No. 49604 (April 22, 2004), 69 FR 54818 (April 30, 2004), and Letter from Edward S. Knight, Executive Vice President, Nasdaq to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated October 15, 2004.

reports) will continue to flow between Nasdaq and ECNs using existing communications linkages.[5] As such, ECNs electing to use a dedicated linkage will be required, for the foreseeable future, to maintain the current linkage infrastructure as well as support the new dedicated match order delivery and response linkage.[6]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[7] in general and with section 15A(b)(6) of the Act,[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been designated by Nasdaq as a ''non-controversial'' rule change pursuant to section 19(b)(3)(A) of the Act[9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10]

The foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. Nasdaq has requested that the Commission waive the 30-day pre-operative period and the five-day pre-filing notice requirement for ''non-controversial'' proposals, based on the following representations: (1) The instant proposal is substantively similar to File No. SR–NASD–2004–66, which was published for comment,[11] (2) this proposal simply establishes a means for ECNs to link directly with Nasdaq in order to measure the 5-second response time obligation that ECNs are currently subject to, (3) Nasdaq will conduct the calculation process for policing the 5-second standard for directly-linked ECNs and this proposal will not impose any specific programming burdens on ECNs, and (4) the use of a dedicated linkage by an ECN will be purely voluntary. In light of the foregoing, and because the Commission believes that the proposal should assist Nasdaq's ability to oversee and monitor the quality of its market, the Commission believes that waiver of the 5-day pre-filing requirement and 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission has determined to waive the pre-filing requirement and the operative delay.

Consequently, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act,[12] and Rule 19b–4(f)(6) thereunder,[13] with no operative delay.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. 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–NASD–2004–156 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–NASD–2004–156. 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 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 NASD. 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–NASD–2004–156 and should be submitted on or before December 14, 2004.

[5] While all of this data is important, it is in the area of Match Order delivery and response traffic where delays can have the most negative impact on market participants as a whole since they are the basis for the swift execution of trades between order-delivery ECNs and those seeking to interact with them. Thus, it is on this messaging that Nasdaq's proposed rule change is initially focused.

[6] Nasdaq notes that the above linkage only speeds delivery and receipt of match delivery and response messages between the Nasdaq Market Center host computers and the directly-linked ECN, it would not give such traffic any special priority in the Nasdaq Market Center execution process. Nasdaq believes that its approach will enhance the speed and efficiency of the Nasdaq Market Center system as a whole and can provide a more accurate understanding of whether Nasdaq or an ECN's own internal system is at fault when ECN order processing is unduly delayed.

[7] 15 U.S.C. 78*o*–3.

[8] 15 U.S.C. 78*o*–3(b)(6).

[9] 15 U.S.C. 78s(b)(1).

[10] 17 CFR 240.19b–4(f)(6).

[11] *See supra* note 4.

[12] 15 U.S.C. 78s(b)(1).

[13] 17 CFR 240.19b–4(f)(6).

[14] Nasdaq will provide market participants with notice of the exact date of the implementation of the proposed rule change via a Head Trader Alert on *http://www.nasdaqtrader.com*. Corresponding changes and footnote added pursuant to telephone conversation between Thomas Moran, Associate General Counsel, Nasdaq, and Marc McKayle, Special Counsel, Division, Commission, on November 16, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3300 Filed 11–22–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50683; File No. SR–NASD–2004–107]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Computer Generated Quoting in Exchange-Listed Securities

November 17, 2004.

I. Introduction

On July 12, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission''), 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 allow market makers to engage in Computer Generated Quoting (''CGQ'') in exchange-listed securities. The proposed rule change was published for comment in the **Federal Register** on October 12, 2004.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Nasdaq proposed to eliminate NASD Rule 6330(d), which governs CGQ in exchange-listed securities. NASD Rule 6330(d) prohibits the practice of automatically, and without cognizable human intervention, updating a market maker's quote to keep the market maker away from the inside market. NASD Rule 6330(d)(2) however, contains exceptions to the general prohibition in CGQ, including exceptions for conduct that is consistent with the Commission's Order Handling Rules, and for CGQ that equals or improves either or both sides of the national best bid or offer (''NBBO'') or adds size to the NBBO.

The limitations contained in NASD Rule 6330(d) were originally implemented because of capacity constraints that Nasdaq has stated no longer persist. Under procedures implemented by the Consolidated Tape Association,[4] Nasdaq, as well as any other Participant, now has the opportunity to request additional capacity to accommodate increased quoting, while bearing the expense. Under the proposal, market makers would be able to engage in CGQ without limitations.

III. Discussion and Commission Findings

In the past, the Commission has recognized concerns regarding the accessibility of CGQ and the impact of such quoting on system capacity.[5] Nasdaq has assured the Commission that these capacity constraints no longer persist, since it is now able to request additional capacity in order to accommodate increased quoting. Thus the Commission believes that lifting the current restrictions on CGQ in exchange-listed securities should not cause a significant impact upon system capacity and data traffic. Furthermore, the Commission notes that various markets have moved towards automated systems to make their markets more efficient.[6]

In addition, the Commission notes that permitting automated generation of quotations will likely contribute to more accurate and informative quotations because market makers are able to use automated measures to produce accessible quotations that add value to the market without limitation. Permitting the use of CGQ by market makers allows them to utilize technology to fulfill their quotation obligations efficiently. Moreover, allowing market makers to utilize technology in this manner reduces any competitive disadvantage that the previous auto-quote ban may have created, with the potential to benefit investors by improving liquidity, transparency, and order interaction in the Nasdaq Market Center.

Section 8(d)(ii) of the Intermarket Trading System (''ITS'') Plan governs the adoption and implementation of trade-through rules by ITS Participants. In February 2000, the Commission granted NASD an exemption from the provisions of the ITS Plan relating to automated quote generation by market makers trading non-Rule 19c–3 and Rule 19c–3 securities,[7] thus allowing market makers to engage in CGQ in exchange-listed securities, under particular circumstances. The Commission has extended the exemption annually since December 2000.[8] In granting the exemption, the Commission determined that the exemption was consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and the perfection of the mechanisms of, a national market system because it allowed market makers to continue to participate in the market for non-Rule 19c–3 securities and to compete for order flow in Rule 19c–3 securities. The Commission is not aware of any negative effects from the use of computer generated quotations by Nasdaq market makers during the nearly four year period covered by the Commission's exemption.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the provisions of section 15A of the Act [9] in general, and section 15A(b)(6) of the Act,[10] which requires that the rules of the NASD foster cooperation and coordination with persons engaged in facilitating transactions in securities and remove impediments to and perfect the mechanism of a free and open market.

IV. Conclusion

It is therefore ordered, Pursuant to section 19(b)(2) of the Act [11] the proposed rule change (SR–NASD–2004–107) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3301 Filed 11–22–04; 8:45 am]

BILLING CODE 8010–01–P

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 50478 (September 30, 2004), 69 FR 60692.

[4] *See* Securities Exchange Act Release No. 47030 (December 18, 2002), 67 FR 78832 (December 26, 2002).

[5] *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) (''Order Execution Obligations'').

[6] *See* Securities Exchange Act Release No. 49749 (February 26, 2004), 69 FR 11126 (March 9, 2004) (''Proposed Regulation NMS'').

[7] *See* Letter to Eugene A. Lopez, Senior Vice President, Nasdaq, from Robert L.D. Colby, Deputy Director, Division of Market Regulation (''Division''), Commission, dated February 11, 2000.

[8] *See* Letters to Eugene A. Lopez, Senior Vice President, Nasdaq, from Robert L.D. Colby, Deputy Director, Division, Commission dated December 22, 2000, and December 21, 2001; Letter to Eugene A. Lopez, Senior Vice President, Nasdaq, from Alden S. Adkins, Associate Director, Division, Commission, December 31, 2002; and Letter to Eugene A. Lopez, Executive Vice President, Nasdaq, from David S. Shillman, Associate Director, Division, Commission, dated December 23, 2003.

[9] 15 U.S.C. 78*o*–3.

[10] 15 U.S.C. 78*o*–3(b)(6).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50677; File No. SR–PCX–2004–108]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. To Amend the Corporate Governance Requirements for PCX Listed Companies

November 16, 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 November 15, 2004, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. The proposed rule change has been filed by PCX as a ''non-controversial'' rule change under Rule 19b–4 under the Act,[3] which renders the proposal effective upon filing with the Commission.[4] 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 Pacific Exchange, Inc. (''PCX'' or ''Exchange''), through its wholly owned subsidiary PCX Equities, Inc. (''PCXE'') is proposing to amend its Corporate Governance and Disclosure Policies. The proposed changes will amend certain director independence standards so that immediate family members of a director are only included in the standards if they are executive officers of the listed company. The Exchange also proposes to allow dually listed companies to apply the independence standards of other self-regulatory organizations (''SROs'') in limited situations. The text of the proposed rule change is set forth below. Proposed new language is in *italics;* proposed deletions are in brackets.

* * * * *

Rules of the PCX Equities, Inc.

Rule 5 Listings

¶ 7956R Corporate Governance and Disclosure Policies

Rule 5.3–5.3(k)(1)—No Change.

Rule 5.3(k)(1)(A)—A director who is an employee or former employee, *or whose immediate family member is an executive officer,* of the listed company whose employment ended within the past three years.

Rule 5.3(k)(1)(B)–(D)—No Change.

Rule 5.3(k)(1)(E)—A director who is an executive officer or an employee, or whose immediate family member is an executive officer, of a company that makes payments to, or receives payments from, the listed company for property or services in an amount which, in any single fiscal year, exceeds the greater of $200,000 or 5% of such other company's consolidated gross revenues, is not ''independent'' until three years after falling below such threshold. For purposes of this rule, charitable organizations shall not be considered ''companies'', provided however that a listed company shall disclose in its annual proxy statement, or if the listed company does not file an annual proxy statement, in the company's annual report on Form 10–K filed with the SEC, any charitable contributions made by the listed company to any charitable organization in which a director serves as an executive officer if, within the preceding three years, contributions in any single fiscal year exceeded the greater of $200,000 or 5% of such charitable organization's consolidated gross revenues. *At any time, however, when an issuer has a class of securities that is listed on a national securities exchange or national securities association other than the Corporation and is subject to requirements substantially similar to those set forth in this Section 5.3(k)(1)(E) the issuer shall not be required to separately meet the requirements set forth above. Governance requirements of other markets will be considered to be substantially similar to the requirements above if they are adopted by the New York Stock Exchange or the National Association of Securities Dealers (for the Nasdaq National Market or Small Cap Market).*

Rule 5.3(k)(1)(F)—A director who receives, or whose immediate family member *is an executive employee* who receives, more than $100,000 per year in direct compensation from the listed company, other than director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service). Such director shall not be independent until three years after he or she ceases to receive more than $100,000 per year in such compensation.

Rule 5.3(k)(1)(G)–5.3(k)(6)—No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to make certain modifications to the Exchange's Corporate Governance and Disclosure Policies. With regard to PCX Rule 5.3(k)(1)(A) and 5.3(k)(1)(F), the proposed changes will amend director independence standards so that immediate family members of a director are only included in the standards if they are executive officers of the listed company.[5] The Exchange also proposes to allow, in the limited situation of Rule 5.3(k)(1)(E), dually listed companies to apply the independence standards of other SROs. The proposed changes to Rules 5.3(k)(1)(A) and 5.3(k)(1)(F) will eliminate certain inconsistencies between the Exchange's rules and those of other national securities exchanges or national securities associations. The proposed change to Rule 5.3(k)(1)(E) will allow dually listed issuers to apply one uniform test to determine independence of their directors regardless of how many SROs list their security.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *Id.*

[4] 17 CFR 240.19b–4(f)(6).

[5] As revised by the proposed rule change, these provisions will be similar to Sections 303A.02(b)(i) and (b)(ii) of the NYSE Listed Company Manual. Telephone conversation between Steven B. Matlin, Senior Attorney, Regulatory Policy, PCX, and Geoffrey Pemble, Special Counsel, Division, Commission, on November 16, 2004.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[6] in general, and furthers the objectives of section 6(b)(5) of the Act[7] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been designated by PCX as a ''non-controversial'' rule change pursuant to section 19(b)(3)(A) of the Act[8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9]

The foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. Furthermore, the PCX gave the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change. Consequently, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

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 No. SR–PCX–2004–108 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 No. SR–PCX–2004–108. 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 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 PCX. 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 No. SR–PCX–2004–108 and should be submitted on or before December 14, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3297 Filed 11–22–04; 8:45 am]

BILLING CODE 8010–01–P

[6] 6 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50676; File No. SR–Phlx–2004–67]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating To Assessing Index Option Charges for FXI Options

November 16, 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 October 19, 2004, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. On November 16, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its Summary of Index Option Charges fee schedule to include options listed on the iShares FTSE/Xinhua China 25 Index Fund (''FXI Options''),[4] an exchange-traded fund (''ETF''). Specifically, the Exchange proposes to charge transactions involving FXI Options according to the Exchange's

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 made a minor technical change to the proposed Summary of Index Option and FXI Options Charges.

[4] The Exchange started listing and trading FXI Options, a product that is an equity option, on October 19, 2004.

Summary of Index Option Charges, as opposed to the fees set forth in the Exchange's Summary of Equity Option Charges.

The Exchange also proposes to delete references on its fee schedule to the Specialist Unit Fixed Monthly Fee (''fixed monthly fee''), as that fee is no longer in effect.[5]

The proposal to include the FXI options in the Exchange's Summary of Index Options is effective for transactions settling on or after October 19, 2004.

The text of the proposed rule change, including the Exchange's Summary of Equity Option Charges, Summary of Index Option Charges, and fixed monthly fee schedule is available at the Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to charge for the FXI Options in the same manner that the Exchange charges for index options. The Exchange believes that charging for FXI Options according to the rates set forth in the Exchange's Summary of Index Option Charges is reasonable for these types of products because the higher charges should help defray some of the license fees incurred by the Exchange in connection with the listing and trading of FXI Options.

The purpose of the proposed rule change as it relates to deleting references to the fixed monthly fee is to update the Exchange's fee schedule to accurately reflect the fees currently charged by the Exchange.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of dues, fees and charges is consistent with section 6(b) of the Act[6] in general, and furthers the objectives of section 6(b)(4) of the Act[7] in particular, in that it provides for an equitable allocation of reasonable dues, fees, and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been designated as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act[8] and Rule 19b–4(f)(2) thereunder.[9] Accordingly, the proposal has become effective upon filing with the Commission. 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.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. 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–Phlx–2004–67 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–Phlx–2004–67. 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. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx.

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–Phlx–2004–67 and should be submitted on or before December 14, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3298 Filed 11–22–04; 8:45 am]

BILLING CODE 8010–01–P

[5] The fixed monthly fee was in effect for transactions settling through August 31, 2004. *See* Securities Exchange Act Release Nos. 49467 (March 24, 2004), 69 FR 17017 (March 31, 2004) (SR–Phlx–2004–17); 49693 (May 12, 2004), 69 FR 28974 (May 19, 2004) (SR–Phlx–2004–30); and 50229 (August 23, 2004), 69 FR 52953 (August 30, 2004) (SR–Phlx–2004–42).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] For purposes of calculating the 60-day abrogation period, the Commission considers the proposal to have been filed on November 15, 2004, the date the Phlx filed Amendment No. 1.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 50679; File No. SR–Phlx–2004–69]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Amendments to the Summary of Index Option and FXI Options Charges Fee Schedule

November 16, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on October 29, 2004, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Phlx. On November 16, 2004, Phlx filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to amend its Summary of Index Option and FXI Options Charges fee schedule to: (1) Increase the firm option transaction charge from $.15 per contract to $.20 per contract and more clearly identify the types of firm option transaction charges; (2) assess a $.40 per contract option transaction charge for customer executions (regardless of the premium); (3) eliminate the block transaction discount for customer executions; and (4) make minor amendments to the Exchange's Summary of Index Option and FXI Options Charges fee schedule to more accurately reflect current Exchange charges.

Specifically, the Exchange will increase the current firm option transaction charge from $.15 per contract to $.20 per contract. The Exchange also proposes to separate the reference to the firm option transaction charge into ''firm/proprietary'' and ''firm/proprietary facilitation'' charges (collectively ''firm-related transaction charges'') in order to more clearly delineate the specific types of firm-related transaction charges.[4]

The Exchange also proposes to amend the index option transaction charges for customer executions. Currently, the Exchange charges an index option transaction charge for customer executions at two rates: $.20 per contract when the premium[5] is less than $1.00, and $.40 per contract when the premium is $1.00 or over. The Exchange proposes to charge an index option transaction charge of $.40 per contract for all customer executions, regardless of the premium. In addition, the Exchange proposes to eliminate the related block transaction discounts of 15 percent and 25 percent for customer executions of 500 to 999 contracts and 1000 contracts, respectively.[6]

In addition, the Exchange proposes to make minor, technical amendments to its Summary of Index Option and FXI Options Charges fee schedule.

The proposal would become effective for transactions settling on or after November 1, 2004. The text of the proposed rule change is available at Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to increase the index option transaction charges as outlined in this proposal, which should, in turn, generate additional revenue for the Exchange. Also, increasing the firm-related transaction charges as described above will make Phlx charges more in line with similar charges imposed by other exchanges.[7] The Exchange proposes to eliminate the block transaction discount as this discount is seldom used by members and has not had the desired effect of promoting and encouraging additional customer market participation. In addition, the purpose of making minor, technical amendments to the Summary of Index Option and FXI Options Charges fee schedule is to more accurately describe the fees that are charged by the Exchange.[8]

2. Basis

The Exchange believes the proposed rule change is consistent with Section 6 of the Act,[9] in general, and with section 6(b)(4) of the Act,[10] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[11] and subparagraph (f)(2) of Rule 19b–4[12] thereunder, because it establishes or changes a due, fee, or other charge.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 made clarifying and technical corrections to the proposed changes to the Summary of Index Option and FXI Options Charges fee schedule. *See infra*, note 4.

[4] No new types of transactions are being added to the firm-related transaction charges. In Amendment No. 1, Phlx corrected the proposed rule text to include a ''+'' symbol after the Firm/Proprietary Facilitation option transaction charge to indicate that the associated footnote regarding a maximum fee of $50,000 relates to both firm/proprietary and firm/proprietary facilitation option transaction charges. Amendment No. 1 also made technical corrections to the footnote.

[5] The premium appears on the Exchange's Summary of Index Option and FXI Options Charges fee schedule as ''market value.''

[6] The block transaction discounts are available to Phlx members upon submission to the Exchange of a customer option block discount request form with supporting documentation within thirty days of the monthly billing date.

[7] *See* Securities Exchange Act Release No. 42675 (April 13, 2000), 65 FR 21223 (April 20, 2000) (File No. SR–Amex–00–15), and Chicago Board Options Exchange, Inc. Index Options fee schedule dated October 1, 2004, located at *www.cboe.com*.

[8] In addition, separating the current firm option transaction charges into two categories of ''firm/proprietary'' and ''firm/proprietary facilitation transaction'' fee will correspond to the firm-related transaction charges that appear on the Exchange's Summary of Equity Option Charges.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

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.[13]

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–Phlx–2004–69 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–Phlx–2004–69. 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. Copies of the filing also will be available for inspection and copying at the principal office of Phlx.

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–Phlx–2004–69 and should be submitted on or before December 14, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3299 Filed 11–22–04; 8:45 am]

BILLING CODE 8010–01–P

[13] *See* 15 U.S.C. 78s(b)(3)(C).

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3628]

State of North Carolina (Amendment #2)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency—effective November 3, 2004, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to December 17, 2004.

All other information remains the same, *i.e.*, the deadline for filing applications for economic injury is June 20, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 10, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–25939 Filed 11–22–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3623]

State of North Carolina (Amendment #4)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency—effective November 3, 2004, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to December 17, 2004.

All other information remains the same, *i.e.*, the deadline for filing applications for economic injury is June 10, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 10, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–25940 Filed 11–22–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORATION

Federal Aviation Administration

High Density Airports; Notice of Reagan National Airport Lottery Allocation Procedures

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of lottery and allocation procedures for slots at Washington Reagan National Airport; extension of submission deadline.

SUMMARY: On November 17, 2004, the FAA announced that a lottery will be held on December 3, 2004, to allocate six available commuter slots at Washington's Reagan National Airport (DCA). (69 FR 67382; November 17, 2004). The closing date for carriers to submit requests to participate in the lottery is November 18, 2004. The FAA is extending that date for submissions to November 29, 2004.

FOR FURTHER INFORMATION CONTACT: Lorelei Peter, Operations and Air Traffic Law Branch, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone number (202) 267–3134.

SUPPLEMENTARY INFORMATION:

Background

On November 10, 2004, the FAA issued a notice announcing a lottery to allocate six commuter slots at DCA (69 FR 67382; November 17, 2004). According to the provisions of the notice, carriers seeking to participate in the lottery must notify the FAA in writing no later than 5 p.m. e.d.t. on November 18, 2004. The FAA is extending this submission deadline to 5 p.m. e.s.t on November 29, 2004. This extension will allow adequate time for carriers to respond to the lottery notice in view of the original publication date and the Thanksgiving holiday.

Issued on November 17, 2004 in Washington, DC.

James Whitlow,

Deputy Chief Counsel.

[FR Doc. 04–25880 Filed 11–17–04; 2:52 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

Office of Hazardous Materials Safety; Notice of Application for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before December 23, 2004.

Address Comments to: Record Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If Confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW., Washington, DC or at *http://dms.dot.gov*.

This notice of receipt of applications for modification of exemption is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on November 16, 2004.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Safety Exemptions & Approvals.

NEW EXEMPTION

Application number	Docket number	Applicant	Regulation(s) affected	Nature of exemption thereof
13998–N	RSPA–2004–19651.	3AL Testing Corp. Miami, FL.	49 CFR 180.205(f)(g); 180.209(a),(b)(1)(iv); 172.203(a); 172.302a(b)(2),(4)(5).	To authorize an alternative requalification method for DOT–3A, DOT–3AA, DOT–3ADX and DOT–3AAX steel cylinders. (modes 1,3,4)
13999–N	RSPA–2004–19659.	Kompozit-Praha s.r.o. Dysina u Plzne Czech Republic.	49 CFR 173.304a(a)(1);175.3.	To authorize the manufacture, marking, sale and use of a non-DOT specification fully-wrapped fiberglass composite cylinder with a seamless, specially designed liner for use in transporting certain hydrocarbon gases. (modes 1,2,3,4)
14001–N	RSPA–2004–19646.	Koch Hyrocarbon LP Medford, OK.	49 CFR 177.834(i)(3); 177.840(q)(1).	To authorize the use of video cameras and monitors to observe the loading and unloading operations of certain hazardous materials from a remote control station in place of personnel remaining within 7.62 meters (25 feet) of cargo tank motor vehicles. (mode 1)
14002–N	RSPA–2004–19645.	BOC Gases Murray Hill, NJ.	49 CFR 178.338–11(c)	To authorize the use of a cargo tank in oxygen, refrigerated liquid service that is not equipped with a remotely controlled self closing shut-off value. (mode 1)
14003–N	RSPA–2004–19647.	INOCOM Inc. Riverside, CA.	49 CFR 173.302(a)(1), 173.304(a), 175.3 and 180.205.	To authorize the manufacture, mark, sale and use of non-DOT specification fully wrapped carbon fiber reinforced aluminum lined cylinders for the transportation in commerce of certain Division 2.2 materials. (modes 1,2,3,4,5)
14004–N	RSPA–2004–19657.	Praxair, Inc. Danbury, CT.	49 CFR 179.13	To authorize the transportation in commerce of certain Division 2.2 gases in DOT Specification 105J500W tank cars with a maximum gross weight on rail greater than currently authorized.
14008–N	RSPA–2004–19656.	Air Products and Chemicals, Inc. Allentown, PA.	49 CFR 173.301(f)(3); 180.205(c)(4).	To authorize an alternative retesting method for DOT–3, 3A, 3AA cylinders used in transporting Division 2.1 hazardous materials. (modes 1,2,3)
14009–N	.....	United States Can Company Elgin, IL.	49 CFR 178.33a–7;	To authorize the transportation in commerce of DOT–2Q receptacles with an alternative wall thickness for use in transporting ORM–D, Division 2.1 and Division 2.2. (modes 1, 2, 3, 4)
14010–N	RSPA–2004–19644.	Varsal, LLC Warminster, PA.	49 CFR 173.202	To authorize the one-way transportation in commerce of a 50% solution of Hypophosphorous Acid in alternative UN 3H2 packagings. (mode 1)

[FR Doc. 04–25887 Filed 11–22–04; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the

application described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Request of modifications of exemptions (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, *etc.*) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. There applications have been separated from the new application for exemption to facilitate processing.

DATES: Comments must be received on or before December 8, 2004.

Address Comments To: Record Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If Confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW., Washington DC or at *http://dms.dot.gov*.

This notice of receipt of applications for modification of exemption is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued In Washington, DC, on November 16, 2004.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Exemptions & Approvals.

MODIFICATION EXEMPTIONS

Application number	Docket number	Applicant	Regulation(s) affected	Modification of exemption	Nature of exemption thereof
10798–M	.....	Olin Corporation Cleveland, TN.	49 CFR 174.67(i), (j) ..	10798	To modify the exemption to authorize the transportation of an additional Class 8 material in DOT Specification tank cars.
10985–M	.....	Georgia-Pacific Corporation Atlanta, GA.	49 CFR 174.67(i), (j) ..	10985	To modify the exemption to authorize the transportation of Class 3, Division 6.1 and additional Class 8 materials in DOT Specification tank cars.
12274–M	RSPA–99–5707.	Snow Peak USA, Inc. Clackamas, OR.	49 CFR 173.304(a)(d)(3)(ii).	12274	To modify the exemption to authorize the transportation of an additional Division 2.1 material in non-DOT specification nonrefillable inside containers.
12783–M	RSPA–01–10309.	CryoSurgery, Inc. Nashville, TN.	49 CFR 173.304a(a)(1); 173.306(a).	12783	To modify the exemption to allow up to 18 oz. non-DOT specification nonrefillable containers be filled to 55% filling density for the transportation of ORM–D materials.
12920–M	RSPA–02–11638.	Epichem, Inc. Haverhill, MA.	49 CFR 173.181(c)	12920	To modify the exemption to authorize the transportation of an additional Division 4.2 material in combination packagings with inner containers that exceed currently authorized quantities.
12988–M	RSPA–02–12215.	Air Products and Chemicals, Inc. Allentown, PA.	49 CFR 173.304; 179.300.	12988	To modify the exemption to update the non-DOT specification design drawings, the material of construction requirements and the minimum burst pressure from 249 bar to 240 bar.
13182–M	RSPA–02–14023.	Cytec Industries Inc. West Paterson, NJ.	49 CFR 173.304a(b) ..	13182	To modify the exemption to authorize domestic distribution of DOT Specification cylinders containing a certain Division 2.3 material filled to liquid full at 130 degrees F.
13208–M	RSPA–03–14944.	Provensis Limited, Keaton House.	49 CFR 171.11(d)(7) and (14); 171.12(b)(17); 173.302(a)(1); Part 174; Part 177;.	13208	To modify the exemption to authorize the transportation of an additional Division 2.2 material in DOT Specification 2Q containers and relief from certain operational controls and modal requirements.
13344–M	RSPA–04–16868.	Precision Technik Atlanta, GA.	49 CFR 173.301(a)(d)(1); 180.209; 173.201; 173.202; 173.203; 173.302; 173.304.	13344	To modify the exemption to authorize the addition of a bottom liquid drain valve and rail mount brackets to the non-DOT specification salvage cylinder.
13565–M	RSPA–04–17863.	H.C. Starck, Inc. Newton, MA.	49 CFR 173.211	13565	To reissue the exemption originally issued on an emergency basis for the transportation of Division 4.3 material in alternative packaging (an accumulator).
13601–M	RSPA–04–18713.	DS Containers, Inc. Lemont, IL.	49 CFR 173.306(b)(1); 175.3.	13601	To modify the exemption to authorize a pressure relief device in the bottom end of the non-DOT specification inner nonrefillable metal container with a venting pressure not below 175 psi.

[FR Doc. 04–25888 Filed 11–22–04; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–04–18975; Notice No. 04–07]

Safety Advisory: Unauthorized Marking of Compressed Gas Cylinders

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Safety advisory notice.

SUMMARY: This is to notify the public that RSPA is investigating the unauthorized marking of DOT specification high-pressure carbon dioxide fire extinguishers serviced by Statewide Fire Equipment, Inc. (Statewide), West Buxton, ME. Note that non-DOT specification dry chemical fire extinguishers are not at issue. RSPA has evidence that suggests Statewide marked, certified and returned to service numerous high-pressure DOT specification carbon dioxide fire extinguishers when the cylinders had not been properly requalified in accordance with the Hazardous Materials Regulations (HMR). In addition, the evidence suggests that Statewide used the Retester Identification Numbers (RINs) of several other licensed retest facilities without the permission or knowledge of these facilities.

A hydrostatic retest and visual inspection are used to verify the structural integrity of compressed gas cylinders. If a hydrostatic retest and visual inspection are not performed within the time period required by the HMR, cylinders with compromised structural integrity may be returned to service when they should be condemned. Extensive property damage, serious personal injury, or death could result from rupture of a cylinder.

SUPPLEMENTARY INFORMATION: Through its investigation, RSPA believes that Statewide marked, certified and returned to service an undetermined number of high-pressure carbon dioxide fire extinguishers without the authority to perform such servicing or without ensuring that the cylinders were properly requalified by an authorized retest facility. The cylinders are owned by municipal school systems, fire departments, and a yet to be determined number of other customers in southern Maine, The HMR require that a cylinder requalification facility hold a current RIN issued by RSPA. Statewide has never applied for or received a RIN; therefore it is not an authorized cylinder requalification facility. Cylinders serviced by Statewide were found to be marked with the RINs of four different authorized requalification facilities. The facilities and RIN numbers are: RIN A803 issued to AAA Fire Extinguisher Co., Inc. (AAA Fire Extinguisher), 328 Rodman Road, Auburn, ME, (207) 784–8306; RIN A887 issued to Simplex Grinnell LP (Simplex Grinnell), 20 Thomas Drive, Westbrook, ME, (207) 842–6440; RIN A813 issued to J. N. Johnson Sales & Service, Inc., (J. N. Johnson), 4200 West 76th Street, Edina, MN, (952) 835–4600; and RIN A857 issued to Orange County Fire Protection (Orange County Fire), 137 West Bristol Lane, Orange, CA, (714) 974–9025.

RSPA has reviewed the retester records from these four companies from 1995 to the present, and has determined that none of these companies have performed any cylinder requalification for Statewide. Although AAA Fire Extinguisher of Auburn, ME requalified DOT specification high pressure carbon dioxide fire extinguishers for Statewide until approximately 1995, it has not performed any services for Statewide since then. In addition to the four RIN numbers mentioned above, RSPA believes that Statewide may have marked cylinders with other unauthorized RINs. The RIN and date of retest are marked on the shoulders of cylinders in the following pattern:

A 8

M Y

30

M is the month of retest (*e.g.*, 10), and Y is the year of the retest (*e.g.*, 04).

This safety advisory covers all high-pressure DOT specification fire extinguishers that have been marked and certified as having been requalified while in the custody of Statewide. These cylinders may pose a safety risk to the public and should be considered unsafe for use in hazardous materials service until requalified by an authorized retest facility. Furthermore, cylinders described in this safety advisory must not be filled with a hazardous material unless the cylinders are first properly retested by an authorized retest facility. A list of authorized requalification facilities sorted by state or by RIN number may be obtained at RSPA's Web site: *http://hazmat.dot.gov/files/approvals/hydro/hydro_retesters.htm*.

FOR FURTHER INFORMATION CONTACT: Anthony Lima, Senior Hazardous Materials Enforcement Specialist, Eastern Region, Office of Hazardous Materials Enforcement, Research and Special Programs Administration, U.S. Department of Transportation, 820 Bear Tavern Road, Suite 306, West Trenton, NJ 08628. Telephone: (609) 989–2252.

RSPA requests that any person possessing a high pressure DOT specification fire extinguisher serviced by Statewide since 1995 contact inspector Anthony Lima with the following information for each cylinder: (1) The DOT specification number and service pressure, (2) the serial number which should be marked in association with the specification number and service pressure, (3) the RIN number and the month and year of the last marked requalification, (4) invoices from Statewide that have the line item, ''Hydrostatic Tests'' completed, and (5) the customer name, address, contact person and telephone number so the inspector may contact you if necessary. Please provide the requested information via facsimile to: (775) 307–4971.

Issued in Washington, DC, on November 17, 2004.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 04–25889 Filed 11–22–04; 8:45 am]
BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Harkins Cunningham on behalf of Canadian National Railway Company (WB525–9–11/9/2004), for permission to use certain data from the Board's Carload Waybill Samples. A copy of the request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Mac Frampton, (202) 565–1541.

Vernon A. Williams,

Secretary.

[FR Doc. 04–25929 Filed 11–22–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Covington & Burling on behalf of Union Pacific Corporation (WB468–6—11/15/04), for permission to use certain data from the Board's Carload Waybill Samples. A copy of the request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Mac Frampton, (202) 565–1541.

Vernon A. Williams,

Secretary.

[FR Doc. 04–25930 Filed 11–22–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34512]

Nebraska, Kansas & Colorado Railnet, Inc.—Acquisition and Operation Exemption—The Burlington Northern and Santa Fe Railway Company

Nebraska, Kansas & Colorado Railnet, Inc. (Nebraska), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 *et seq.* to acquire and operate two lines of railroad from The Burlington Northern and Santa Fe Railway Company (BNSF). The subject lines total 88.6 miles in length and are located in Harlan, Franklin, Hitchcock, Hayes, and Chase Counties, NE.

Specifically, Nebraska will: (1) Lease and operate BNSF's Imperial Subdivision between milepost 0.89 near Culbertson, NE., and milepost 49.1 near Imperial, NE.; and (2) purchase and operate a portion of BNSF's Wymore Subdivision located between milepost 216.95 near Franklin, NE., and milepost 257.36 near Oxford Jct., NE., In addition, BNSF will grant Nebraska incidental trackage rights for the purpose of interchange with BNSF over BNSF's line between milepost 236.0 near Oxford, NE, and milepost 257.36 near Oxford Jct.; between milepost 257.36 near Oxford Jct., and milepost 288.0 near McCook, NE; and between milepost 0.89 near Culbertson, and milepost 286.0 near McCook.

Nebraska certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier so as to require processing under 49 CFR 1150.45. Nebraska also states that on or about July 29, 2004, it posted and served notice to employees of the proposed transaction as required under 49 CFR 1150.42(e) and certified to the Board that it had done so on the same date. The transaction was scheduled to be consummated on or after November 12, 2004.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34512, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John D. Heffner, 1920 N Street, NW., Suite 800, Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: November 15, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–25931 Filed 11–22–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Environmental Hazards; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Pub. L. 92–463 (Federal Advisory Committee Act) that a meeting of the Veteran's Advisory Committee on Environmental Hazards will be held on Thursday and Friday, January 6–7, 2005, from 9 a.m. to 5 p.m. each day. The meeting will be held at 810 Vermont Avenue, NW., Room 530, Washington, DC 20420. The meeting is open to the public.

The purpose of the Committee is to provide advice to the Secretary of Veterans Affairs on adverse health effects that may be associated with exposure to ionizing radiation and to make recommendations on proposed standards and guidelines regarding VA benefit claims based upon exposure to ionizing radiation.

The major items on the agenda for both days will be discussions and analyses of medical and scientific papers concerning the health effects of exposure to ionizing radiation. On the basis of its analyses and discussions, the Committee may make recommendations to the Secretary concerning the relationship of certain diseases with exposure to ionizing radiation. On January 6 there will be presentations by VA's Public Health and Environmental Hazards Office, and by Specialists in Energy, Nuclear, and Environmental Sciences (SENES). The January 7 session will include planning future Committee activities and assignment of tasks among the members.

Those who wish to attend should contact Ms. Bernice Green of the Department of Veterans Affairs, Compensation and Pension Service, 810 Vermont Avenue, NW., Washington, DC 20420, by phone at (202) 273–7210, or by fax at (202) 275–1728. Members of the public may submit written questions or prepared statements for review by the Committee in advance of the meeting. Statements should be sent to Ms. Green's attention at least 5 days prior to the meeting at the address shown above. Those who submit material may be asked to clarify it prior to its consideration by the Committee.

An open forum for verbal statements from the public will also be available for 20 minutes during the morning and 20 minutes in the afternoon each day. Each person who wishes to make a verbal statement before the Committee will be accommodated on a first come, first served basis and will be provided three (3) minutes to present the statement.

Dated: November 15, 2004.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 04–25916 Filed 11–22–04; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease of VA Property, Chicago (Lakeside), IL

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent to enter into an enhanced-use lease.

SUMMARY: The Secretary of the Department of Veterans Affairs (VA) intends to enter into an enhanced-use lease of approximately 3.8 acres known as VA's Lakeside property in Chicago, Illinois (''Lakeside''). The Department proposes to enter into a long-term (up to 75 years) lease with a competitively selected lessee that would bear full financial and legal responsibility to redevelop the property into a modern health care campus, at no cost to VA. VA would use the consideration from the proposed lease to improve health care services and facilities for veterans. Under other terms of the proposed lease, VA could continue to use the hospital property to provide health care and services to veterans until December 31, 2007.

FOR FURTHER INFORMATION CONTACT: Brian A. McDaniel, Office of Asset Enterprise Management (004B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–9492.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 8161 *et seq.*, specifically provides that the Secretary may enter into an enhanced-use lease if he determines that the implementation of a business plan proposed by the Under Secretary for Health for applying the consideration under such a lease to the provision of medical care and services would result in a demonstrable improvement of services to eligible veterans in the geographic service-delivery area within which the property is located. This project meets this requirement.

Approved: November 15, 2004.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 04–25915 Filed 11–22–04; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 69, No. 225

Tuesday, November 23, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 229

[Docket No. 040903253–4253–01; I.D. 081104H]

RIN 0648–AR39

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Bottlenose Dolphin Take Reduction Plan; Sea Turtle Conservation; Restrictions to Fishing Activities

Correction

In proposed rule document 04–25113 beginning on page 65127 in the issue of Wednesday, November 10, 2004 make the following correction:

On page 65129, the second table should have the heading: ''Table 2. Estimated Bycatch for the Mid-Atlantic Beach-Based and Ocean Gillnet Fisheries in 2000 and Southeast U.S. Shark Gillnet Fishery from 1992–2001, and Current PBR Estimates for Each Management Unit Within the Western North Atlantic Coastal Bottlenose Dolphin Stock Applied Semi-Annually. For Management Units South of North Carolina, the PBR Is Applied Annually. Bycatch Estimates for Other Fisheries Impacting the Bottlenose Dolphin Stock Are Unavailable Due to Lack of Observer Effort.''.

[FR Doc. C4–25113 Filed 11–22–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
November 23, 2004

Part II

Department of Housing and Urban Development

24 CFR Part 5

Electronic Submission of Applications for Grants and Other HUD Financial Assistance; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 5

[Docket No. FR–4875–P–01]

RIN 2501–AD02

Electronic Submission of Applications for Grants and Other HUD Financial Assistance

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule establishes the requirement for applicants for HUD grants or certain other financial assistance to submit their applications to HUD electronically through the federal government grant portal, Grants.gov, in response to a HUD announcement of funding availability that is placed on Grants.gov/Apply or its successor Web site.

DATES: *Comments Due Date:* December 23, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Interested persons may also submit comments electronically through either:

- The federal electronic rulemaking portal at: *www.regulations.gov;* or
- The HUD electronic Web site at: *www.epa.gov/feddocket.* Follow the link entitled ''View Open HUD Dockets.'' Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted will be available, without revision, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Copies are also available for inspection and downloading at *www.epa.gov/feddocket.*

FOR FURTHER INFORMATION CONTACT: Barbara Dorf, Director, Office of Departmental Grants Management and Oversight, Room 3156, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–3000, telephone (202) 708–0667 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The President's Management Agenda for Fiscal Year 2002 sets forth the President's goals for electronic government (e-government), which include a requirement for federal agencies to allow applicants for federal grants and other federal financial assistance to find, apply for, and ultimately manage grant funds online through a common government-wide portal. The President's Management Agenda furthers the objectives of the Federal Financial Assistance Management Improvement Act of 1999 (31 U.S.C. 6101), which seeks to unify and simplify application submission and reporting requirements for potential applicants and grantees of federal financial assistance. This policy is also consistent with the objectives of the Government Paperwork Elimination Act (GPEA) (44 U.S.C. 3504), which seeks to reduce or eliminate application submission and reporting burdens on program participants.

On October 8, 2003 (68 FR 58146), the Office of Management and Budget (OMB) published in the **Federal Register**, a notice of issuance of a final policy directive requiring federal agencies to use the Web site, Grants.gov, to electronically post synopses of funding opportunities under federal financial assistance programs that award discretionary grants and cooperative agreements. Grants.gov allows applicants, to find, apply for, and manage federal grants through a single web portal. The governmentwide use of Grants.gov will simplify the grant management process and create a centralized, online process to find and apply for over 600 grant programs from the 26 federal grant-making agencies. Grants.gov will streamline the process of awarding over $360 billion annually to state and local governments, academia, and not-for-profit and other organizations. This initiative is one of the 24 federal cross-agency e-government initiatives focused on improving access to services via the Internet. Additionally, the Grants.gov initiative will facilitate efficient operations for federal grant agencies and the grant community.

II. This Proposed Rule

Based on OMB's directive, this proposed rule would require all applicants for HUD grants and other financial assistance to submit applications electronically through the Grants.gov Web site. HUD believes that electronic grant application submission will standardize, simplify, and improve the integrity of HUD's grant making process.

For the purpose of this policy, applications subject to this requirement would include submissions from applicants for HUD grants, cooperative agreements, capital fund or operating fund subsidies, capital advances, vouchers, and other financial assistance awards, including programs that are classified by OMB as mandatory, as well as formula grant programs or activities for which HUD has placed an electronic application on Grants.gov/Apply. Electronic submissions may also include plans, updates to plans, and funding requests submitted to HUD to fulfill requirements to receive new or funding renewals or other federal financial assistance. The requirement for electronic application to be established through this rulemaking does not extend to Federal Housing Administration (FHA) insurance or loan guarantee transactions that are not associated with the grants and financial assistance previously described. The FHA is covering its e-government transactions through separate rulemaking.

Electronic application submission means applicants will not waste time and resources on preparing, mailing, and hand delivering paper copies of their applications to HUD Headquarters, field offices, or multiple locations. To participate in electronic grant submission on Grants.gov, applicants need only a computer with access to the Internet. To make it easier for applicants to use the Grants.gov electronic portal, applicants can download the application instructions and forms, complete the application off-line and share with others via e-mail, and later upload and submit the completed application to *Grants.gov.*

The requirement for electronic submission would apply to all program application or plan submissions placed by HUD at *www.Grants.gov/Apply* for electronic submission via the Grants.gov portal. The requirement would not take effect for individual program applications until HUD makes available the electronic application on the *www.grants.gov/Apply* Web site. Placing an application on the *www.grants.gov/Find* Web site with a link to find forms and other application materials would not trigger the requirement for mandatory, electronic application submission. The HUD assistant secretary with authority over the program may waive the electronic submission requirement, as provided for in 24 CFR part 5.

III. Findings and Certifications

Justification for 30-Day Public Comment Period

In accordance with HUD's regulations concerning rulemaking at 24 CFR part 10 (entitled, ''Rulemaking Policy and Procedures''), it is HUD's policy that the public comment period for notice of proposed rulemaking should be 60 days. In the case of this proposed rule however, HUD has determined that there is good cause to reduce the public comment period to 30 days. As discussed in more detail earlier in this preamble, this proposed rule would simply require applicants to submit applications electronically rather than paper copy. Electronic submission of grants and other funding applications requires only a computer with access to the Internet and poses no substantial burden on applicants, and in fact may actually reduce the paperwork burden for timely application submission.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This proposed rule does not impose any federal mandate on any state, local, or tribal government or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications, if the rule imposes either substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of Section 6 of the order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the order.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule and in so doing, certifies that this rule will not have a significant economic impact on a substantial number of small entities. Providing for electronic submission of grant applications will simplify and lessen the burden on applicants' resources because they will no longer need to duplicate and submit paper applications. Although HUD has determined that this proposed rule does not have a significant economic impact on a substantial number of small entities, HUD invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Environmental Impact

In accordance with 24 CFR 50.19(c)(1), this proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this proposed rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

For the reasons described in the preamble, HUD proposes to amend 24 CFR part 5 as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for 24 CFR part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d).

2. Add § 5.1005 to Subpart K to read as follows:

§ 5.1005 Electronic submission of applications for grants and other financial assistance.

Applicants described under 24 CFR 5.1001 are required to submit electronic applications or plans for grants and other financial assistance in response to any application that HUD has placed on the *www.grants.gov/Apply* Web site or its successor. The HUD Assistant Secretary or equivalent HUD official with authority over a program may waive the electronic submission requirement for an applicant on the basis of good cause in accordance with 24 CFR 5.110.

Dated: October 25, 2004.

Alphonso Jackson,

Secretary.

[FR Doc. 04–25893 Filed 11–22–04; 8:45 am]

BILLING CODE 4210–32–P

Federal Register

Tuesday,
November 23, 2004

Part III

Department of Labor

Employment and Training Administration

20 CFR Part 655

Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H–1B Visas in Specialty Occupations and as Fashion Models; Labor Attestations Regarding H–1B1 Visas; Interim Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205–AB38

Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H–1B Visas in Specialty Occupations and as Fashion Models; Labor Attestations Regarding H–1B1 Visas

AGENCIES: Employment and Training Administration and Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Interim final rule; request for comments.

SUMMARY: The Department of Labor (Department or DOL) is amending its regulations related to the temporary employment of foreign professionals to implement procedural requirements applicable to a new visa category—the H–1B1 visa. The H–1B1 visa permits the temporary entry and employment in the United States of professionals in specialty occupations from countries with which the United States has entered into agreements identified in section 214(g)(8)(A) of the Immigration and Nationality Act (INA). Congress created the new visa category as part of its approval of the United States-Chile Free Trade Agreement and the United States-Singapore Free Trade Agreement. By statute, the new H–1B1 visa is available only to nationals of Chile and Singapore. Under the implementing legislation, DOL's responsibilities regarding H–1B1 visas are to be implemented in a manner similar to the existing H–1B program for temporary employment of nonimmigrant aliens in specialty occupations and as fashion models. Thus, employers in the United States seeking to temporarily employ foreign professionals in specialty occupations through H–1B1 visas must file a labor attestation with the Department of Labor making the same attestations regarding payment of prevailing wages, working conditions, absence of strikes or lockouts, and notice to other employees that employers currently make when seeking entry of a foreign worker under the H–1B program.

DATES: This interim final rule is effective on November 23, 2004. Interested persons are invited to submit written comments on this interim final rule. To ensure consideration, comments must be received on or before January 24, 2005.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1205–AB38, by any of the following methods:

- Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the website instructions for submitting comments.
- E-mail: Comments may be submitted by e-mail to *Chil.sing@dol.gov*. Include RIN 1205–AB38 in the subject line of the message.
- Mail: Submit written comments to the Assistant Secretary for Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210, Attention: William Carlson, Chief, Division of Foreign Labor Certification. Because of security measures, mail directed to Washington, DC is sometimes delayed. We will only consider comments postmarked by the U.S. Postal Service or other delivery service on or before the deadline for comments.

Instructions: All submissions received must include the RIN 1205–AB38 for this rulemaking. Receipt of submissions, whether by mail, Internet, or e-mail will not be acknowledged. Because DOL continues to experience delays in receiving postal mail in the Washington, DC area, commenters are encouraged to submit any comments by mail early.

Comments will be available for public inspection during normal business hours at the address listed above for mailed comments. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. Copies of this interim final rule may be obtained in alternative formats (*e.g.*, large print, Braille, audiotape, or disk) upon request. To schedule an appointment to review the comments and/or to obtain the proposed rule in an alternative format, contact the Division of Foreign Labor Certification at 202–693–3010 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: On 20 CFR part 655, subpart H, regarding the H–1B1 labor attestation procedures, contact Denis Gruskin, Senior Specialist, Division of Foreign Labor Certification, Employment and Training Administration (ETA), Department of Labor, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210; Telephone: (202) 693–2953 (this is not a toll-free number).

On 20 CFR part 655, subpart I, regarding the H–1B1 enforcement process, contact Michael Ginley, Director, Office of Enforcement Policy, Wage and Hour Division, Employment Standards Administration (ESA), Department of Labor, 200 Constitution Avenue, NW., Room S–3510, Washington, DC 20210; Telephone: (202) 693–0745 (this is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority and Background

The United States-Chile Free Trade Agreement (Chile FTA) and United States-Singapore Free Trade Agreement (Singapore FTA) have been implemented by the U.S. Congress through legislation. *See* United States-Chile Free Trade Agreement Implementation Act, Pub. L. 108–77, 117 Stat. 909 (September 3, 2003) (Chile FTA Implementation Act); United States-Singapore Free Trade Agreement Implementation Act, Pub. L. 108–78, 117 Stat. 948 (September 3, 2003) (Singapore FTA Implementation Act). The Chile FTA and Singapore FTA are available on the Web site for the Office of the United States Trade Representative at *http://www.ustr.gov*.

The Chile FTA Implementation Act amends the Immigration and Nationality Act (INA) to create a new visa category—the H–1B1 visa—for the temporary entry and employment in the United States of professionals from countries with which the United States has entered into agreements identified in section 214(g)(8)(A) of the INA. *See* INA section 101(a)(15)(H)(i)(b1) [8 U.S.C. 1101(a)(15)(H)(i)(b1)]. The H–1B1 visa is available for individuals in specialty occupations who seek to come to the United States temporarily to engage in professional activities for an employer. *Id*. The INA amendments creating the H–1B1 visa took effect on January 1, 2004. The INA as amended identifies two agreements with countries that qualify for the H–1B1 program—the Chile FTA and Singapore FTA. *See* INA section 214(g)(8)(A) [8 U.S.C. 1184(g)(8)(A)].

To qualify as a professional for purposes of the H–1B1 program, a person must be engaged in a specialty occupation requiring theoretical and practical application of a body of specialized knowledge, and attainment of a bachelor's degree or higher as a minimum for entry into the occupation in the United States. *See* INA section 214(i)(3) [8 U.S.C. 1184(i)(3)]. Both the Chile FTA and Singapore FTA state that they cover ''a business person seeking to engage in a business activity as a professional, or to perform training functions related to a particular

profession, including conducting seminars, if the business person otherwise complies with immigration measures applicable to temporary entry.'' Chile FTA Annex 14.3(D)(1); Singapore FTA Annex 11A(IV)(1). Both agreements also identify certain professions that qualify for temporary entry, along with required credentials for each. *See* Chile FTA at Annex 14.3(D)(2) and Appendix 14.3(D)(2) (Disaster Relief Claims Adjuster, Management Consultant, Agricultural Manager, and Physical Therapist); Singapore FTA at Annex 11A(IV)(3) and Appendix 11A.2 (Disaster Relief Claims Adjuster and Management Consultant). The Statement of Administrative Action regarding the Chile FTA, which was approved by Congress, notes that the definition of ''specialty occupation'' will be interpreted in a manner similar to the term's use in the H–1B visa program. *See* Public Law 108–77, § 101(a) (approving United States-Chile Free Trade Agreement Implementation Act—Statement of Administrative Action, July 15, 2003, available at *http://waysandmeans.house.gov/media/pdf/chile/hr2738ChileSAA7–15–03.pdf*). Determinations of specialty occupation and of nonimmigrant qualifications are not made by the Department of Labor, but by the Department of State and/or the United States Citizenship and Immigration Services (USCIS) of the Department of Homeland Security (formerly the Immigration and Naturalization Service or INS) in accordance with the procedures of those agencies for processing H–1B or H–1B1 visa requests.

An employer in the United States wishing to employ a professional from one of the countries for which H–1B1 visas are available (now Chile or Singapore) must submit a labor attestation to the Department of Labor that includes the same elements required for employers' attestations under the existing H–1B visa program. *Compare* INA section 212(t)(1) *with* 212(n)(1) [8 U.S.C. 1182(t)(1) and (n)(1)]. As with the H–1B program, the potential H–1B1 employer must attest that:

- It is offering the nonimmigrant, and will pay during the period of authorized employment, wages that are at least the actual wage level paid to other employees with similar experience and qualifications for the specific employment in question, or the prevailing wage level for the occupational classification in the area of intended employment, whichever is greater;
- It will provide working conditions for the nonimmigrant that will not adversely affect working conditions for similarly employed workers;
- There is no strike or lockout in the course of a labor dispute in the occupational classification at the worksite; and
- It has provided notice of its filing of a labor attestation to its employees' bargaining representative for the occupational classification affected or, if there is no bargaining representative, has provided notice to its employees in the affected occupational classification by physical posting or other means.

Under the INA amendments creating the H–1B1 visas, as under the H–1B labor condition application requirements, the Department must review labor attestations only for completeness and obvious inaccuracies. Unless a filing is incomplete or obviously inaccurate, the Secretary of Labor must certify the H–1B1 filing within 7 days of the filing. *See* INA section 212(t)(2)(C) [8 U.S.C. 1182(t)(2)(C)]. As with the H–1B program, the Department will certify the H–1B1 labor attestation for the period of employment requested by the employer on the ETA Form 9035, up to a maximum 3-year period. By statute, however, H–1B1 visas will be valid and renewable for 1-year periods, with visa renewals beyond 3 years requiring the filing of a new labor attestation with the Department of Labor. *See* INA section 214(g)(8)(C) [8 U.S.C. 1184(g)(8)(C)].

Steps for receiving an H–1B1 visa subsequent to the Department of Labor attestation process are the responsibility of and will be identified by USCIS and the Department of State.

As with labor condition applications for H–1B nonimmigrants, the Secretary of Labor is required to compile a list, by employer and occupational classification, of all labor attestations filed regarding H–1B1 nonimmigrants. The list is to identify for each attestation: the wage rate, number of alien professionals sought, period of intended employment, and date of need. INA section 212(t)(2)(B) [8 U.S.C. 1182(t)(2)(B)]. The Department must make the list publicly available in Washington, DC.

Enforcement provisions for the attestation are also based on requirements under the H–1B visa program. *See* INA section 212(t)(3) [8 U.S.C. 1182(t)(3)]. The Department will receive, investigate, and make determinations on complaints filed by any aggrieved person or organization regarding the failure of an employer to meet the terms of its attestation. Penalties for failure to meet conditions of the labor attestation are the same as those under the H–1B program.

The statute establishing the H–1B1 visa category also provides that an H–1B1 nonimmigrant may be denied entry into the U.S. if a labor dispute is in progress in the occupational classification at the intended place of employment, unless the nonimmigrant establishes, pursuant to regulations to be issued by the Department of Homeland Security, after consultation with the Department of Labor, that the nonimmigrant's entry will not adversely affect settlement of the labor dispute or employment of the workers involved. *See* INA section 214(j)(2) [8 U.S.C. 1184(j)(2)]. This interim final rule does not address this situation, but the Department will consult with USCIS on development of the USCIS labor dispute regulation.

During the period that the temporary entry of professionals provisions of the Chile FTA are in effect, prospective employers of Chilean nationals seeking H–1B1 visas will be subject to the attestation requirements of section 212(t) of the INA, in accordance with Chapter 14 and Section D of Annex 14.3 of the Chile FTA and section 402 of the Chile FTA Implementation Act. The number of Chilean professionals that may enter the United States on H–1B1 visas under Annex 14.3, Section D is limited to 1,400 annually. *See* Appendix 14.3(D)(6) of the Chile FTA and INA section 214(g)(8)(B).

For their part, prospective employers of Singaporean nationals seeking H–1B1 visas will be subject to the attestation requirements of section 212(t) of the INA during the period that the temporary entry of professionals provisions of the Singapore FTA are in effect, in accordance with Chapter 11 and Section IV of Annex 11A of the Singapore FTA and section 402 of the Singapore FTA Implementation Act. The number of Singaporean professionals entering the United States under Annex 11A, Section IV is limited to 5,400 annually. *See* Appendix 11A.3 of the Singapore FTA and INA section 214(g)(8)(B).

The Chile and Singapore Free Trade Agreements specify that their provisions for the temporary entry of professionals (that is, the H–1B1 visa program) do not limit the ability of such professionals to seek entry under other immigration measures. Likewise, entry into the United States of Chilean or Singaporean nationals under the H–1B1 provisions neither forecloses nor establishes their eligibility for entry under other similar provisions of the INA.

II. Overview of Regulatory Changes

This interim final rule implements responsibilities of the Department of

Labor with respect to the admission and related enforcement provisions under the new H–1B1 program of nonimmigrant professionals in specialty occupations from countries with which the United States has reached agreements identified in section 214(g)(8)(A) of the INA. This rule amends the subpart headings, applicability section, and other sections of the Department of Labor regulations pertaining to employers seeking the temporary entry on H–1B visas of nonimmigrant aliens in specialty occupations and as fashion models (20 CFR part 655, subparts H and I) to extend the same procedures, with limited exceptions based upon statutory requirements, to temporary entry and employment on H–1B1 visas.

In accordance with the provisions of the legislation implementing the Chile and Singapore FTAs, this rule specifically applies subparts H and I, subject to the limited exceptions, to H–1B1 labor attestations regarding nationals of those countries by amending 20 CFR 655.0(d), adding a new introductory paragraph to § 655.700, adding new paragraphs (c)(3) and (d) to § 655.700, and adding a new introductory paragraph to § 655.730. The specific applicability of subparts H and I of part 655 to nonimmigrants from Chile and Singapore is identified in new § 655.700(d)(5) (applicability to Chile) and § 655.700(d)(6) (applicability to Singapore). Other conforming changes are made as described below.

As provided in this rule, employers seeking to temporarily employ professionals under H–1B1 visas must file labor attestations with the Department in accordance with the regulations at 20 CFR part 655, subpart H, and comply with the requirements of subpart I, with certain exclusions identified in the regulation. Because the Department is making the existing H–1B regulations generally applicable to H–1B1 nonimmigrants, rather than writing a new rule for the H–1B1 program, this interim final rule identifies in § 655.700(c) and (d) the portions of subparts H and I that will apply and others that will not apply to the H–1B1 program. Employer's responsibilities under the H–1B1 program are identified in new § 655.700(d)(4). New section 20 CFR 655.700(d)(1) lists the provisions of the H–1B regulations that do not apply to H–1B1 nonimmigrants, but rather apply only to H–1B nonimmigrants. Among these exclusions are several provisions related to ''H–1B-dependent employers'' and ''willful violators'' of the H–1B rules that Congress did not include in the legislation establishing the H–1B1 visa, specifically 20 CFR 655.710(b); 655.730(d)(5) and (e)(3); 655.736; 655.737; 655.738; 655.739; 655.760(a)(8), (9) and (10); part of 655.705(c); and 655.805(a)(7), (8), and (9). These provisions also no longer apply to H–1B filings, because the statutory provisions regarding H–1B-dependent employers and willful violators have lapsed for H–1B labor condition applications filed after September 30, 2003.

This interim final rule also directs in § 655.700(d)(2) that certain terms in subparts H and I of part 655 will be interpreted to include terminology applicable to the H–1B1 program in accordance with the INA amendments, except as excluded. Thus, wherever 20 CFR part 655, subparts H or I, reference ''H–1B'' (for example, ''H–1B nonimmigrant'' or ''H–1B visas''), it includes ''H–1B1'' (*e.g.*, ''H–1B1 nonimmigrants'' or ''H–1B1 visas''), except as excluded. Likewise, references to a ''labor condition application'' or ''LCA'' shall be understood to include reference to a labor attestation under the H–1B1 provisions, except as excluded. To provide clear statutory citations within the regulation, this interim final rule amends several sections of part 655, subparts H and I, that refer to the INA statutory provisions regarding H–1B visas (that is, INA section 212(n) and its subordinate clauses) to add references to the corresponding INA statutory provisions regarding H–1B1 visas (that is, INA section 212(t) and its corresponding subordinate clauses). In some instances, no additional reference to the H–1B1 statutory provisions is necessary because the particular H–1B statutory provision ''for example, regarding ''H–1B-dependent employers'' and ''willful violators'' ''has no parallel provision in the H–1B1 statutory section (*see, e.g.*, reference to H–1B statutory provision in § 655.705(a)). Amendments addressing statutory citations are made to §§ 655.731, 655.740, 655.800, 655.801, 655.805, and 655.810. Corrections are also made to statutory citations in §§ 655.731(c)(10)(i)(C) and (c)(10)(ii), and in § 655.801(c).

Filing procedures for H–1B1 labor attestations are identified in § 655.700(d)(3). As provided by that section, employers seeking to hire an H–1B1 nonimmigrant must make the required labor attestations by submitting a completed ETA Form 9035 or ETA Form 9035E (electronic) to the Department in accordance with the procedures identified in §§ 655.720 and 655.730. The Department has obtained approval for revised ETA Forms 9035 and 9035E covering both the H–1B and H–1B1 programs (OMB control number 1205–0310, expiration date August 31, 2007). The new forms allow the Department to distinguish between Form 9035s filed under the H–1B statutory terms and those filed under the H–1B1 statutory terms, and between labor attestations regarding H–1B1 nonimmigrants from Chile and H–1B1 nonimmigrants from Singapore. ETA will announce changes in filing procedures and instructions by publication of notice in the **Federal Register** and posting on the ETA Web site at *http://atlas.doleta.gov/foreign/*.

As required by the new INA amendments related to the H–1B1 program, this interim rule provides in 20 CFR 655.760(b) that ETA will compile and maintain a list of H–1B1 labor attestations filed under INA section 212(t). For each attestation, this list will show, by employer, the occupational classification, wage rate(s), number of nonimmigrants sought, period(s) of intended employment, and date(s) of need for each employer's application. The list will be available for public examination at the Washington, DC offices of ETA's Division of Foreign Labor Certification.

As stated in 20 CFR 655.700(c)(3), this interim rule, which implements the Department of Labor's statutory responsibilities regarding the H–1B1 program, will take effect immediately on publication in the **Federal Register** and will apply to H–1B1 attestations regarding Chilean or Singaporean nationals filed on or after that date. H–1B1 attestations filed on or after January 1, 2004, but prior to this interim final rule's effective date, will be handled in accordance with the statutory terms and the processing procedures that the Department posted on its Web Site in advance of the January 1, 2004, commencement of the H–1B1 program.

III. Administrative Information

Executive Order 12866—Regulatory Planning and Review

We have determined that this interim final rule is not an ''economically significant regulatory action'' within the meaning of Executive Order 12866. The procedures for filing a labor attestation under the new H–1B1 visa category, and specifically on behalf of nonimmigrant professionals from Chile and Singapore, will not have an economic impact of $100 million or more because employers seeking to employ H–1B1 nonimmigrant professionals will use the same procedures and forms presently required for the H–1B nonimmigrant professionals program, and H–1B1 visas will be subject to annual numerical limits. While it is not economically significant, the Office of Management

and Budget (OMB) reviewed this interim final rule because this is a new program and needs to be closely coordinated with other Federal agencies, in particular the Departments of State and of Homeland Security, which are also charged with responsibilities in implementing the H–1B1 program.

Regulatory Flexibility Analysis

We have notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act (RFA) at 5 U.S.C. 605(b), that this interim final rule will not have a significant economic impact on a substantial number of small entities.

The factual basis for that certification is as follows: This rule, which is procedural in nature, is required to implement statutory provisions enacted by Congress pursuant to the Chile FTA and Singapore FTA that narrowly extend the scope of the Department of Labor's existing H–1B program to include similar labor attestation filing requirements for the temporary entry of Chilean and Singaporean professionals under the H–1B1 program. The regulatory change will affect only those employers seeking nonimmigrant H–1B1 professionals in specialty occupations from Chile or Singapore for temporary employment in the United States. Employers seeking to employ these H–1B1 nonimmigrant professionals will use the same procedures and forms presently required for H–1B nonimmigrant professionals, and H–1B1 visas will be subject to annual numerical limits. Based on past filing data, the DOL estimates that in the upcoming year employers will file approximately 260,000 attestations under the H–1B and H–1B1 programs. (Since the H–1B program's inception, the number of H–1B attestations has exceeded the initial H–1B visas available each year; for example, for Fiscal Year 2003, about 261,000 attestations covering 517,000 job openings were certified even though only 195,000 initial H–1B visas were available that year.) Some employers will file multiple attestations in a year. Because entry of professionals from Chile and Singapore under the H–1B1 program will be subject to annual numerical limits (1,400 from Chile and 5,400 from Singapore), the Department does not anticipate a significant expansion in filings. We do not inquire about the size of employers filing labor attestations; however, the number of small entities that file attestations in the upcoming year will be less than the expected total of 260,000 applications and significantly below the potential universe of small businesses to which the program is open. Further, it should be noted that a sizeable number of employers file multiple applications. Because applications come from employers in all industry segments, we consider all small businesses as the appropriate universe for comparison purposes. According to the Small Business Administration's publication *The Regulatory Flexibility Act—An Implementation Guide for Federal Agencies*, there were 22,900,000 small businesses in the United States in 2002. Thus in comparison to the universe of all small businesses, we estimate the number of different (or non-duplicated) employers that will be involved in filing the expected 260,000 applications represents approximately 1% of all small businesses. The Department of Labor asserts a small business pool of 1% does not represent a substantial proportion of small entities.

Moreover, the Department of Labor does not believe that this rule will have a significant economic impact. Under the interim final rule, an employer will spend the same amount of time preparing and submitting the Form ETA 9035 for the H–1B1 program as the employer would for application under the H–1B program. Since the attestation and filing activities are no different from those required under the existing H–1B program, the interim rule establishes no additional economic burden on small entities.

The Department of Labor welcomes comments on this RFA certification.

Unfunded Mandates Reform Act of 1995

This interim final rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This interim final rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996 (SBREFA). The standards for determining whether a rule is a major rule as defined by section 804 of SBREFA are similar to those used to determine whether a rule is an ''economically significant regulatory action'' within the meaning of Executive Order 12866. Because we certified that this interim final rule is not an economically significant rule under Executive Order 12866, we certify that it also is not a major rule under SBREFA. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 13132—Federalism

This interim final rule 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, in accordance with Executive Order 13132, we have determined that this interim final rule does not have sufficient federalism implications to warrant the preparation of a summary impact statement.

Assessment of Federal Regulations and Policies on Families

This interim final rule does not affect family well-being.

Paperwork Reduction Act

Forms and information collection requirements related to the Department's H–1B and H–1B1 programs under 20 CFR part 655, subpart H, are currently approved under OMB control number 1205–0310 (expiration date August 31, 2007). This interim final rule does not include a substantive or material modification of that collection of information. Under this interim final rule, employers filing labor attestations regarding H–1B1 nonimmigrants will use the same forms and follow the same procedures as employers seeking entry for H–1B nonimmigrants. This interim final rule simply extends existing H–1B paperwork forms and filing procedures to potential employers of an additional category of potential foreign temporary workers—nationals of countries with which the United States has entered into certain agreements (Chile and Singapore) seeking to enter the United States under H–1B1 visas to perform professional work. Because H–1B1 visas will be subject to annual numerical limits, the Department does not anticipate a substantial increase in filings under 20 CFR part 655, subpart H.

Publication as an Interim Final Rule

The Department has determined that the public interest requires the

immediate issuance of this interim final rule, and that it is unnecessary to publish this technical amendment to the H–1B regulations as a Notice of Proposed Rulemaking. Pursuant to the September 2003 legislation implementing the Chile Free Trade Agreement, the statutory changes extending the H–1B labor attestation procedures, with limited changes, to the newly created H–1B1 visa category for nonimmigrant professionals from certain countries became effective January 1, 2004. In accordance with the Chile FTA and the Singapore FTA and their respective implementing legislation, application of the new H–1B1 nonimmigrant procedures, including the labor attestation requirements, to employers seeking to temporarily employ nonimmigrant professionals of those countries also took effect on January 1, 2004. (While this interim rule, which implements the Department of Labor's statutory responsibilities regarding the H–1B1 program, will take effect immediately on publication in the **Federal Register**, any H–1B1 applications filed on or after January 1, 2004, but prior to this interim rule's effective date, have been handled in accordance with the statutory terms and the processing procedures that the Department posted on its website in advance of the January 1, 2004, commencement of the H–1B1 program.) Insufficient time existed following enactment of the statutory implementing provisions for the Department to issue a proposal for comments, review the comments, and promulgate a final rule to be effective by January 1, 2004. Moreover, the changes being made by this interim final rule merely extend the H–1B regulations to H–1B1 nonimmigrants, subject to limited exceptions, in accordance with statutory provisions that extend the H–1B procedural filing requirements to the temporary entry of Chilean and Singaporean professionals during the effective periods of the Chile FTA and Singapore FTA. Therefore, the Department finds, pursuant to 5 U.S.C. 553(b)(3)(B), that good cause exists for publishing this regulatory amendment as an interim final rule. While notice of proposed rulemaking is being waived, the Department is interested in comments and advice regarding this interim final rule.

In addition, for these same reasons, it has been determined that good cause exists for waiving the requirements to delay the effective date of these technical amendments under 5 U.S.C. 553(d). It is impracticable and unnecessary to provide for a delayed effective date because the statutory amendments creating the H–1B1 nonimmigrant category, extending the procedural filing requirements under the H–1B program to H–1B1 nonimmigrants, and applying these provisions to nationals of Chile and Singapore became effective January 1, 2004.

Catalog of Federal Domestic Assistance Number

This program is listed in the *Catalog of Federal Domestic Assistance* at Number 17.252, ''Attestations by Employers Using Non-Immigrant Aliens in Specialty Occupations.''

List of Subjects in 20 CFR Part 655

Administrative practice and procedure, Agriculture, Aliens, Chile, Employment, Forest and forest products, Health professions, Immigration, Labor, Longshore work, Migrant labor, Penalties, Reporting and recordkeeping requirements, Singapore, Students, Wages.

■ For the reasons stated in the Preamble, 20 CFR part 655 is amended as follows:

PART 655—TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

■ 1. The authority citation for part 655 is revised to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(H)(i) and (ii), 1182(m), (n), and (t), 1184, 1188, and 1288(c) and (d); 29 U.S.C. 49 *et seq.*; sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 323, Pub. L. 103–206, 107 Stat. 2149; Title IV, Pub. L. 105–277, 112 Stat. 2681; Pub. L. 106–95, 113 Stat. 1312 (8 U.S.C. 1182 note); and 8 CFR 213.2(h)(4)(i).

Section 655.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subparts A and C issued under 8 U.S.C. 1101(a)(15)(H)(ii)(b) and 1184; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184, and 1188; and 29 U.S.C. 49 *et seq.*

Subparts D and E issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1184; 29 U.S.C. 49 *et seq.*; and sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note).

Subparts F and G issued under 8 U.S.C. 1184 and 1288(c); and 29 U.S.C. 49 *et seq.*

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b1), 1182(n), 1182(t), and 1184; 29 U.S.C. 49 *et seq.*; sec 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1182 note); and Title IV, Pub. L. 105–277, 112 Stat. 2681.

Subparts J and K issued under 29 U.S.C. 49 *et seq.*; and sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note).

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c), 1182(m), and 1184; and 29 U.S.C. 49 *et seq.*

■ 2. Section 655.0 is amended by revising paragraph (d) to read as follows:

§ 655.0 Scope and purpose of part.

* * * * *

(d) *Subparts H and I of this part.* Subparts H and I of this part set forth the process by which employers can file with, and the requirements for obtaining approval from, the Department of Labor of labor condition applications necessary for the purpose of petitioning the United States Citizenship and Immigration Services (USCIS) of the Department of Homeland Security (formerly the Immigration and Naturalization Service or INS) for H–1B visas for aliens to be employed in specialty occupations or as fashion models of distinguished merit and ability, and the enforcement provisions relating thereto. With respect to H–1B1 visas for the temporary employment in specialty occupations of nonimmigrant professionals from countries with which the U.S. has entered into certain agreements identified in section 214(g)(8)(A) of the INA, subparts H and I set forth the process for an employer to file a labor attestation with the Department of Labor, the Department's approval procedures regarding these attestations, and enforcement positions related thereto.

* * * * *

■ 3. Part 655, subpart H, is amended by revising the subpart heading to read as follows:

Subpart H—Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H–1B Visas in Specialty Occupations and as Fashion Models, and Labor Attestation Requirements for Employers Using Nonimmigrants on H–1B1 Visas in Specialty Occupations

■ 4. Section 655.700 is amended by revising the section title and paragraph (a) introductory text, by adding a new introductory paragraph to be placed prior to paragraph (a), and by adding new paragraphs (c)(3) and (d) as follows:

§ 655.700 What statutory provisions govern the employment of H–1B and H–1B1 nonimmigrants and how do employers apply for an H–1B or H–1B1 visa?

Under the H–1B1 visa, the Immigration and Nationality Act (INA), as amended, permits nonimmigrant professionals in specialty occupations from countries with which the U.S. has entered into certain agreements that are identified in section 214(g)(8)(A) of the

INA to temporarily enter the U.S. for professional employment. Employers seeking to temporarily employ H–1B1 professionals must file a labor attestation with the Department of Labor in accordance with this subpart as set out in § 655.700(c)(3) and (d), which identify the sections of this subpart H and of subpart I of this part that apply to the H–1B1 program, sections and subsections applicable only to the H–1B program, and how terminology is to be applied. Steps for receiving an H–1B1 visa and entering the U.S. on an H–1B1 visa after the attestation process is completed with the Department of Labor, which differ in some respects from the steps for H–1B visas, are the responsibility of the Department of State and the United States Citizenship and Immigration Services (USCIS) of the Department of Homeland Security (formerly the Immigration and Naturalization Service or INS) and are identified in regulations and procedures of those agencies. Consult the Department of State (*http://www.state.gov/*) and USCIS (*http://uscis.gov/*) websites and regulations for specific instructions regarding H–1B1 visas. Procedures described in this subpart H for obtaining a visa and entering the U.S. after the Department of Labor attestation process, including procedures in this section and § 655.705, apply only to H–1B nonimmigrants, not to H–1B1 nonimmigrants.

(a) *Statutory provisions regarding H–1B visas.* With respect to nonimmigrant workers entering the U.S. on H–1B visas, which are available to nonimmigrant aliens in specialty occupations or certain fashion models from any country, the INA, as amended, provides as follows: * * *

* * * * *

(c) * * *

(3) Subject to paragraph (d) of this section, this subpart H and subpart I of this part apply to all employers seeking to employ foreign workers under the H–1B1 visa classification in specialty occupations in accordance with INA section 101(a)(15)(H)(i)(b1) (8 U.S.C. 1101(a)(15)(H)(i)(b1)), under an agreement listed in INA section 214(g)(8)(A) (8 U.S.C. 1184(g)(8)(A)), and during the period that the listed agreement is in effect. This paragraph is applicable to H–1B1 attestations filed on or after November 23, 2004; H–1B1 attestations filed prior to that date but on or after January 1, 2004, the commencement of the H–1B1 program, will be handled in accordance with the H–1B1 statutory terms and the H–1B1 processing procedures the Department posted on its website in advance of January 1, 2004.

(d) *Nonimmigrants on H–1B1 visas.*

(1) *Exclusions.* The following sections and portions of sections in this subpart and in subpart I of this part do not apply to H–1B1 nonimmigrants but apply only to H–1B nonimmigrants: Sections 655.700(a), (b), (c)(1) and (c)(2); 655.705(b) and (c); 655.710(b); the last clause of the second sentence of 655.720(c) (regarding a petition to INS); 655.730(d)(5) and (e)(3); 655.736; 655.737; 655.738; 655.739; 655.760(a)(8), (9) and (10); and 655.805(a)(7), (8) and (9). Additionally, the definition of the Immigration and Naturalization Service in § 655.715 is inapplicable to the H–1B1 program. Further, any of the following references in this subpart H or in subpart I of this part, whether in the excluded sections listed above or elsewhere, do not apply to H–1B1 nonimmigrants but apply only to H–1B nonimmigrants: References to fashion models of distinguished merit and ability (H–1B but not H–1B1 visas are available to such fashion models); references to a petition process before the INS (now USCIS) (the petition process applies only to H–1B not H–1B1 visas); references to H–1B-dependent employers and employers found to have willfully violated the H–1B program requirements (these provisions do not apply to the H–1B1 program); and reference in § 655.750(a) or elsewhere in this part to the provision in INA section 214(n) (formerly INA section 214(m)) regarding increased portability of H–1B status (by the statutory terms, the portability provision is inapplicable to H–1B1 nonimmigrants).

(2) *Terminology.* For purposes of this subpart H and subpart I of this part, except in those sections identified in paragraph (d)(1) of this section as inapplicable to H–1B1 nonimmigrants and as otherwise excluded:

(i) The term ''H–1B'' shall include ''H–1B1'' (INA section 101(a)(15)(H)(i)(b1)); and

(ii) The term ''labor condition application'' or ''LCA'' shall include a labor attestation pursuant to the provisions of INA section 212(t)(1) with respect to an H–1B1 nonimmigrant professional under INA section 101(a)(15)(H)(i)(b1).

(3) *Filing procedures for H–1B1 labor attestations.* Employers seeking to employ an H–1B1 nonimmigrant must submit to DOL a completed ETA Form 9035 or ETA Form 9035E (electronic) in the manner prescribed in §§ 655.720 and 655.730. Employers must indicate on the form whether the labor attestation is for an ''H–1B1 Chile'' or ''H–1B1 Singapore'' nonimmigrant. Changes in the procedures and instructions for submission of the H–1B1 labor attestation will be provided in a notice published in the **Federal Register** and posted at the ETA web site at *http://atlas.doleta.gov/foreign/*.

(4) *Employer's responsibilities regarding H–1B1 labor attestation.* Each employer seeking an H–1B1 nonimmigrant in a specialty occupation has several responsibilities, as described more fully in this subpart and subpart I of this part, including:

(i) By completing and submitting the LCA, and in addition by signing the LCA, the employer makes certain representations and agrees to several attestations regarding the employer's responsibilities, including the wages, working conditions, and benefits to be provided to the H–1B1 nonimmigrant (8 U.S.C. 1182(t)(1)). These attestations are specifically identified and incorporated in the LCA, as well as being set forth in full on Form ETA 9035CP.

(ii) The employer reaffirms its acceptance of all of the attestation obligations by transmitting the certified labor attestation to the nonimmigrant, the Department of State, and/or the USCIS in accordance with the further procedures of those agencies necessary for the nonimmigrant to obtain an H–1B1 visa and enter or remain in the U.S.

(iii) The employer shall maintain the original signed and certified LCA in its files, and shall make a copy of the filed LCA, as well as necessary supporting documentation (as identified under this subpart), available for public examination in a public access file at the employer's principal place of business in the U.S. or at the place of employment within one working day after the date on which the LCA is filed with ETA.

(iv) The employer shall develop sufficient documentation to meet its burden of proof, in the event that such statement or information is challenged, with respect to the validity of the statements made in its LCA and the accuracy of information provided. The employer shall also maintain such documentation at its principal place of business in the U.S. and shall make such documentation available to DOL for inspection and copying upon request.

(5) *Application to Chile.* During the period that the provisions of Chapter 14 and Section D of Annex 14.3 of the United States-Chile Free Trade Agreement (Chile FTA) are in effect, this subpart H and subpart I of this part shall apply (except for the provisions excluded under paragraph (d)(1) of this section) to the temporary entry and employment of a nonimmigrant who is

a national of Chile under the provisions of Article 14.9 and Annex 2.1 of the Chile FTA and who is a professional under the provisions of Annex 14.3(D) of the Chile FTA.

(6) *Application to Singapore.* During the period that the provisions of Section IV of Annex 11A of the United States-Singapore Free Trade Agreement (Singapore FTA) are in effect, this subpart H and subpart I of this part shall apply (except for the provisions excluded under paragraph (d)(1) of this section) to the temporary entry and employment of a nonimmigrant who is a national of Singapore under the provisions of Chapter 11 and Section IV of Annex 11A of the Singapore FTA and who is a professional under the provisions of Annex 11A(IV) of the Singapore FTA.

5. Section 655.715 is amended by revising the definitions of ''employer'' and ''specialty occupation'' to read as follows:

§ 655.715 Definitions.

* * * * *

Employer means a person, firm, corporation, contractor, or other association or organization in the United States that has an employment relationship with H–1B or H–1B1 nonimmigrants and/or U.S. worker(s). In the case of an H–1B nonimmigrant (not including an H–1B1 nonimmigrant), the person, firm, contractor, or other association or organization in the United States that files a petition with the United States Citizenship and Immigration Services (USCIS) of the Department of Homeland Security (formerly the Immigration and Naturalization Service or INS), on behalf of the nonimmigrant is deemed to be the employer of that nonimmigrant. In the case of an H–1B1 nonimmigrant, the person, firm, contractor, or other association or organization in the United States that files an LCA with the Department of Labor on behalf of the nonimmigrant is deemed to be the employer of that nonimmigrant.

* * * * *

Specialty occupation:

(1) For purposes of the H–1B (not including H–1B1) program, *specialty occupation* means an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree (or its equivalent) in the specific specialty as a minimum for entry into the occupation in the United States. The nonimmigrant in a specialty occupation shall possess the following qualifications:

(i) Full state licensure to practice in the occupation, if licensure is required for the occupation;

(ii) Completion of the required degree; or

(iii) Experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty. INA, 8 U.S.C. 1184(i)(1) and (2).

(2) For purposes of the H–1B1 program, *specialty occupation* means an occupation that requires theoretical and practical application of a body of specialized knowledge, and attainment of a bachelor's or higher degree (or its equivalent) in the specific specialty as a minimum for entry into the occupation in the United States. INA, 8 U.S.C. 1184(i)(3). For H–1B1 nonimmigrants from Chile, additional occupations that qualify as specialty occupations are Disaster Relief Claims Adjuster, Management Consultant, Agricultural Manager, and Physical Therapist, as defined in Appendix 14.3(D)(2) of the United States-Chile Free Trade Agreement. For H–1B1 nonimmigrants from Singapore, additional occupations that qualify as specialty occupations are Disaster Relief Claims Adjuster and Management Consultant, as defined in Appendix 11A.2 of the United States-Singapore Free Trade Agreement.

(3) Determinations of specialty occupation and of nonimmigrant qualifications for the H–1B and H–1B1 programs are not made by the Department of Labor, but by the Department of State and/or United States Citizenship and Immigration Services (USCIS) of the Department of Homeland Security (formerly the Immigration and Naturalization Service or INS) in accordance with the procedures of those agencies for processing visas, petitions, extensions of stay, or requests for change of nonimmigrant status for H–1B or H–1B1 nonimmigrants.

* * * * *

■ 6. Section 655.730 is amended by adding a new introductory paragraph to be placed prior to paragraph (a) to read as follows:

§ 655.730 What is the process for filing a labor condition application?

This section applies to the filing of labor condition applications for both H–1B nonimmigrants and H–1B1 nonimmigrants.

* * * * *

§ 655.731 [Amended]

■ 7. Section 655.731 is amended:

■ (a) In paragraph (c)(10)(i)(C) by removing the phrase ''filing fee under section 214(c)(1) of the INA'' and adding in lieu thereof the phrase ''filing fee, if any, under section 214(c) of the INA'' and

■ (b) In paragraph (c)(10)(ii) by removing the phrase ''filing fee paid by the employer under Section 214(c)(1) of the INA'' and adding in lieu thereof the phrase ''filing fee paid by the employer, if any, under section 214(c) of the INA.''

§ 655.740 [Amended]

■ 8. Section 655.740 is amended in paragraph (a)(2)(ii) by removing the phrase ''disqualified from employing H–1B nonimmigrants under section 212(n)(2) of the INA.'' and adding in lieu thereof the phrase ''disqualified from employing H–1B nonimmigrants under section 212(n)(2) of the INA or from employing H–1B1 nonimmigrants under 212(t)(3) of the INA.''

■ 9. Section 655.760 is amended by revising paragraph (b) to read as follows:

§ 655.760 What records are to be made available to the public, and what records are to be retained?

* * * * *

(b) *National lists of applications and attestations.* ETA shall compile and maintain on a current basis a list of the labor condition applications filed under INA section 212(n) regarding H–1B nonimmigrants and a list of labor attestations filed under INA section 212(t) regarding H–1B1 nonimmigrants. Each list shall be by employer, showing the occupational classification, wage rate(s), number of nonimmigrants sought, period(s) of intended employment, and date(s) of need for each employer's application. The list shall be available for public examination at the Division of Foreign Labor Certification, Department of Labor, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210.

* * * * *

■ 10. Part 655, subpart I is amended by revising the subpart heading to read as follows:

Subpart I—Enforcement of H–1B Labor Condition Applications and H–1B1 Labor Attestations

§ 655.800 [Amended]

■ 11. Section 655.800 is amended:

(a) In paragraph (a) by removing the phrase ''section 212(n) of the INA (8 U.S.C. 1182(n))'' and adding in lieu thereof the phrase ''sections 212(n) and (t) of the INA (8 U.S.C. 1182(n) and (t))'';

■ (b) In paragraph (c) by removing the phrase ''section 212(n) of the INA'' and

adding in lieu thereof the phrase ''sections 212(n) or (t) of the INA''; and

■ (c) In paragraph (c) by removing the phrase ''pursuant to 8 U.S.C. 1182(n)'' and adding in lieu thereof the phrase ''pursuant to 8 U.S.C. 1182(n) or (t).''

§ 655.801 [Amended]

■ 12. Section 655.801 is amended:

■ (a) In paragraphs (a)(1) and (2) by removing the phrase ''section 212(n)'' wherever it appears and adding in lieu thereof the phrase ''sections 212(n) or (t)'';

■ (b) In paragraph (b) by removing the phrase ''section 212(n)(2)(C)(ii)'' and adding in lieu thereof the phrase ''sections 212(n)(2)(C)(ii) or (t)(3)(C)(ii)'';

■ (c) In the first sentence of paragraph (c) by: removing the phrase ''section 212(n)(2)(v) of the INA'' and adding in lieu thereof the phrase ''sections 212(n)(2)(C)(v) and (t)(3)(C)(v) of the INA''; and removing the phrase ''paragraph (d)(1) of this section (or § 655.501(a)) may be allowed'' and adding in lieu thereof the phrase ''paragraph (a)(1) of this section may be allowed''; and

■ (d) In the second sentence of paragraph (c) by removing the phrase ''section 212(n) of the INA'' and adding in lieu thereof the phrase ''sections 212(n) or (t) of the INA, as applicable.''

§ 655.805 [Amended]

■ 13. Section 655.805 is amended in paragraph (c) by removing the phrase ''section 212(n)(1)(A)(i) or (ii) of the INA'' and adding in lieu thereof the phrase ''sections 212(n)(1)(A)(i) or (ii), or 212(t)(1)(A)(i) or (ii) of the INA.''

§ 655.810 [Amended]

■ 14. Section 655.810 is amended:

■ (a) In paragraph (b)(1)(vi) by removing the phrase ''section 212(n)'' wherever it appears and adding in lieu thereof the phrase ''sections 212(n) or (t)''; and

■ (b) In paragraph (c)(4) by removing the phrase ''8 U.S.C. 1182(n)'' and adding in lieu thereof the phrase ''8 U.S.C. 1182(n) or (t).''

Signed in Washington, DC, this 16th day of November 2004.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

Alfred B. Robinson, Jr.,

Acting Administrator, Wage and Hour Division, Employment Standards Administration.

[FR Doc. 04–25783 Filed 11–22–04; 8:45 am]

BILLING CODE 4510–30–P

Federal Register

Tuesday,
November 23, 2004

Part IV

Securities and Exchange Commission

17 CFR Parts 210, 240, and 249

Temporary Postponement of the Final Phase-In Period for Acceleration of Periodic Report Filing Dates; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 240 and 249

[Release Nos. 33–8507; 34–50684; File No. S7–32–04]

RIN 3235–AJ30

Temporary Postponement of the Final Phase-In Period for Acceleration of Periodic Report Filing Dates

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting amendments to postpone for one year the final phase-in period for acceleration of the due dates of quarterly and annual reports required to be filed under the Securities Exchange Act of 1934 by certain reporting companies known as ''accelerated filers,'' which are issuers that have a public float of at least $75 million, that have been subject to the Exchange Act's reporting requirements for at least 12 calendar months, that previously have filed at least one annual report, and that are not eligible to file their quarterly and annual reports on Forms 10–QSB and 10–KSB.

DATES: Effective December 23, 2004.

FOR FURTHER INFORMATION CONTACT: Jennifer G. Williams, Attorney-Advisor, Office of Rulemaking, Division of Corporation Finance, at (202) 942–2910, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are adopting amendments to Rules 3–01,[1] 3–09[2] and 3–12[3] of Regulation S–X,[4] and Forms 10–Q[5] and 10–K,[6] as well as Rules 13a–10[7] and 15d–10,[8] under the Securities Exchange Act of 1934.[9]

I. Introduction

On September 5, 2002, we adopted amendments to certain rules and forms to accelerate the filing of quarterly, annual and transition reports under the Securities Exchange Act of 1934[10] by reporting companies that are ''accelerated filers.''[11] Exchange Act Rule 12b–2[12] defines an ''accelerated filer'' to mean an issuer after it first meets the following conditions as of the end of its fiscal year:

- The issuer has a public float of $75 million or more as computed on the last business day of the issuer's most recently completed second fiscal quarter;
- The issuer has been subject to Exchange Act reporting requirements for at least 12 calendar months;
- The issuer has filed at least one annual report; and
- The issuer is not eligible to use Forms 10–KSB and 10–QSB for its annual and quarterly reports.

We also adopted changes to related rules governing the timeliness of financial information in Commission filings, such as Securities Act registration statements and proxy statements and information statements under Section 14 of the Exchange Act.

We originally determined to phase-in the accelerated filing deadlines over a three-year period in an effort to balance the market's need for information with the time companies need to prepare that information without undue burden. In our September 2002 adopting release, we stated that a phase-in period would allow a greater transition period for companies to adjust their reporting schedules and to develop efficiencies to ensure that the quality and accuracy of reported information would not be compromised.

Year one of the phase-in period began for accelerated filers with fiscal years ending on or after December 15, 2002. During year one, the annual report deadline remained at 90 days after fiscal year end, and the quarterly report deadline remained at 45 days after the end of a quarter, but accelerated filers became subject to new disclosure requirements concerning website access to their Exchange Act reports.[13] In year two, the deadline for annual reports filed for fiscal years ending on or after December 15, 2003 was accelerated to 75 days and the deadline for the three subsequently filed quarterly reports was accelerated to 40 days. We currently are in year two of the phase-in period.

In year three, the annual report deadline was to become further accelerated to 60 days with respect to annual reports filed for fiscal years ending on or after December 15, 2004, and the deadline for the three subsequently filed quarterly reports was to change to 35 days. This would have completed the phase-in, with the 60-day and 35-day deadlines remaining in place for all subsequent periods.

II. Proposing Release

On August 25, 2004, we published for comment a proposal to postpone for one year the final phase-in period for acceleration of the filing deadlines of annual and quarterly reports filed by ''accelerated filers,'' as defined in Exchange Act Rule 12b–2.[14] Specifically, the annual report deadline would remain at 75 days and the quarterly report deadline would remain at 40 days for annual reports filed for fiscal years ending on or after December 15, 2004, and the three subsequently filed quarterly reports. The accelerated filing phase-in period would resume for reports filed for fiscal years ending on or after December 15, 2005, during which an accelerated filer would have to file its annual report within 60 days after year end and file its next three quarterly reports within 35 days. These filing deadlines would then remain in place for all annual and quarterly reports filed thereafter. We proposed the one year postponement to allow additional time and opportunity for accelerated filers and their auditors to focus their efforts on complying with our new requirements regarding internal control over financial reporting.[15] An accelerated filer must begin to include both a management report and auditor report on the effectiveness of its internal control over financial reporting in its annual report filed for its first fiscal year ending on or after November 15, 2004.[16]

We received forty-one comment letters on the proposal[17] from

[1] 17 CFR 210.3–01.

[2] 17 CFR 210.3–09.

[3] 17 CFR 210.3–12.

[4] 17 CFR 210.1–01 *et seq.*

[5] 17 CFR 249.308a.

[6] 17 CFR 249.310.

[7] 17 CFR 240.13a–10.

[8] 17 CFR 240.15d–10.

[9] 15 U.S.C. 78a *et seq.*

[10] Id.

[11] Release No. 33–8128 (Sept. 5, 2002)[67 FR 58480]. On April 8, 2003, we published technical amendments to these final rules in Release No. 33–8128A [67 FR 17880].

[12] 17 CFR 240.12b–2.

[13] *See* Item 101(e) of Regulation S–K [17 CFR 229.101(e)].

[14] See Release No. 33–8477 (Aug. 25, 2004) [69 FR 53550] (the ''Proposing Release'').

[15] See Release No. 33–8238 (June 5, 2003) [68 FR 36636]. See also Release No. 33–8392 (Feb. 24, 2004) [69 FR 9722].

[16] Item 308 of Regulations S–B and S–K [17 CFR 228.308 and 229.308].

[17] See letters from Addison, American Bar Association (''ABA''), American Institute of Certified Public Accountants (''AICPA''), American Society of Corporate Secretaries (''ASCS''), America's Community Bankers (''ACB''), AmSouth Bancorporation (''AmSouth''), Astoria Financial Corporation (''Astoria''), BDO Seidman (''BDO''), Becker & Poliakoff (''Becker''), Bierce & Kenerson (''Bierce''), BMC Software (''BMC''), Business Roundtable (''BR''), Central Vermont Public Service Corporation (''CVPSC''); Computer Sciences Corp. (''CSC''), Deloitte & Touche (''Deloitte2''), Eli Lilly and Company (''Eli Lilly''), Enterprise Products (''EP''), Ernst & Young (''E&Y''), Federal Signal Corporation (''FSC''), FFLC Bancorp (''FFLC''), First Federal Bancshares of Arkansas (''FFBA''), FirstBank Northwest (''FirstBank''), Franklin Financial Services Corporation (''FFSC''), Gary Bilello, CPA (''Bilello''), Horizon Organic Dairy (''Horizon''), ICU Medical (''ICU''), KPMG, MAXXAM, MBNA, National Association of Real Estate Investment Trusts (''NAREIT''), New York State Bar Association (''NYSBA''), Paul Allen, CPA (''Allen''), Pfizer, PricewaterhouseCoopers (''PWC''), Protective Life Corporation (''PLC''), Red

companies, accounting firms, individual accountants, business associations and law firms.[18] An overwhelming majority of the commenters supported the proposed postponement.[19] They agreed that a postponement of the final phase-in period for acceleration of the annual report would provide additional time for companies and auditors to focus their efforts and resources on complying with the internal control requirements.[20] A few of these commenters noted the proposed postponement would afford accelerated filers more time to address difficult analytical issues that may arise in the course of management's internal control assessment.[21] Several commenters agreed that the additional time would allow companies to improve the accuracy and reliability of financial reports available to investors.[22]

All commenters remarking on the issue suggested that the final phase-in of the accelerated filing deadlines should be postponed for both annual and quarterly reports. Some of these commenters stated that the additional time to file quarterly reports would assist management in improving and refining companies' ongoing evaluation and testing of internal control over financial reporting.[23] Other commenters noted that applying the postponement to the annual and quarterly reports would simplify companies' efforts to plan and implement the acceleration of the filing deadlines with respect to both types of reports in year four.[24]

In the Proposing Release, we requested comment on possible alternatives to the proposed postponement, such as whether we should extend the filing deadlines only for accelerated filers requesting an extension by filing Form 12b–25 under the Exchange Act. All of those commenting on this alternative rejected it on grounds that companies would have to incur additional time and cost to file Form 12b–25 and that public filing of the form could raise unnecessary concerns about the registrant in the capital markets.[25] They favored the proposed approach and expressed the view that the one year postponement would more uniformly assist companies in their efforts to thoroughly implement the internal control requirements.[26]

III. Final Rule Amendments

Based on the public comments, we are adopting the amendments to postpone for one year the completion of the final phase-in of the accelerated filing deadlines for annual and quarterly reports, as proposed. We also are adopting the proposed conforming changes to the deadlines for transition reports to ensure the deadlines are similar to the deadlines for periodic reports.

Under the amended rules, the deadline for an accelerated filer to file its annual report for its fiscal year ending on or after December 15, 2004 will remain at 75 days after fiscal year end. Similarly, the quarterly report deadlines for the three subsequently filed quarterly reports will remain at 40 days after quarter end. The current year two deadlines therefore will remain in place for one additional year, which is year three of the phase-in period. The phase-in schedule will resume in year four, during which an accelerated filer will have to file its annual report within 60 days after its fiscal year ending on or after December 15, 2005. The company will then have to file its next three quarterly reports within 35 days after quarter end. At the end of year four, the accelerated filing phase-in period will be complete, with the 60-day and 35-day deadlines remaining in place for accelerated filers for all subsequent periods.

We are also adopting conforming amendments to Regulation S–X to apply the postponed phase-in period to the financial information updating requirements in other Commission filings, such as Securities Act and Exchange Act registration statements and proxy statements and information statements under Section 14 of the Exchange Act, as these updating requirements also are tied to periodic report due dates under the Exchange Act.[27] Updated interim financial information will continue to be required within 130 days after the end of the registrant's fiscal year for a fiscal year ending on or after December 15, 2004 and before December 15, 2005. The phase-in schedule will resume in year four, during which updated interim financial information will be required within 125 days after the end of the registrant's fiscal year for fiscal years ending on or after December 15, 2005.

In the Proposing Release, we requested comment on whether the length of the proposed postponement was appropriate. Several of the commenters agreed that the one-year postponement was appropriate.[28]

A number of commenters offered suggestions outside the scope of the proposal. For example, nine commenters recommended that the Commission postpone the implementation of the internal control requirements by one year or some other period to improve managements' initial assessments of internal controls and accountants' internal control audits.[29] Four commenters requested that we increase the public float threshold in the Rule 12b–2 definition of an ''accelerated filer.''[30] Finally, four commenters asserted that we should reconsider whether further acceleration of the current periodic report filing deadlines may have potential adverse consequences on the quality and accuracy of information provided to investors.[31]

The limited purpose of the amendments that we are adopting is to address concerns that were raised that the final step in acceleration of the periodic reports could impede some accelerated filers' initial efforts to implement the internal control requirements carefully and completely. While we will continue to closely monitor the quality of financial

Robin Gourmet Burgers (''Red Robin''), Spectrum Organic Products (''Spectrum''), The Chubb Corporation (''Chubb''), Troutman Sanders (''Troutman''), Valero Energy Corporation (''VEC'') and Vineyard National Bancorp (''Vineyard''). The public comments that we received and a summary of the comments prepared by our staff (the ''Comment Summary'') are available for inspection in our Public Reference Room at 450 Fifth Street, NW., Washington, DC 20549 in File No. S7–32–04, or may be viewed at *http://www.sec.gov/rules/proposed/33–8477.htm*.

[18] Prior to publishing the proposed amendments, we received a letter from James H. Quigley, Chief Executive Officer of Deloitte & Touche USA to Donald Nicolaisen, Chief Accountant for the Commission (Jul. 28, 2004) (''Deloitte1'') and a letter from Deloitte & Touche LLP, Ernst & Young LLP, KPMG LLP, and PricewaterhouseCoopers LLP to Donald T. Nicolaisen, Chief Accountant for the Commission (Aug. 3, 2004) (''Four Firms''). These two letters and transmittal memorandum are included in File No. S7–32–04.

[19] *See*, for example, letters from AICPA, BR, Eli Lilly and MBNA.

[20] Some commenters confirmed that compliance with the internal control requirements is placing substantial demands on the same personnel and systems are key to preparing and filing periodic reports. See, for example, letters from the ASCS, BMC and FSC.

[21] *See*, for example, letters from the ABA, Eli Lilly and E&Y.

[22] *See*, for example, letters from Astoria, NYSBA, and PWC.

[23] *See*, for example, letters from Astoria, AICPA and E&Y.

[24] *See*, for example, letters from ABA, BR and NYSBA.

[25] *See*, for example, letters from BMC, ICU and Pfizer.

[26] *See*, for example, letters from AmSouth, Eli Lilly and FSC.

[27] 15 U.S.C. 78n.

[28] *See* the letters from ABA, AICPA, AmSouth, Astoria, BMC, BR, Pfizer and PWC.

[29] *See* the letters from ACB, Allen, Becker, Bierce, Bilello, FFLC, FFSC, Red Robin and Troutman.

[30] *See* the letters from Becker, BDO, FFSC and Spectrum.

[31] *See* the letters from BDO, Chubb, Pfizer and PLC. We considered this issue when the accelerated filing requirements initially were proposed.

reporting, we remain committed to the completion of the final phase-in period of the accelerated filing deadlines after the one year postponement.

IV. Paperwork Reduction Act

The amendments that we are adopting postpone the final phase-in of accelerating filing deadlines of quarterly reports on Form 10–Q and annual reports on Form 10–K for companies that are ''accelerated filers,'' as defined in Exchange Act Rule 12b–2.[32] Our amendments to postpone the final compliance dates will not change the information required to be included in accelerated filers' annual and quarterly reports; they affect only the forms' due dates. We did not receive any comments on the Paperwork Reduction Act analysis contained in the Proposing Release.

V. Cost-Benefit Analysis

The amendments that we are adopting postpone the final phase-in of accelerated filing deadlines of quarterly and annual reports filed by ''accelerated filers,'' as defined in Exchange Act Rule 12b–2. Specifically, the annual report deadline will remain at 75 days for annual reports filed for the fiscal year ending on or after December 15, 2004, and the quarterly report deadline will remain at 40 days for the three subsequently filed quarterly reports. The accelerated filing phase-in period will resume for reports filed for fiscal years ending on or after December 15, 2005, during which an accelerated filer will have to file its annual report within 60 days after year end and file its next three quarterly reports within 35 days. These filing deadlines will then remain in place for all annual and quarterly reports filed thereafter. In this section, we examine the benefits and costs of our amendments.

A. Benefits

The amendments will afford an accelerated filer's management an additional 15 days after the end of the filer's fiscal year ending on or after November 15, 2004 to carefully evaluate the effectiveness of the company's internal control over financial reporting and to prepare a report assessing such effectiveness. The amendments also will allow the accelerated filer's independent auditor additional time to prepare its report on the effectiveness of the filer's internal control over financial reporting in sufficient time for inclusion in the company's annual report. We expect investors to benefit from the additional time that we are affording companies and their auditors to prepare meaningful disclosure about their internal control reviews in this period of initial compliance with the internal control requirements during which we expect companies and auditors to incur the highest compliance burdens.

Many commenters representing companies, accounting firms, individual accountants, business associations and law firms concurred with our assessment of the benefits of the proposal. They believed that postponing the final phase-in period for acceleration of the filing deadlines of periodic reports will afford accelerated filers and their auditors greater opportunity to focus their efforts and resources on successfully completing their first assessment and documentation of internal control over financial reporting with care and accuracy. These commenters concurred with our view that investors will benefit from the more thoughtful and meaningful disclosure that companies will be able to provide if the postponement is adopted. They also thought that adoption of the proposed postponement strikes an appropriate balance between the quality and integrity of financial reporting and the market's need for timely information.

B. Costs

The amendments will result in investors not having access to the information included in accelerated filers' quarterly and annual reports as quickly as they would have if we adhered to the original accelerated filing phase-in schedule. However, the delay of information will be temporary and limited to 15 days with respect to annual reports and five days with respect to quarterly reports.

None of the commenters believed that investors would be significantly disadvantaged by the proposal. Commenters emphasized that the benefits from the postponement substantially outweighed any minor impact on the delay of information to investors.[33] Some of the commenters thought that the recent Form 8–K requirements,[34] which expanded the number of reportable events, should help to provide investors with timely information regarding any significant events in the interim.[35]

VI. Consideration of Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act[36] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, Section 3(f) of the Exchange Act[37] requires us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. We have considered the amendments in light of standards in these provisions.

The amendments will minimize the cost and disruption of implementing the accelerated final phase-in period at the same time companies and their external auditors must comply for the first time with our new internal control over financial reporting requirements. The amendments will provide additional time for affected companies and their auditors to conduct a high-quality and thorough initial assessment and audit of the effectiveness of the companies' internal control over financial reporting. This, in turn, will increase the reliability and integrity of the company's financial reporting to investors. Enhanced investor confidence leads to increased efficiency and competitiveness of the U.S. capital markets. Increased market efficiency and investor confidence also should encourage more efficient capital formation.

The amendments may have certain negative effects. The adopted postponement of compliance dates will delay the timeliness and accessibility of Exchange Act reports to investors and the financial markets. The delay of information to investors may hinder an investor's ability to make informed decisions, and as a result, may impede market efficiency and delay capital formation. However, the delay will be limited to 15 days with respect to annual reports and five days with respect to quarterly reports; these negative effects are temporary and will be eliminated once the final phase-in

[32] 17 CFR 240.12b–2.

[33] *See*, for example, letters from ASCS, Eli Lilly, Enterprise, E&Y, and PWC.

[34] *See* Release No. 333–8400 (March 16, 2004) [69 FR 48370].

[35] *See*, for example, letters from ASCS, E&Y, and Pfizer.

[36] 15 U.S.C. 78w(a)(2).

[37] 15 U.S.C. 78c(f).

period is completed next year. Furthermore, we believe that the proposal will not have any additional competitive effect between accelerated and non-accelerated filers other than the incremental costs imposed by accelerated deadlines.

We did not receive any comment on any anti-competitive effects of the proposal or how the proposal would affect efficiency, competition and capital formation. Many commenters concurred that the combination of the internal control requirements and further acceleration of the reporting deadlines at the same time will diminish the quality of financial reports available to investors as well as increase the cost of financial reporting requirements. A few commenters believed that a disproportionate number of accelerated filers rely on Rule 12b–25 to obtain filing extensions if the proposal was not adopted, and asserted that such action could raise unnecessary concerns about these filers in the capital markets.[38]

VII. Regulatory Flexibility Analysis Certification

Under Section 605(b) of the Regulatory Flexibility Act,[39] we certified that, when adopted, the proposal would not have a significant economic impact on a substantial number of small entities. We included this certification in Part VII of the Proposing Release. While we solicited written comment regarding this certification, none of the commenters responded to this request.

VIII. Statutory Authority and Text of Rule Amendments

The amendments contained in this document are being adopted under the authority set forth in Sections 3(b) and 19(a) of the Securities Act and Sections 13, 15(d) and 23(a) of the Exchange Act.

Text of Rule Amendments

List of Subjects in 17 CFR Parts 210, 240 and 249

Reporting and recordkeeping requirements, Securities.

■ In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows.

[38] *See*, for example, the letter from the Four Firms.

[39] 5 U.S.C. 605(b).

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

■ 1. The authority citation for Part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 78c, 78j–1, 78*l*, 78m, 78n, 78o(d), 78q, 78u–5, 78w(a), 78*ll*, 78mm, 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–31, 80a–37(a), 80b–3, 80b–11, 7202 and 7262, unless otherwise noted.

■ 2. Section 210.3–01 is amended by revising paragraphs (e)(1)(ii) and (iii), (i)(1)(i)(B) and (C), (i)(2)(i)(B) and (C) and (i)(2)(ii) to read as follows:

§ 210.3–01 Consolidated balance sheets.

* * * * *

(e) * * *

(1) * * *

(ii) 130 days for fiscal years ending on or after December 15, 2003 and before December 15, 2005; and

(iii) 125 days for fiscal years ending on or after December 15, 2005; and

* * * * *

(i)(1) * * *

(i) * * *

(B) 75 days for fiscal years ending on or after December 15, 2003 and before December 15, 2005; and

(C) 60 days for fiscal years ending on or after December 15, 2005; and

(2) * * *

(i) * * *

(B) 129 days subsequent to the end of the registrant's most recent fiscal year for fiscal years ending on or after December 15, 2003 and before December 15, 2005; and

(C) 124 days subsequent to the end of the registrant's most recent fiscal year for fiscal years ending on or after December 15, 2005; and

* * * * *

■ 3. Section 210.3–09 is amended by revising paragraph (b)(3)(i)(B) and (C) and (b)(4)(i)(B) and (C) to read as follows:

§ 210.3–09 Separate financial statements of subsidiaries not consolidated and 50 percent or less owned persons.

* * * * *

(b) * * *

(3) * * *

(i) * * *

(B) 75 days for fiscal years ending on or after December 15, 2003 and before December 15, 2005; and

(C) 60 days for fiscal years ending on or after December 15, 2005; and

(ii) * * *

(4) * * *

(i) * * *

(B) 75 days for fiscal years ending on or after December 15, 2003 and before December 15, 2005; and

(C) 60 days for fiscal years ending on or after December 15, 2005; and

* * * * *

■ 4. Section 210.3–12 is amended by revising paragraph (g)(1)(i)(B) and (C) and (g)(2)(i)(B) and (C) to read as follows:

§ 210.3–12 Age of financial statements at effective date of registration statement or at mailing date of proxy statement.

* * * * *

(g)(1) * * *

(i) * * *

(B) 130 days for fiscal years ending on or after December 15, 2003 and before December 15, 2005; and

(C) 125 days for fiscal years ending on or after December 15, 2005; and

(ii) * * *

(2) * * *

(i) * * *

(B) 75 days for fiscal years ending on or after December 15, 2003 and before December 15, 2005; and

(C) 60 days for fiscal years ending on or after December 15, 2005; and

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 5. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et. seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 6. Section 240.13a–10 is amended by revising paragraph (j)(1)(i)(B) and (C) and (j)(2)(i)(B) and (C) to read as follows:

§ 240.13a–10 Transition reports.

* * * * *

(j)(1) * * *

(i) * * *

(B) 75 days for fiscal years ending on or after December 15, 2003 and before December 15, 2005; and

(C) 60 days for fiscal years ending on or after December 15, 2005; and

(ii) * * *

(2) * * *

(i) * * *

(B) 40 days for fiscal years ending on or after December 15, 2004 and before December 15, 2006; and

(C) 35 days for fiscal years ending on or after December 15, 2006; and

■ 7. Section 240.15d–10 is amended by revising paragraph (j)(1)(i)(B) and (C) and (j)(2)(i)(B) and (C) to read as follows:

§ 240.15d–10 Transition reports.

* * * * *

(j)(1) * * *

(i) * * *

(B) 75 days for fiscal years ending on or after December 15, 2003 and before December 15, 2005; and

(C) 60 days for fiscal years ending on or after December 15, 2005; and

(ii) * * *

(2) * * *

(i) * * *

(B) 40 days for fiscal years ending on or after December 15, 2004 and before December 15, 2006; and

(C) 35 days for fiscal years ending on or after December 15, 2006; and

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 8. The authority citation for part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 9. Section 249.308a is amended by revising paragraph (a)(1)(ii) and (iii) to read as follows:

§ 249.308a Form 10–Q, for quarterly and transition reports under sections 13 or 15(d) of the Securities Exchange Act of 1934.

(a) * * *

(1) * * *

(ii) 40 days after the end of the fiscal quarter for fiscal years ending on or after December 15, 2004 and before December 15, 2006; and

(iii) 35 days after the end of the fiscal quarter for fiscal years ending on or after December 15, 2006; and

* * * * *

■ 10. Form 10–Q (referenced in § 249.308a) is amended by revising paragraph a.(ii) and (iii) of General Instruction A.1. to read as follows:

Note: The text of Form 10–Q does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–Q

General Instructions

A. Rule as to Use of Form 10–Q.

1. * * *

a. * * *

(ii) 40 days after the end of the fiscal quarter for fiscal years ending on or after December 15, 2004 and before December 15, 2006; and

(iii) 35 days after the end of the fiscal quarter for fiscal years ending on or after December 15, 2006; and

* * * * *

■ 11. Section 249.310 is amended by revising paragraph (b)(1)(ii) and (iii) to read as follows:

§ 249.310 Form 10–K, for annual and transition reports pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934.

* * * * *

(b) * * *

(1) * * *

(ii) 75 days after the end of the fiscal year covered by the report for fiscal years ending on or after December 15, 2003 and before December 15, 2005;

(iii) 60 days after the end of the fiscal year covered by the report for fiscal years ending on or after December 15, 2005; and

* * * * *

■ 12. Form 10–K (referenced in § 249.310) is amended by revising paragraph (2)(a)(ii) and (iii) of General Instruction A, to read as follows:

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–K

* * * * *

General Instructions

A. Rule as to Use of Form 10–K.

(2) * * *

(a) * * *

(ii) 75 days after the end of the fiscal year covered by the report for fiscal years ending on or after December 15, 2003 and before December 15, 2005; and

(iii) 60 days after the end of the fiscal year covered by the report for fiscal years ending on or after December 15, 2005; and

* * * * *

Dated: November 17, 2004.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–25938 Filed 11–22–04; 8:45 am]

BILLING CODE 8010–01–P

Reader Aids

Federal Register

Vol. 69, No. 225

Tuesday, November 23, 2004

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, NOVEMBER

63317–63438 1
63439–63916 2
63917–64244 3
64245–64474 4
64475–64636 5
64637–64828 8
64829–65052 9
65053–65366 10
65367–65514 12
65515–67040 15
67041–67262 16
67263–67500 17
67501–67632 18
67633–67804 19
67805–68052 22
68053–68236 23

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7838 65041
7839 65043
7840 65045
7841 65047
7842 65049
7843 65051
7844 65511
7845 65515
7846 67501

Executive Orders:
12163 (Amended by EO 13361) 67633
12170 (See Notice of November 9, 2004) 65513
12938 (See Notice of November 4, 2004) 64637
13067 (See Notice of November 1, 2004) 63915
13094 (See Notice of November 4, 2004) 64637
13361 67633

Administrative Orders:
Notices:
Notice of November 1, 2004 63915
Notice of November 4, 2004 64637
Notice of November 9, 2004 65513
Presidential Determinations:
No. 2005-05 of October 20, 2004 63917
No. 2005-06 of October 22, 2004 64475

5 CFR

2641 68053

Proposed Rules:
307 64503

7 CFR

Ch. XXX 64477
27–52 65053
301 .....64639, 67041
319 65053
905 64641
1580 63317
1775 65517
1776 67263
1777 65517
1778 65517
1780 65517
1942 65517
1955 65520
3570 65517
4274 65517
4279 64829

Proposed Rules:
923 63958
1005 67670
1006 67670
1007 67670
1260 65386
1717 64689
1782 65546
1951 65546
1955 65546
1956 65546
4280 65554

8 CFR

215 .....64477, 65508
235 .....64477, 65508
252 .....64477, 65508

9 CFR

71 64644
77 64644
78 .....64245, 64644, 67501
79 64644
80 64644
85 64644
93 64644

10 CFR

50 68808
74 64249
431 63574

Proposed Rules:
2 67070
30 67070
40 67070
50 67070
52 67070
63 67070
70 67070
72 67070
73 .....64690, 67070
76 67070
150 67070
430 67680

11 CFR

100 68056
102 .....63919, 68056
104 68056
106 .....63919, 68056
109 63919

12 CFR

5 64478
19 65067
201 67635
327 68068
509 64249

Proposed Rules:
615 67070

617 67074

13 CFR

105 63921

14 CFR

23 67636
25 ....64651, 67492
39 ....63439, 63440, 63442, 63443, 64251, 64253, 64255, 64482, 64653, 64832, 64835, 64836, 64839, 64842, 64846, 64847, 64849, 64850, 64852, 64854, 64856, 64858, 65520, 65522, 65523, 65528, 65531, 65533, 65535, 67043, 67045, 67047, 67050, 67805, 67807, 67809
71 ....64656, 65069, 65367, 65368, 67052, 67215, 67638, 67811, 68074
73 68075
97 ....63318, 65538
121 67492
Proposed Rules:
23 67860
39 ....63336, 63960, 63962, 63963, 63965, 63968, 64260, 64262, 64263, 64504, 64506, 64510, 64513, 64515, 64517, 64520, 64523, 64525, 64530, 64534, 64537, 64539, 64692, 64695, 64869, 64871, 65059, 65097, 65099, 65101, 65103, 65105, 65388, 65391, 67864, 67867, 67869
61 67258
71 ....63970, 63972, 63973, 63974, 63975, 63976, 63978, 65107, 68104, 68105
382 64364

15 CFR

740 ....64483, 64490, 64657
744 ....64657, 65368, 65539
748 64483
750 68076
774 ....64483, 64490
Proposed Rules:
700 67872
732 65555
736 65555
740 65555
744 65555
752 65555
764 65555
772 65555

16 CFR

603 63922
613 63922
614 63922
Proposed Rules:
Ch. I 64698
310 67287

17 CFR

37 67811
38 67811
40 67503
41 67503
145 67503
210 68232
240 68232
249 ....67053, 68232
Proposed Rules:
1 64873
228 67392
229 67392
230 67392
239 67392
240 67392
243 67392
270 64816
274 67392

18 CFR

375 64659
Proposed Rules:
157 68106

19 CFR

10 63445
178 63445
Proposed Rules:
206 64541
207 64541

20 CFR

404 67018
655 68222
Proposed Rules:
404 ....64702, 67039

21 CFR

180 65540
522 ....67817, 67818
558 67263
Proposed Rules:
101 67513
341 63482
890 64266

22 CFR

51 67053
171 63934

24 CFR

5 65024
81 63580
92 68850
Proposed Rules:
5 68218
81 63576
203 65324

26 CFR

1 68077
31 67054
Proposed Rules:
1 ....64546, 65108, 65555, 67075, 67681, 67873, 68110
31 67075

27 CFR

24 67639

28 CFR

0 65542

29 CFR

4022 65543
4044 65543
Proposed Rules:
458 64226

30 CFR

18 68078
Proposed Rules:
56 67681
57 67681
58 67681
70 67681
71 67681
72 67681
75 67681
90 67681

33 CFR

117 ....63574, 64494, 64860, 65369, 65371, 67055, 67056, 68079
165 65373
402 64258
403 64258
Proposed Rules:
Ch. I 63979, 65555
110 ....64546, 64549, 64551
117 ....64553, 64875, 67294
165 64555

36 CFR

7 65348
Proposed Rules:
7 65556
1228 67692
1234 63980

37 CFR

2 63320
7 63320

39 CFR

20 63946
111 63452
501 67508
Proposed Rules:
111 64877
3001 ....65563, 67514

40 CFR

52 ....63321, 63324, 63947, 64259, 64661, 64860, 65069, 65375, 65378, 67058, 67060, 67062, 67645, 67819, 68080
63 63452
81 ....64133, 64860
131 67218
180 ....63950, 63954, 65073, 65081
239 65381
258 65381
268 67647
271 64861
Proposed Rules:
52 ....63981, 64703, 65117, 65393, 65394, 67100, 67694, 67880
63 63489
136 ....64704, 64707
194 64558
268 67695
271 64880
720 65565

41 CFR

Proposed Rules:
51-2 65395
51-3 65395
51-4 65395
300-3 68111
302-2 68111
302-3 68111
302-4 68111
302-5 68111
302-6 68111
302-7 68111
302-9 68111
302-11 68111
302-15 68111

42 CFR

403 66236
405 66236
410 66236
411 66236
412 66922
413 66922
414 66236
418 66236
419 65682
424 66236
484 66236
486 66236

43 CFR

Proposed Rules:
2530 67880

44 CFR

64 63456
Proposed Rules:
67 63338

45 CFR

Proposed Rules:
98 64881

46 CFR

10 68089
12 68089
28 68089
30 68089
501 64398
535 64398
Proposed Rules:
531 63981

47 CFR

1 65544
2 ....67823, 67853
13 64664
22 ....67823, 67853
24 ....67823, 67853
73 ....63458, 64681, 64682, 65381, 65382, 65545, 67265, 67266
74 ....67823, 67853
78 ....67823, 67853
80 64664
90 ....67823, 67853
Proposed Rules:
2 ....65570, 67880
22 67880
24 67880
27 63459
64 65401
73 ....65118, 65119, 65120, 67296, 67297, 67882
74 67880
78 67880
80 65570
90 67880

48 CFR

201 63326
202 63326
204 63327
205 63327

208.....63327, 62328
209.....65088
210.....63328
211.....67854
212 .....63329, 62330, 65089
214.....65089
217.....67855
219.....63328, 67855
224.....67856
226.....63327
227.....67856
228.....65090
231.....63331
235 .....63327, 65091, 67857
251.....67858
252 .....63327, 62328, 65088, 65091, 67856, 67858
1804.....63458
1815.....63458
1816.....63458
1817.....63458
1823.....63458
1837.....63458
1852.....63458

Proposed Rules:

Ch. 2 65121
2.....63436
5.....63436
7.....63436
23.....65330
52.....65330
204.....65121
208.....65121
209.....65121
212.....65121
213.....65121
215.....65121
217.....65121
219.....65121
222.....65121
223.....65121
225.....65121
227.....65121
233.....65121
235.....65121
236.....65121
237.....65121
239 .....67883, 67884, 67885
242.....65121
247.....65121
252.....65121, 67885
253.....65121

49 CFR

40.....64865
171.....64462
172.....64462
173.....64462
222.....67858
229.....67858
501.....63957
541.....63957
571 .....64495, 67068, 67654, 67660, 67663
574.....64500

Proposed Rules:

171.....65294
172.....65294
173.....65294
175.....65294
229.....63890
238.....63890
379.....63997
381.....63997
385.....63997
390.....63997
395.....63997
571.....65126
1522.....65332
1540.....65258
1542.....65258
1544.....65258
1546.....65258
1548.....65258

50 CFR

300 .....65382, 67267, 67268
622.....65092
635 .....67268, 68090, 68094
648 .....63460, 67284, 67780
660 .....63332, 62333, 64501, 65093, 67285, 67508, 67509, 67510
679 .....64683, 67668, 68095

Proposed Rules:

17 .....64710, 64884, 64889
223.....65127, 68215
229.....65127, 68215
600.....67100
622 .....67104, 67106, 68119
648 .....63341, 63498, 67528
679.....67107

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT NOVEMBER 23, 2004

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Egg Products Inspection Act:

Technical amendments; published 9-24-04

GOVERNMENT ETHICS OFFICE

Government ethics:

Post-employment conflict of interest restrictions; departmental component designations revision; published 11-23-04

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicare:

Entitlement continuation when disability benefit entitlement ends because of substanial gainful activity; published 9-24-04

HOMELAND SECURITY DEPARTMENT

Coast Guard

Shipping and transportation; technical, organizational, and conforming amendments; correction; published 11-23-04

LABOR DEPARTMENT

Employment and Training Administration

Alien temporary employment labor certification process:

Nonimmigrant workers (H-1B); Labor condition applications and requirments; published 11-23-04

LABOR DEPARTMENT

Mine Safety and Health Administration

Coal mine safety and health:

Underground mines—

Electric motor-driven mine equipment and accessories and high-voltage longwall equipment standards; correction; published 11-23-04

LABOR DEPARTMENT

Wage and Hour Division

Alien temporary employment labor certification process:

Nonimmigrant workers (H-1B); Labor condition applications and requirments; published 11-23-04

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Rolls-Royce plc; published 11-8-04

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cotton classing, testing and standards:

Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Caribbean, Gulf, and South Atlantic fisheries—

Puerto Rico and US Virgin Islands reef fish; comments due by 12-1-04; published 11-16-04 [FR 04-25430]

Northeastern United States fisheries—

Atlantic sea scallop fishery; comments due by 12-1-04; published 11-1-04 [FR 04-24344]

West Coast States and Western Pacific fisheries—

West Coast salmon; comments due by 12-3-04; published 11-18-04 [FR 04-25642]

International fisheries regulations:

Fraser River sockeye and pink salmon; inseason orders; comments due by 12-2-04; published 11-17-04 [FR 04-25524]

Marine mammals:

Incidental taking—

Dolphin and tuna conservation; tuna purse seine vessels in Eastern Tropical Pacific Ocean; classification and permit application changes; comments due by 11-29-04; published 10-29-04 [FR 04-24008]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Accounting for unallowable costs; comments due by 11-29-04; published 9-28-04 [FR 04-21640]

EDUCATION DEPARTMENT

Civil rights:

Boy Scouts of America Equal Acess Act; implementation; comments due by 12-3-04; published 10-19-04 [FR 04-23290]

ENERGY DEPARTMENT

Meetings:

Environmental Management Site-Specific Advisory Board—

Oak Ridge Reservation, TN; Open for comments until further notice; published 11-19-04 [FR 04-25693]

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Commercial and industrial equipment; energy efficiency program:

Test procedures and efficiency standards—

Commercial packaged boilers; Open for comments until further notice; published 10-21-04 [FR 04-17730]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:

Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Virginia; comments due by 11-29-04; published 10-29-04 [FR 04-24240]

Air quality implementation plans; approval and promulgation; various States:

Indiana; comments due by 11-29-04; published 10-29-04 [FR 04-24238]

Iowa; comments due by 12-3-04; published 11-3-04 [FR 04-24531]

Texas; comments due by 11-29-04; published 10-29-04 [FR 04-24127]

Environmental statements; availability, etc.:

Coastal nonpoint pollution control program—

Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Allethrin, etc.; comments due by 11-29-04; published 9-29-04 [FR 04-21695]

Bacillus thuringiensis var. aizawai strain PS811 (Cry1F insecticidal protein); comments due by 11-29-04; published 9-30-04 [FR 04-21877]

Carfentrazone-ethyl; comments due by 11-29-04; published 9-29-04 [FR 04-21586]

Citrate Esters; comments due by 11-29-04; published 9-29-04 [FR 04-21587]

Cyazofamid; comments due by 11-29-04; published 9-30-04 [FR 04-21931]

Dichlormid; comments due by 11-29-04; published 9-30-04 [FR 04-21930]

Fenamidone; comments due by 11-29-04; published 9-29-04 [FR 04-21694]

Fludioxonil; comments due by 11-29-04; published 9-29-04 [FR 04-21803]

Forchlorfenuron; comments due by 11-29-04; published 9-30-04 [FR 04-21932]

Mesotrione; comments due by 11-29-04; published 9-30-04 [FR 04-21934]

Methoxyfenozide; comments due by 11-29-04; published 9-29-04 [FR 04-21804]

Octanal; comments due by 11-29-04; published 9-30-04 [FR 04-21937]

Sodium thiosulfate; comments due by 11-29-04; published 9-30-04 [FR 04-21933]

Superfund program:

Landowner liability protection; standards for conducting appropriate inquiries into previous ownership, uses; and

environmental conditions of property; comments due by 11-30-04; published 9-17-04 [FR 04-20972]

Water pollution; effluent guidelines for point source categories:

Meat and poultry products processing facilities; Open for comments until further notice; published 9-8-04 [FR 04-12017]

FEDERAL COMMUNICATIONS COMMISSION

Radio services, special:

Fixed microwave services—

37.0-38.6 GHz and 38.6-40.0 GHz bands; competitive bidding; comments due by 12-3-04; published 10-4-04 [FR 04-22194]

Private land mobile services—

800 MHz band; public safety interference proceeding; ex parte presentations, etc.; comments due by 12-2-04; published 11-22-04 [FR 04-25261]

Radio stations; table of assignments:

Louisiana; comments due by 11-29-04; published 10-20-04 [FR 04-23458]

Louisiana; correction; comments due by 11-29-04; published 11-10-04 [FR 04-25064]

Various States; comments due by 11-29-04; published 10-20-04 [FR 04-23457]

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Accounting for unallowable costs; comments due by 11-29-04; published 9-28-04 [FR 04-21640]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Human drugs:

Labeling of drug products (OTC)—

Standardized format; implementation date delay; comments due by 12-2-04; published 9-3-04 [FR 04-18842]

Reports and guidance documents; availability, etc.:

Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]

Medical devices—

Dental noble metal alloys and base metal alloys; Class II special controls; Open for comments until further notice; published 8-23-04 [FR 04-19179]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Anchorage regulations:

Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]

HOMELAND SECURITY DEPARTMENT

United States Visitor and Immigrant Status Indicator Technology Program (US-VISIT):

Biometric data collection from additional travelers; expansion to 50 most highly trafficked land border ports of entry; comments due by 12-1-04; published 11-5-04 [FR 04-24811]

HOMELAND SECURITY DEPARTMENT

Transportation Security Administration

Hazardous materials drivers; security threat assessments; fees; comments due by 12-1-04; published 11-10-04 [FR 04-25122]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species permit applications

Recovery plans—

Paiute cutthroat trout; Open for comments until further notice; published 9-10-04 [FR 04-20517]

Endangered and threatened species:

Critical habitat designations—

Sacramento Mountains checkerspot butterfly; comments due by 11-29-04; published 11-8-04 [FR 04-24869]

MERIT SYSTEMS PROTECTION BOARD

Practice and procedure:

Electronic filing; implementation; comments due by 11-29-04; published 9-27-04 [FR 04-21589]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Accounting for unallowable costs; comments due by 11-29-04; published 9-28-04 [FR 04-21640]

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Presidential records:

Denial of access; appeals extension; comments due by 11-30-04; published 10-1-04 [FR 04-22051]

NUCLEAR REGULATORY COMMISSION

Environmental statements; availability, etc.:

Fort Wayne State Developmental Center; Open for comments until further notice; published 5-10-04 [FR 04-10516]

Nuclear equipment and material; export and import:

Security policies; high-risk radioactive material license requirements; comments due by 11-30-04; published 9-16-04 [FR 04-20855]

PERSONNEL MANAGEMENT OFFICE

Acquisition regulations:

Federal Employees Group Life Insurance—

Administrative policy, practices, and clarifying language changes; comments due by 12-3-04; published 10-4-04 [FR 04-21922]

SMALL BUSINESS ADMINISTRATION

Disaster loan areas:

Maine; Open for comments until further notice; published 2-17-04 [FR 04-03374]

Standards of conduct and employee restrictions and responsibilities; comments due by 12-3-04; published 11-3-04 [FR 04-24498]

OFFICE OF UNITED STATES TRADE REPRESENTATIVE

Trade Representative, Office of United States

Generalized System of Preferences:

2003 Annual Product Review, 2002 Annual Country Practices Review, and previously deferred product decisions; petitions disposition; Open for comments until further notice; published 7-6-04 [FR 04-15361]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 11-29-04; published 9-30-04 [FR 04-21650]

Boeing; Open for comments until further notice; published 8-16-04 [FR 04-18641]

Bombardier; comments due by 12-3-04; published 11-3-04 [FR 04-24543]

Eagle Aircraft; comments due by 11-29-04; published 10-22-04 [FR 04-23623]

Pilatus Aircraft Ltd.; comments due by 12-3-04; published 11-1-04 [FR 04-24323]

Pratt & Whitney; comments due by 11-29-04; published 9-29-04 [FR 04-21812]

Pratt & Whitney Canada; comments due by 11-30-04; published 10-1-04 [FR 04-21913]

Rolls-Royce Deutschland; comments due by 12-3-04; published 10-4-04 [FR 04-22192]

Class E airspace; comments due by 11-30-04; published 10-26-04 [FR 04-23868]

TRANSPORTATION DEPARTMENT

Federal Motor Carrier Safety Administration

Motor carrier safety standards:

Drivers' hours of service—

Compliance requirements; electronic on-board recorders use; comments due by 11-30-04; published 9-1-04 [FR 04-19907]

TREASURY DEPARTMENT

Internal Revenue Service

Estate and gift taxes:

Generation-skipping transfer tax; predeceased parent rule; public hearing; comments due by 12-2-04; published 9-3-04 [FR 04-20165]

VETERANS AFFAIRS DEPARTMENT

Adjudication; pensions, compensation, dependency, etc.:

Accrued benefits; death compensation and special rules applicable upon beneficiary's death; comments due by 11-30-04; published 10-1-04 [FR 04-21541]

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.

H.R. 4381/P.L. 108–392
To designate the facility of the United States Postal Service located at 2811 Springdale Avenue in Springdale, Arkansas, as the ''Harvey and Bernice Jones Post Office Building''. (Oct. 30, 2004; 118 Stat. 2245)

H.R. 4471/P.L. 108–393
Homeownership Opportunities for Native Americans Act of 2004 (Oct. 30, 2004; 118 Stat. 2246)

H.R. 4481/P.L. 108–394
Wilson's Creek National Battlefield Boundary Adjustment Act of 2004 (Oct. 30, 2004; 118 Stat. 2247)

H.R. 4556/P.L. 108–395
To designate the facility of the United States Postal Service located at 1115 South Clinton Avenue in Dunn, North Carolina, as the ''General William Carey Lee Post Office Building''. (Oct. 30, 2004; 118 Stat. 2249)

H.R. 4579/P.L. 108–396
Truman Farm Home Expansion Act (Oct. 30, 2004; 118 Stat. 2250)

H.R. 4618/P.L. 108–397
To designate the facility of the United States Postal Service located at 10 West Prospect Street in Nanuet, New York, as the ''Anthony I. Lombardi Memorial Post Office Building''. (Oct. 30, 2004; 118 Stat. 2251)

H.R. 4632/P.L. 108–398
To designate the facility of the United States Postal Service located at 19504 Linden Boulevard in St. Albans, New York, as the ''Archie Spigner Post Office Building''. (Oct. 30, 2004; 118 Stat. 2252)

H.R. 4731/P.L. 108–399
To amend the Federal Water Pollution Control Act to reauthorize the National Estuary Program. (Oct. 30, 2004; 118 Stat. 2253)

H.R. 4827/P.L. 108–400
To amend the Colorado Canyons National Conservation Area and Black Ridge Canyons Wilderness Act of 2000 to rename the Colorado Canyons National Conservation Area as the McInnis Canyons National Conservation Area. (Oct. 30, 2004; 118 Stat. 2254)

H.R. 4917/P.L. 108–401
Federal Regulatory Improvement Act of 2004 (Oct. 30, 2004; 118 Stat. 2255)

H.R. 5027/P.L. 108–402
To designate the facility of the United States Postal Service located at 411 Midway Avenue in Mascotte, Florida, as the ''Specialist Eric Ramirez Post Office''. (Oct. 30, 2004; 118 Stat. 2257)

H.R. 5039/P.L. 108–403
To designate the facility of the United States Postal Service located at United States Route 1 in Ridgeway, North Carolina, as the ''Eva Holtzman Post Office''. (Oct. 30, 2004; 118 Stat. 2258)

H.R. 5051/P.L. 108–404
To designate the facility of the United States Postal Service located at 1001 Williams Street in Ignacio, Colorado, as the ''Leonard C. Burch Post Office Building''. (Oct. 30, 2004; 118 Stat. 2259)

H.R. 5107/P.L. 108–405
Justice for All Act of 2004 (Oct. 30, 2004; 118 Stat. 2260)

H.R. 5131/P.L. 108–406
Special Olympics Sport and Empowerment Act of 2004 (Oct. 30, 2004; 118 Stat. 2294)

H.R. 5133/P.L. 108–407
To designate the facility of the United States Postal Service located at 11110 Sunset Hills Road in Reston, Virginia, as the ''Martha Pennino Post Office Building''. (Oct. 30, 2004; 118 Stat. 2297)

H.R. 5147/P.L. 108–408
To designate the facility of the United States Postal Service located at 23055 Sherman Way in West Hills, California, as the ''Evan Asa Ashcraft Post Office Building''. (Oct. 30, 2004; 118 Stat. 2298)

H.R. 5186/P.L. 108–409
Taxpayer-Teacher Protection Act of 2004 (Oct. 30, 2004; 118 Stat. 2299)

H.R. 5294/P.L. 108–410
John F. Kennedy Center Reauthorization Act of 2004 (Oct. 30, 2004; 118 Stat. 2303)

S. 129/P.L. 108–411

Federal Workforce Flexibility Act of 2004 (Oct. 30, 2004; 118 Stat. 2305)

S. 144/P.L. 108–412

To require the Secretary of Agriculture to establish a program to provide assistance to eligible weed management entities to control or eradicate noxious weeds on public and private land. (Oct. 30, 2004; 118 Stat. 2320)

S. 643/P.L. 108–413

Hibben Center Act (Oct. 30, 2004; 118 Stat. 2325)

S. 1194/P.L. 108–414

Mentally Ill Offender Treatment and Crime Reduction Act of 2004 (Oct. 30, 2004; 118 Stat. 2327)

Last List November 8, 2004

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.