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Contents

Federal Register

Vol. 69, No. 229

Tuesday, November 30, 2004

Agriculture Department
See Animal and Plant Health Inspection Service
See Foreign Agricultural Service
See Forest Service
See Rural Business-Cooperative Service
See Rural Housing Service
See Rural Utilities Service

Alcohol and Tobacco Tax and Trade Bureau
RULES
Alcohol; viticultural area designations:
Dundee Hills, Yamhill County, OR, 69524–69527
PROPOSED RULES
Alcohol; viticultural area designations:
Texoma area; Montague County, et al., TX, 69557–69561

Animal and Plant Health Inspection Service
RULES
Plant-related quarantine, foreign:
Mexican Hass avocados, 69747–69774

Army Department
See Engineers Corps

Centers for Medicare & Medicaid Services
RULES
Medicare:
Home health prospective payment systems; 2005 FY rates update
Correction, 69685–69727
Hospital inpatient prospective payment systems and 2005 FY rates, 69536

Children and Families Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 69603–69604

Coast Guard
RULES
Anchorage regulations:
New York, 69527–69529
Drawbridge operations:
Mississippi, 69529–69531
PROPOSED RULES
Drawbridge operations:
Florida, 69561–69563

Commerce Department
See Economic Analysis Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Textile and apparel categories:
Caribbean Basin Trade Partnership Act; commercial availability—
100 percent woven flannel fabrics for use in apparel, 69586–69587
Single knit jersey jacquard geometric rib stitch, 69587–69588
Textile and apparel categories:
Caribbean Basin Trade Partnership Act; short supply requests—
100 percent cotton woven flannel fabrics for use in apparel, 69588–69589

Commodity Futures Trading Commission
RULES
Commodity Exchange Act:
Customer funds allocation; funds held in futures account type customer account class, 69510–69511

Customs and Border Protection Bureau
RULES
Articles conditionally free, subject to reduced rate, etc.:
Caribbean Basin Economic Recovery Act; brassieres; preferential treatment, 69511–69523

Defense Department
See Engineers Corps

Economic Analysis Bureau
RULES
International services surveys:
BE-80; financial services transactions between US financial service providers and foreign persons; benchmark survey, 69508–69510

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Postsecondary education—
Strengthening Institutions Programs et al., 69589–69592
Special education and rehabilitative services:
Blind vending facilities under Randolph-Sheppard Act—
Arbitration panel decisions, 69593–69594
Arbitration panel decisions, 69592–69593

Employee Benefits Security Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
J.C.O., Inc., 69620–69628

Employment and Training Administration
NOTICES
Adjustment assistance:
Butler Manufacturing Co., 69628–69629
Butternut Bakery, 69629
CDI Professional Services, 69629
Clinton Tube (USA), 69629
Fiskars Brands, Inc., 69629
Fort Hill Lumber Co., 69629–69630
Galey & Lord Industries, Inc., 69630
Lakewood Dyed Yarns, 69630
Learjet, Inc., et al., 69630–69632
Santee Print Works, 69632
WestPoint Stevens, 69632

Energy Department
See Federal Energy Regulatory Commission

Engineers Corps
PROPOSED RULES
Nationwide permit program; miscellaneous amendments, 69563–69567

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Indiana, 69531–69536
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Indiana, 69567–69569
Radiation protection programs:
Transuranic radioactive waste for disposal at Waste Isolation Pilot Plant; waste characterization program documents; availability—
Hanford Site, Plutonium Finishing Plant, WA, 69569–69572
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 69598–69599
Meetings:
Clean Air Act Advisory Committee, 69599
National Drinking Water Advisory Council, 69599–69600
Pesticide programs:
Risk assessments—
Pentachlorophenol, 69600–69603

Federal Aviation Administration
RULES
Airworthiness directives:
Saab, 69505–69506
Class E airspace, 69506
Standard instrument approach procedures, 69507–69508
PROPOSED RULES
Class E airspace, 69554–69557
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 69664–69665
Exemption petitions; summary and disposition, 69665
Passenger facility charges; applications, etc.:
Harrisburg International Airport, PA, 69665–69666

Federal Communications Commission
PROPOSED RULES
Common carrier services:
Interconnection—
Incumbent local exchange carriers; reclassification from competitive local exchange carriers, 69573–69578
Wireless telecommunications services—
Advanced wireless services; service rules, 69572–69573
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 69603

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings, 69594–69597
Environmental statements; availability, etc.:
Transcontinental Gas Pipe Line Corp., 69597–69598
Meetings:
Wind energy in wholesale electricity markets; assessment; technical conference, 69598

Federal Railroad Administration
NOTICES
Traffic control systems; discontinuance or modification:
Norfolk Southern Corp., 69666–69667
Union Pacific Railroad Co., 69667

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 69603

Federal Trade Commission
RULES
Fair Credit and Reporting Act:
Consumer rights summaries and notices of duties, 69775–69804

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Critical habitat designations—
Buena Vista Lake shrew, 69578–69581
NOTICES
Endangered and threatened species:
Incidental take permits—
Tillamook County, OR; bald eagle, 69617–69618
Environmental statements; notice of intent:
Lacreek National Wildlife Refuge Complex, SD; habitat conservation plan, 69618

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Meloxicam, 69523–69524
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 69604–69606
Food additive petitions:
Sterigenics International, Inc., 69606
Reports and guidance documents; availability, etc.:
In vitro diagnostic devices intended for professional use; use of selected symbols from international standards; industry guidance, 69606–69608

Foreign Agricultural Service
NOTICES
Trade adjustment assistance; applications, petitions, etc.:
North Carolina Fisheries Association, 69582
Texas Shrimp Association, 69582

Foreign Claims Settlement Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 69620

Forest Service
NOTICES
Environmental statements; notice of intent:
Bridger-Teton National Forest, WY; correction, 69582
National Forest System lands:
Timber sales contracts, 69583

Health and Human Services Department
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health

Homeland Security Department
See Coast Guard

See Customs and Border Protection Bureau
See U.S. Citizenship and Immigration Services

Housing and Urban Development Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 69616–69617
Low income housing:
Difficult development areas and qualified census tracts; statutorily mandated designations for tax credit, 69729–69745

Interior Department
See Fish and Wildlife Service
See Land Management Bureau

Internal Revenue Service
PROPOSED RULES
Income taxes:
Partnership liabilities; disregarded entities treatment; hearing, 69557

International Trade Administration
NOTICES
Antidumping:
Persulfates from—
China, 69583–69584
North American Free Trade Agreement (NAFTA); binational panel reviews:
Softwood lumber products from—
Canada, 69584–69585

Justice Department
See Foreign Claims Settlement Commission

Labor Department
See Employee Benefits Security Administration
See Employment and Training Administration
See Labor Statistics Bureau
See Occupational Safety and Health Administration

Labor Statistics Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 69632–69633

Land Management Bureau
NOTICES
Coal leases, exploration licenses, etc.:
Wyoming, 69618–69619
Meetings:
Resource Advisory Councils—
Front Range, 69619–69620

Maritime Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 69667–69668
Coastwise trade laws; administrative waivers:
KALLISTE, 69668–69669
NOMAD, 69669
RENEGADE, 69669–69670
SPECIAL K, 69670

National Archives and Records Administration
NOTICES
Agency records schedules; availability, 69637–69638

National Highway Traffic Safety Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Increased safety belt use, 69670–69677

National Institutes of Health
NOTICES
Grants and cooperative agreements; availability, etc.:
Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds, 69608–69611
Health disparities research loan repayment program, 69611–69614
Meetings:
National Cancer Institute, 69614–69615
National Institute of Allergy and Infectious Diseases, 69616
National Institute of Mental Health, 69615–69616
National Institute on Alcohol Abuse and Alcoholism, 69615
National Library of Medicine, 69616

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Atlantic highly migratory species—
Large and small coastal sharks, 69537–69545
Marine mammals:
North Atlantic Right Whales; approach prohibition, 69536–69537
NOTICES
Permits:
Endangered and threatened species, 69585
Marine mammals, 69585–69586

National Science Foundation
NOTICES
Environmental statements; availability, etc.:
Antarctic activities, 69638

Nuclear Regulatory Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 69638–69639
Meetings:
Nuclear Waste Advisory Committee, 69639
Meetings; Sunshine Act, 69639–69640

Occupational Safety and Health Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 69633–69637

Postal Rate Commission
NOTICES
Domestic rates, fees, and mail classifications:
Premium forwarding services; 2-year experimental testing, 69640–69641

Research and Special Programs Administration
NOTICES
Hazardous materials transportation:
Preemption determinations—
ATOFINA Chemicals, Inc., 69677–69681

Rural Business-Cooperative Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 69583

Rural Housing Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 69583

Rural Utilities Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 69583

Securities and Exchange Commission
NOTICES
Public Utility Holding Company Act of 1935 filings, 69641–69644
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 69644–69650
Boston Stock Exchange, Inc., 69650–69653
Fixed Income Clearing Corp., 69653–69655
National Association of Securities Dealers, Inc., 69655–69659
Pacific Exchange, Inc., 69660–69661

State Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 69661–69663
Committees; establishment, renewal, termination, etc.:
Overseas Schools Advisory Council, 69664
Meetings:
International Communications and Information Policy Advisory Committee, 69664

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Monon Rail Preservation Corp., 69681
Norfolk Southern Railway Co., 69682
Railroad services abandonment:
Norfolk Southern Railway Co., 69682–69683

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

Transportation Department
See Federal Aviation Administration
See Federal Railroad Administration
See Maritime Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
See Surface Transportation Board

Treasury Department
See Alcohol and Tobacco Tax and Trade Bureau
See Internal Revenue Service
RULES
Articles conditionally free, subject to reduced rate, etc.:
Caribbean Basin Economic Recovery Act; brassieres; preferential treatment, 69511–69523

U.S. Citizenship and Immigration Services
PROPOSED RULES
Immigration:
Evidence processing request; standardized timeframe; removal, 69549–69554
Full costs recovery; appeal and motion fees adjustment, 69546–69549

Separate Parts In This Issue

Part II
Health and Human Services Department, Centers for Medicare & Medicaid Services, 69685–69727

Part III
Housing and Urban Development Department, 69729–69745

Part IV
Agriculture Department, Animal and Plant Health Inspection Service, 69747–69774

Part V
Federal Trade Commission, 69775–69804

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
319 69748

8 CFR

Proposed Rules:
103 (2 documents) 69546, 69549
204 69549
214 69549
245 69549
245a 69549

14 CFR
39 69505
71 69505
97 69507

Proposed Rules:
71 (2 documents) 69554, 69556

15 CFR
801 69508

16 CFR
601 69776
698 69776

17 CFR
190 69510

19 CFR
10 69511
163 69511

21 CFR
520 69523
522 69523

26 CFR

Proposed Rules:
1 69557

27 CFR
9 69524

Proposed Rules:
9 69557

33 CFR
110 69527
117 69529

Proposed Rules:
117 69561
330 69563

40 CFR
52 69531

Proposed Rules:
52 69567
194 69569

42 CFR
403 69536
412 69536
413 69536
418 69536
460 69536
480 69536
482 69536
483 69536
484 69686
485 69536
489 69536

47 CFR

Proposed Rules:
27 69572
51 69573

50 CFR
224 69536
635 69537

Proposed Rules:
17 69578

Rules and Regulations

Federal Register
Vol. 69, No. 229
Tuesday, November 30, 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.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–182–AD; Amendment 39–13882; AD 2004–24–06]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes. This AD requires replacement of the retract actuator bracket attachment bolt (RABAB) of the main landing gear (MLG) with a new RABAB; reidentification of the MLG shock strut; an inspection for corrosion, fretting, or other damage of certain RABABs; and applicable corrective actions. The actions specified by this AD are intended to prevent failure of the RABAB, which could result in loosening of the actuator bracket and consequent failure of the MLG to retract, with considerable damage to other landing gear parts, including the MLG trunnion fitting. This action is intended to address the identified unsafe condition.

DATES: Effective January 4, 2005.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of January 4, 2005.

ADDRESSES: The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on September 28, 2004 (69 FR 57892). That action proposed to require replacement of the retract actuator bracket attachment bolt (RABAB) of the main landing gear (MLG) with a new RABAB; reidentification of the MLG shock strut; an inspection for corrosion, fretting, or other damage of any RABAB; and applicable corrective actions.

Comments

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

Conclusion

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

Cost Impact

We estimate that approximately 281 airplanes of U.S. registry will be affected by this AD, that it will take approximately 7 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Required parts will be supplied at no cost by the manufacturer. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $127,855, or $455 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–24–067 SAAB AIRCRAFT AB: Amendment 39–13882. Docket 2002–NM–182–AD.

Applicability

Model SAAB SF340A series airplanes, serial numbers (S/Ns) 004 through 159 inclusive; and Model SAAB 340B series airplanes, S/Ns 160 through 459 inclusive; certificated in any category.

Compliance

Required as indicated, unless accomplished previously.

To prevent failure of the retract actuator bracket attachment bolt (RABAB), which could result in loosening of the retract actuator bracket and consequent failure of the main landing gear (MLG) to retract, with considerable damage to other landing gear parts, including the MLG trunnion fitting, accomplish the following:

Replacement/Reidentification of RABAB

(a) For airplanes not previously modified in accordance with Saab Service Bulletin 340–32–124, Revision 01, dated May 21, 2002: Within 12 months after the effective date of this AD, perform the actions specified in paragraphs (a)(1) and (a)(2) of this AD in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–32–131, dated June 29, 2004, including Attachments 1 and 2, both dated January 2002, and Attachments 3 and 4, both dated April 2002.

Note 1: APPH Ltd. Service Bulletins AIR83022–32–28 and AIR83064–32–08, both dated January 2002, comprising Attachments 1 and 2; and Service Bulletins AIR83022–32–29 and AIR83064–32–09, both dated April 2002, comprising Attachments 3 and 4; are incorporated into Saab Service Bulletin 340–32–131 as additional sources of service information.

(1) Replace the existing RABAB with a new RABAB.

(2) Re-identify the MLG shock strut.

Inspection of RABAB

(b) For airplanes previously modified in accordance with Saab Service Bulletin 340–32–124, Revision 01, dated May 21, 2002: Within 6 months after the effective date of this AD, perform a one-time detailed inspection for corrosion, fretting, or other damage of any RABAB replaced in accordance with Saab Service Bulletin 340–32–124, Revision 01; and applicable corrective actions; in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–32–131, dated June 29, 2004, including Attachments 1 and 2, both dated January 2002, and Attachments 3 and 4, both dated April 2002.

Note 2: For the purposes of this AD, a detailed inspection is ''an intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirrors magnifying lenses, etc. may be necessary. Surface cleaning and elaborate procedures may be required.''

Parts Installation

(c) As of the effective date of this AD, no person may install a RABAB, part number (P/N) AIR83022–5 through –18 inclusive, or P/N AIR83064 (any suffix), on any airplane.

Special Flight Permits

(d) Special flight permits are not allowed as specified in section 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199).

Alternative Methods of Compliance

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

Incorporation by Reference

(f) The actions shall be done in accordance with Saab Service Bulletin 340–32–131, dated June 29, 2004; including Attachments 1 and 2, both dated January 2002, and Attachments 3 and 4, both dated April 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Note 3: The subject of this AD is addressed in Swedish airworthiness directive 1–195, effective July 6, 2004.

Effective Date

(g) This amendment becomes effective on January 4, 2005.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–26191 Filed 11–29–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–18826; Airspace Docket No. 04–ACE–52]

Modification of Class E Airspace; Lamar, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Lamar, MO.

EFFECTIVE DATE: 0901 UTC, January 20, 2005.

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on October 4, 2004 (69 FR 59129). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 20, 2005. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on November 12, 2004.

Anthony D. Roetzel,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 04–26343 Filed 11–29–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30430; Amdt. No. 3110]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective November 30, 2004. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 30, 2004.

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

For Examination—

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

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

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

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

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

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

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

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

The Rule

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on November 19, 2004.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

** * * Effective December 23, 2004*

Seattle, WA, Seattle-Tacoma Intl, ILS RWY 16R, Amdt 12D
Seattle, WA, Seattle-Tacoma Intl, NDB RWY 16R, Amdt 1B
Seattle, WA, Seattle-Tacoma Intl, RNAV (GPS) RWY 16R, Orig-B
Seattle, WA, Seattle-Tacoma Intl, VOR RWY 16L/R, Amdt 13A

** * * Effective January 20, 2005*

Deadhorse, AK, Deadhorse, LOC/DME BC RWY 22, Amdt 10
King Cove, AK, King Cove, RNAV (GPS)-A, Orig
Point Lay, AK, Point Lay LRRS, RNAV (GPS) RWY 5, Orig
Point Lay, AK, Point Lay LRRS, RNAV (GPS) RWY 23, Orig
Point Lay, AK, Point Lay LRRS, NDB RWY 5, Orig
Point Lay, AK, Point Lay LRRS, NDB RWY 5, Orig, CANCELLED
Point Lay, AK, Point Lay LRRS, GPS RWY 5, Orig, CANCELLED
Point Lay, AK, Point Lay LRRS, GPS RWY 23, Orig, CANCELLED
Mobile, AL, Mobile Regional, VOR OR TACAN–A, Amdt 2
Mariposa, CA, Mariposa-Yosemite, RNAV (GPS)–B, Orig
Mariposa, CA, Mariposa-Yosemite, RNAV (GPS)–A, Orig
Blakely, GA, Early County, RNAV (GPS) RWY 5, Amdt 1
Blakely, GA, Early County, RNAV (GPS) RWY 23, Amdt 1
St Marys, GA, St Marys, RNAV (GPS) RWY 31, Orig-A
Goodland, KS, Renner Fld/Goodland Muni, ILS OR LOC RWY 30, Amdt 1
Somerset, KY, Somerset-Pulaski County-J.T.Wilson Field, RNAV (GPS) RWY 22, Orig-A
Somerset, KY, Somerset-Pulaski County-J.T.Wilson Field, RNAV (GPS) RWY 4, Orig-A
Shreveport, LA, Shreveport Regional, RNAV (GPS) RWY 23, Orig-A
Elkton, MD, Cecil County, RNAV (GPS) RWY 13, Orig
Mitchellville, MD, Freeway, RNAV (GPS) RWY 18, Orig-A
Mitchellville, MD, Freeway, RNAV (GPS) RWY 36, Orig-A
St. Joseph, MO, Rosecrans Memorial, ILS OR LOC RWY 35, Amdt 31
Cozad, NE, Cozad Muni, RNAV (GPS) RWY 13, Orig
Cozad, NE, Cozad Muni, RNAV (GPS) RWY 31, Orig
Cozad, NE, Cozad Muni, VOR RWY 13, Amdt 2
Oshkosh, NE, Garden City, RNAV (GPS) RWY 12, Orig
Oshkosh, NE, Garden City, RNAV (GPS) RWY 30, Orig
Oshkosh, NE, Garden City, NDB RWY 12, Amdt 1
Mangum, OK, Scott Field, RNAV (GPS) RWY 17, Amdt 1
Mangum, OK, Scott Field, RNAV (GPS) RWY 35, Amdt 1
Saratoga Springs, NY, Saratoga County, VOR/DME-A, Orig
Saratoga Springs, NY, Saratoga County, VOR-A, Amdt 5, CANCELLED
Saratoga Springs, NY, Saratoga County, RNAV (GPS) RWY 5, Orig
Saratoga Springs, NY, Saratoga County, GPS RWY 5, Orig, CANCELLED
Saratoga Springs, NY, Saratoga County, RNAV (GPS) RWY 23, Orig
Saratoga Springs, NY, Saratoga County, GPS RWY 23, Orig, CANCELLED
Collegeville, PA, Perkiomen Valley, VOR RWY 9, Amdt 5
Collegeville, PA, Perkiomen Valley, RNAV (GPS) RWY 9, Orig
Collegeville, PA, Perkiomen Valley, RNAV (GPS) RWY 27, Orig
North Kingstown, RI, Quonset State, VOR RWY 34, Amdt 2
Waupaca, WI, Waupaca Muni, RNAV (GPS) RWY 10, Orig
Waupaca, WI, Waupaca Muni, RNAV (GPS) RWY 28, Orig
Waupaca, WI, Waupaca Muni, NDB RWY 31, Orig
Waupaca, WI, Waupaca Muni, NDB OR GPS RWY 30, Amdt 4, CANCELLED
Evanston, WY, Evanston-Uinta County Burns Field, RNAV (GPS) RWY 5, Amdt 1
Evanston, WY, Evanston-Uinta County Burns Field, RNAV (GPS) RWY 23, Amdt 1
Evanston, WY, Evanston-Uinta County Burns Field, VOR/DME RWY 23, Orig
Evanston, WY, Evanston-Uinta County Burns Field, VOR/DME OR GPS-A, Orig-A, CANCELLED
Evanston, WY, Evanston-Uinta County Burns Field, VOR/DME RWY 23, Amdt 2B, CANCELLED

[FR Doc. 04–26342 Filed 11–29–04; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 040803225–4315–02]

RIN 0691–AA51

International Services Surveys: BE–80, Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends regulations that set forth reporting requirements for the BE–80, Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons.

The BE–80 survey is conducted once every five years by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act and under the Omnibus Trade and Competitiveness Act of 1988. The Benchmark Survey will be conducted for 2004. The data are needed to compile the U.S. international transactions, national income and product, and input-output accounts; support U.S. economic policy; assess U.S. competitiveness in international trade in services; and improve the ability of U.S. businesses to identify and evaluate market opportunities.

This final rule changes the reporting of data on international transactions in financial services by: creating a new category for brokerage services related to equities transactions; collecting total receipts and total payments for financial services transactions with affiliated foreign parties (that is, with foreign affiliates and foreign parents); and revising the definition of a financial services provider to more fully align the definition with the North American Industry Classification System—2002.

DATES: This final rule will become effective December 30, 2004.

FOR FURTHER INFORMATION CONTACT: Obie G. Whichard, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9800 or e-mail (*obie.whichard@bea.gov*).

SUPPLEMENTARY INFORMATION: In the August 27, 2004 **Federal Register**, 69 FR 52613–52615, BEA published a notice of proposed rulemaking setting forth revised reporting requirements for the BE–80, Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons. No comments on the proposed rule were received. Thus, the proposed rule is adopted without change.

This final rule amends 15 CFR part 801.11 to set forth reporting requirements for the BE–80, Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons.

Description of Revisions

The BE–80, Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign

Persons, is mandatory and is conducted every 5 years by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108)—hereinafter, ''the Act,'' and under section 5408 of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4908). BEA will send the survey to potential respondents in January 2005, and a response will be due by March 31, 2005. BEA will enact the following changes to the Code of Federal Regulations: (1) Split the category for brokerage services into two categories, by collecting information on services related to equities transactions separately from other brokerage services; (2) add questions covering total receipts and total payments for transactions in financial services with affiliated foreign parties (*i.e.*, foreign affiliates and foreign parents); and (3) revise the definition of a financial services provider to more fully align the definition with the 2002 version of North American Industry Classification System. The forms and instructions for the 2004 Benchmark Survey will be amended to reflect these changes to the Code of Federal Regulations.

Survey Background

The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, will conduct the survey under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108)—hereinafter, ''the Act,'' and under section 5408 of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4908). Section 4(a) of the Act (22 U.S.C. 3103(a)) provides that the President shall, to the extent he deems necessary and feasible, conduct a regular data collection program to secure current information related to international investment and trade in services and publish for the use of the general public and the United States Government agencies periodic, regular, and comprehensive statistical information collected pursuant to this subsection. In section 3 of Executive Order 11961, as amended by Executive Order 12518, the President delegated his authority under the Act as concerns international trade in services to the Secretary of Commerce, who has redelegated it to BEA.

The major purposes of the survey are to compile the U.S. international transactions, national income and product, and input-output accounts; support U.S. international economic policy; assess U.S. competitiveness in international trade in financial services; and improve the ability of U.S. businesses to identify and evaluate market opportunities.

The survey is intended to cover the universe of financial services transactions between U.S. financial services providers and foreign persons. Reporting is required from U.S. financial services providers who have sales to or purchases from unaffiliated foreign persons in all financial services combined in excess of $3 million during the reporting year. Financial services providers meeting these criteria must supply data on the amount of their sales or purchases with unaffiliated foreign persons for each type of covered service, disaggregated by country, and must report transactions with foreign affiliates and foreign parents at the global level for both total sales and total purchases of the covered financial services. U.S. financial services providers that have covered transactions of $3 million or less during the reporting year are asked to provide voluntary estimates of their total sales and total purchases of each type of financial service.

Executive Order 12866

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

Executive Order 13132

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

Paperwork Reduction Act

The collection-of-information required in this final rule has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid Office of Management and Budget control number. The OMB number for the BE–80 is 0608–0062; the collection will display this control number.

The survey is expected to result in the filing of reports from approximately 375 respondents. The respondent reporting burden for this collection of information is estimated to vary from less than 4 hours to 150 hours, with an overall average burden of 8 hours. This includes time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total respondent burden of the survey is estimated at 3,000 hours (375 responses times 8 hours average burden).

Comments regarding the burden estimate or any other aspect of this collection of information should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230 (fax: 202–606–5311); and either faxed (202–395–7245) or e-mailed (*pbugg@omb.eop.gov*) to the Office of Management and Budget, O.I.R.A. (Attention PRA Desk Officer for BEA).

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities. Although BEA does not collect data on total sales or other measures of the overall size of businesses that respond to the survey, historically the respondent universe has been comprised mainly of major U.S. corporations. With the exemption level for the survey being $3 million in covered receipts or payments, the reporting threshold for this survey is set at a level that will exempt most small businesses from reporting. Of those smaller businesses that must report, most will tend to have specialized operations and activities and thus will be likely to report only one type of service transaction, often limited to transactions with a single partner country; therefore, the burden on them can be expected to be small.

BEA received no comments on the economic impact of this rule. As a result, no regulatory flexibility analysis was prepared.

List of Subjects in 15 CFR Part 801

Economic statistics, Foreign trade, Penalties, Reporting and recordkeeping requirements.

Dated: November 2, 2004.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

■ For the reasons set forth in the preamble, BEA amends 15 CFR part 801, as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

■ 1. The authority citation for 15 CFR part 801 is revised to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; E.O. 11961, 3 CFR, 1977 Comp., p. 86, as amended by E.O. 12318, 3 CFR, 1981 Comp. p. 173, and E.O. 12518, 3 CFR, 1985 Comp. p. 348.

■ 2. Section 801.11(b) and (c) are revised to read as follows:

§ 801.11 Rules and regulations for the BE–80, Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons.

* * * * *

(b) *BE–80 definition of financial services provider.* The definition of financial services provider used for this survey is identical in coverage to Sector 52—Finance and Insurance, and holding companies that own or influence, and are principally engaged in making management decisions for these firms (part of Sector 55—Management of Companies and Enterprises, of the North American Industry Classification System, United States, 2002). For example, companies and/or subsidiaries and other separable parts of companies in the following industries are defined as financial services providers: Depository credit intermediation and related activities (including commercial banking, savings institutions, credit unions, and other depository credit intermediation); nondepository credit intermediation (including credit card issuing, sales financing, and other nondepository credit intermediation); activities related to credit intermediation (including mortgage and nonmortgage loan brokers, financial transactions processing, reserve, and clearinghouse activities, and other activities related to credit intermediation); securities and commodity contracts intermediation and brokerage (including investment banking and securities dealing, securities brokerage, commodity contracts dealing, and commodity contracts brokerage); securities and commodity exchanges; other financial investment activities (including miscellaneous intermediation, portfolio management, investment advice, and all other financial investment activities); insurance carriers; insurance agencies, brokerages, and other insurance related activities; insurance and employee benefit funds (including pension funds, health and welfare funds, and other insurance funds); other investment pools and funds (including open-end investment funds, trusts, estates, and agency accounts, real estate investment trusts, and other financial vehicles); and holding companies that own, or influence the management decisions of, firms principally engaged in the aforementioned activities.

(c) *Covered types of services.* The BE–80 survey covers the following types of financial services transactions (purchases and/or sales) between U.S. financial services providers and unaffiliated foreign persons: Brokerage services related to equities transactions; other brokerage services; underwriting and private placement services; financial management services; credit-related services, except credit card services; credit card services; financial advisory and custody services; securities lending services; electronic funds transfer services; and other financial services. The BE–80 also covers total receipts and total payments for the above-listed types of financial services transactions with affiliated foreign parties (foreign affiliates and foreign parents).

* * * * *

[FR Doc. 04–26367 Filed 11–29–04; 8:45 am]

BILLING CODE 3510–06–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 190

Interpretative Statement Regarding Funds Determined To Be Held in the Futures Account Type of Customer Account Class

AGENCY: Commodity Futures Trading Commission.

ACTION: Interpretative statement.

SUMMARY: This interpretation by the Commodity Futures Trading Commission is issued to clarify the appropriate means by which to allocate customer funds held by an insolvent Futures Commission Merchant (FCM) to account classes (as such term is defined in section 190.01(a) of the Commission's Regulations (17 CFR 190.01(a)) in cases where money, securities or other property margining, guaranteeing or securing futures contracts traded on non-domestic boards of trade has been deposited, pursuant to a Commission Order, in a segregated account established pursuant to Regulation 1.20 (17 CFR 1.20).

FOR FURTHER INFORMATION CONTACT: Robert B. Wasserman, Associate Director, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5092; e-mail *rwasserman@cftc.gov.*

* * * * *

Section 20 of the Commodity Exchange Act [1] empowers the Commission to provide by rule or regulation how the net equity of a customer is to be determined:

> ''* * * the Commission may provide, with respect to a commodity broker that is a debtor under chapter 7 of title 11 of the United States Code, by rule or regulation—(1) that certain cash, securities, other property, or commodity contracts are to be included in or excluded from customer property or member property; * * * and (5) how the net equity of a customer is to be determined.''

Subchapter IV of the Bankruptcy Code (concerning Commodity Brokers) has the same effect, explicitly subjecting its definition of ''net equity'' to ''such rules and regulations as the Commission promulgates under the [Commodity Exchange] Act.'' [2]

The Commission has exercised this power in promulgating Part 190. In particular, Net Equity is defined in Regulation 190.07. This definition includes the concept of ''account classes.'' For example, § 190.07(b)(2) directs that one of the steps in calculating a customer's net equity is to ''[a]ggregate the credit and debit equity balances of all accounts of the same class held by a customer in the same capacity.'' Similarly, § 190.07(c) defines the ''funded balance'' as ''a customer's pro rata share of the customer estate account class available as of the primary liquidation date for distribution to customers of the same class.'' Commission Regulation 190.01(a) defines account class as follows:

> each of the following types of customer accounts which must be recognized as a separate class of account by the trustee: futures accounts, foreign futures accounts, leverage accounts, commodity option accounts, and delivery accounts as defined in § 190.05(a)(2): Provided, however, That to the extent that the equity balance, as defined in § 190.07, of a customer in a commodity option, as defined in § 1.3(hh) of this chapter, may be commingled with the equity balance of such customer in any domestic commodity futures contract pursuant to regulations under the Act, the aggregate shall be treated for purposes of this part as being held in a futures account.

There is a potential ambiguity in how this provision should be applied in two related contexts. First, where a customer account holds foreign futures contracts, and/or property margining, guaranteeing, or securing such contracts, but where the collateral has, pursuant to a Commission order, been segregated in accordance with Commission Regulation 1.20 in the

[1] 7 U.S.C. 24.

[2] 11 U.S.C. 761(17).

manner of a domestic futures account, the appropriate ''type of account'' is ambiguous. One can distinguish between a ''foreign future'' which is characterized by the place in which it is executed, and a ''foreign futures account'' which may be characterized by the calculation of the applicable segregation requirements. A ''futures account'' is also characterized by the calculation of the applicable segregation requirement. If the Commission grants Section 4d relief to permit funds supporting foreign futures to be deposited in a ''futures account'' calculated pursuant to Section 4d and Commission Regulation 1.20, then it would appear apposite to treat claims on those funds as belonging to the futures account class of accounts.

Second, where a customer account contains both foreign futures contracts and domestic futures contracts, with those positions margined on a portfolio basis, such that the same property margins, guarantees, or secures both types of contracts in one account, the appropriate allocation of claims on the collateral between ''futures contracts'' and ''foreign futures contracts'' is, again, ambiguous.

As the Commission noted in the proposing release for Commission Regulation 190.01,

> ''The allocation provisions are intended to prefer customers for which segregation is undertaken over * * * customers holding accounts of a class for which segregation is not required * * * The reason for identifying classes of customer accounts is to permit the implementation of the principle of pro rata distribution so that the differing segregation requirements with respect to different classes of accounts benefit customer claimants based on the class of account for which they were imposed.'' 46 FR 57535, 57536 (November 24, 1981).

Thus, the Commission intended the customers who contribute to a segregated pool to benefit from that pool. Later in that release the Commission explained that the distinction in treatment between account classes sprang from the contrast in segregation requirements:

> all property segregated on behalf of a particular class would be allocated to the class on behalf of which it is segregated. This approach is consistent with the fact that differing segregation requirements exist for different classes of accounts. Obviously, much of the benefit of segregation would be lost if property segregated on behalf of a particular account class could be allocated to pay the claims of customers of a different account for which less stringent segregation provisions were in effect. 46 FR at 57554.

Again, the Commission contemplated that customers would benefit from the stringency of the segregation regime to which their funds were subject. To the extent that, subject to a Commission order, customer margin supporting non-domestic trades is subject to the full stringency of segregation under Commission Regulation 1.20 rather than the less stringent Commission Regulation 30.7 secured amount calculation, it is consistent with the Commission's intentions in adopting the Part 190 scheme that the property in the accounts of these customers be treated as futures accounts. Conversely, it would be inconsistent with the Commission's intentions to deny customers who had contributed property that was, in accordance with Commission Orders, deposited into accounts segregated pursuant to Commission Regulation 1.20, any participation in those accounts based on those contributions.

Thus, the Commission intended that the customers who contribute to a segregated pool benefit from that pool. If customers do not contribute to a pool, they should not benefit from that pool. The Commission's intent to tie distribution of funds to the contribution of those funds, and the ambiguity of how to allocate claims on collateral that supports both futures and foreign futures positions placed in domestic segregation, both support the interpretation that, in the event of an insolvency, collateral supporting foreign futures placed in domestic segregation pursuant to Commission Order should be treated as in a futures account, not a foreign futures account, for purposes of Part 190. Thus, in a situation where by Commission order or direction, customers are required or allowed to contribute to a Commission Regulation 1.20 segregated account, those customers also should benefit from the distribution of that account proportionately to their contributions in the event of an insolvency. Such claims should be treated as encompassed within the futures account class as opposed to the foreign futures account class or an other account class.

* * * * *

Issued in Washington, DC, on October 21, 2004, by the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–26386 Filed 11–29–04; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 10 and 163

[CBP Dec. 04–40]

RIN 1505–AB42

Preferential Treatment of Brassieres Under the Caribbean Basin Economic Recovery Act

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule amendments to the Customs and Border Protection (CBP) Regulations to implement the standards for preferential treatment for brassieres imported from Caribbean Basin countries. This rule was initially published as an interim regulation in the **Federal Register** on October 4, 2001, as T.D. 01–74, and later amended by T.D. 03–29 published in the **Federal Register** on September 30, 2003.

T.D. 01–74 set forth interim amendments to the CBP Regulations to implement those provisions within the United States-Caribbean Basin Trade Partnership Act (CBTPA) which established the standards for preferential treatment for brassieres imported from CBTPA beneficiary countries. T.D. 03–29 amended the brassieres provision set forth in T.D. 01–74 to reflect the amendments to section 213(b) of the Caribbean Basin Economic Recovery Act (the CBERA) that were made by section 3107 of the Trade Act of 2002. T.D. 03–29 also included a number of other changes to the CBERA implementing regulations for brassieres to clarify a number of issues that arose after their original publication.

EFFECTIVE DATES: Final rule effective on December 30, 2004.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Background

Textile and Apparel Articles Under the Caribbean Basin Economic Recovery Act

The Caribbean Basin Economic Recovery Act (the CBERA, also referred

to as the Caribbean Basin Initiative, or CBI, statute codified at 19 U.S.C. 2701–2707) instituted a duty preference program that applies to exports of goods from those Caribbean Basin countries that have been designated by the President as program beneficiaries. On May 18, 2000, the President signed into law the Trade and Development Act of 2000, Pub. L. 106–200, 114 Stat. 251, which included as Title II the United States-Caribbean Basin Trade Partnership Act, or CBTPA. The CBTPA provisions included section 211 which amended section 213(b) of the CBERA (19 U.S.C. 2703(b)) in order to, among other things, provide in new paragraph (2) for the preferential treatment of certain textile and apparel articles, specified in subparagraph (A), that had previously been excluded from the CBI duty-free program. The preferential treatment for those textile and apparel articles under paragraph (2)(A) of section 213(b) involves not only duty-free treatment but also entry in the United States free of quantitative restrictions, limitations, or consultation levels for all qualifying goods. Paragraph (2)(A) of the statute includes, in clause (iv), a specific provision covering brassieres from designated CBTPA beneficiary countries.

On October 2, 2000, the President signed Proclamation 7351 to implement the provisions of the CBTPA. This Proclamation, which was published in the **Federal Register** (65 FR 59329) on October 4, 2000, modified the Harmonized Tariff Schedule of the United States (HTSUS) by, among other things, the addition of a new Subchapter XX to Chapter 98 to address the majority of the textile and apparel provisions of the CBTPA. Within that Subchapter XX, the brassieres provision of paragraph (2)(A)(iv) of the CBTPA statute is dealt with in U.S. Note 2(d) and in subheading 9820.11.15.

On October 5, 2000, the U.S. Customs Service (now U.S. Customs and Border Protection (CBP)) published in the **Federal Register** (65 FR 59650) T.D. 00–68 to amend the Customs and Border Protection (CBP) Regulations on an interim basis in order to set forth basic legal requirements and procedures that apply for purposes of obtaining preferential treatment of textile and apparel articles pursuant to the provisions added to section 213(b) by the CBTPA. Those interim regulations, consisting of §§ 10.221 through 10.227 of the CBP Regulations (19 CFR 10.221 through 10.227), include, in paragraph (a) of § 10.223, a list of the various groups of articles that are eligible for preferential treatment under the statute. Paragraph (a)(6) of § 10.223 specifically addressed the basic CBTPA brassieres provision of subclause (I) of paragraph (2)(A)(iv) of the statute and subheading 9820.11.15 of the HTSUS. The regulatory texts set forth in T.D. 00–68 did not address subclauses (II) and (III) of paragraph (2)(A)(iv) of the statute and U.S. Note 2(d) of Subchapter XX, Chapter 98, HTSUS, because under the terms of the statute those provisions applied only to articles entered on or after October 1, 2001.

On October 4, 2001, CBP (as legacy Customs) published in the **Federal Register** (66 FR 50534) T.D. 01–74 to amend the CBP Regulations on an interim basis in order to implement the terms of subclauses (II) and (III) of paragraph (2)(A)(iv) of the statute and U.S. Note 2(d) of Subchapter XX, Chapter 98, HTSUS. Those regulatory amendments involved primarily the addition of a new § 10.228 which set forth specific rules for the application of the minimum 75 and 85 percent U.S. fabric component content requirements under subclauses (II) and (III) that took effect for purposes of preferential treatment of brassieres described in subclause (I) starting on October 1, 2001.

T.D. 01–74 also amended the introductory text in § 10.222 to account for the newly created § 10.228. In addition, T.D. 01–74 amended paragraph (a)(7) of § 10.223 to exclude brassieres from the apparel articles that are constructed of fabrics or yarns that are considered to be in ''short supply'' for purposes of Annex 401 of the NAFTA. We note that while T.D. 01–74 amended paragraph (a)(6) of § 10.223 by adding a proviso at the end to indicate that the requirements of new § 10.228 also must be satisfied, paragraph (a)(6) was later amended in its entirety by T.D. 03–12, published in the **Federal Register** (68 FR 13827) on March 21, 2003.

T.D. 01–74 also amended the Appendix to Part 163 of the CBP Regulation (19 CFR 163), which sets forth a list of entry records (that is, records that are required by statute or regulation for the entry of merchandise—the ''(a)(1)(A)'' list), by adding a listing that covers the CBTPA declaration of compliance for brassieres.

Trade Act of 2002 Amendments

On August 6, 2002, the President signed into law the Trade Act of 2002 (the ''Act''), Pub. L. 107–210, 116 Stat. 933. Section 3107(a) of the Act made a number of changes to the textile and apparel provisions of paragraph (2)(A) of section 213(b) of the CBERA. The amendments made by section 3107(a) of the Act included a revision of the brassieres provisions of paragraph (2)(A)(iv) of the statute which involved the following textual changes: (1) Subclause (I) was amended by the addition of exception language regarding articles covered by certain other clauses under paragraph (2)(A); and (2) subclauses (II) and (III) were amended by replacing each reference to ''fabric components'' with ''fabrics,'' by adding exclusion language regarding findings and trimmings after each reference to fabric(s), and by adding various references to articles that are ''entered'' and that are ''eligible'' under clause (iv). The principal effects of the language changes within subclauses (II) and (III) were: (1) Adoption of a cost or value percentage standard based on a comparison between U.S. fabric and all fabric (rather than based on a comparison between U.S. fabric components and all fabric) contained in the articles; and (2) removal of the requirement that the articles must be both produced and entered in the same year. The amended paragraph (2)(A)(iv) text now reads as follows:

(iv) Certain Other Apparel Articles.—(I) General Rule.—Subject to subclause (II), any apparel article classifiable under subheading 6212.10 of the HTS, except for articles entered under clause (i), (ii), (iii), (v), or (vi), if the article is both cut and sewn or otherwise assembled in the United States, or one or more CBTPA beneficiary countries, or both.

(II) Limitation.—During the 1-year period beginning on October 1, 2001, and during each of the 6 succeeding 1-year periods, apparel articles described in subclause (I) of a producer or an entity controlling production shall be eligible for preferential treatment under subparagraph (B) only if the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that are used in the production of all such articles of that producer or entity that are entered and eligible under this clause during the preceding 1-year period is at least 75 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all such articles of that producer or entity that are entered and eligible under this clause during the preceding 1-year period.

(III) Development of Procedure to Ensure Compliance.—The United States Customs Service shall develop and implement methods and procedures to ensure ongoing compliance with the requirement set forth in subclause (II). If the Customs Service finds that a producer or an entity controlling production has not satisfied such requirement in a 1-year period, then apparel articles described in subclause (I) of that producer or entity shall be ineligible for preferential treatment under subparagraph (B) during any succeeding 1-year period until the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that are used in the production of such articles of that producer or entity

entered during the preceding 1-year period is at least 85 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all such articles of that producer or entity that are entered and eligible under this clause during the preceding 1-year period.

On November 13, 2002, the President signed Proclamation 7626 (published in the **Federal Register** at 67 FR 69459 on November 18, 2002) which included, among other things, modifications to the HTSUS to implement the changes to section 213(b)(2)(A) of the CBERA made by section 3107(a) of the Act. Those modifications included an amendment of U.S. Note 2(d) to Subchapter XX, Chapter 98, HTSUS, to reflect the changes to subclauses (II) and (III) of paragraph (2)(A)(iv) of the statute discussed above. The Proclamation further provided that this amendment of U.S. Note 2(d) was effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after October 1, 2002.

Interim Regulatory Amendments in T.D. 03–29

As a consequence of the statutory amendments described above and as a result of the modifications to the HTSUS made by Proclamation 7626, the interim regulatory provisions published in T.D. 01–74 no longer fully reflected the current standards that apply for purposes of preferential treatment of brassieres under the CBERA. In this regard, the effect of the statutory changes required changes throughout the text of interim § 10.228. Moreover, following publication of T.D. 01–74, some other issues came to the attention of CBP that warranted additional changes to the interim § 10.228 text.

Accordingly, in T.D. 03–29, CBP set forth an interim rule document revising interim § 10.228 in its entirety to reflect the amendments to the statute and to clarify or otherwise improve the previously published text. T.D. 03–29 was limited to the text of interim § 10.228 and therefore did not address the change that the Act made to paragraph (2)(A)(iv)(I) of the statute; that provision was reflected in § 10.223(a)(6) within the interim CBTPA regulations published in T.D. 00–68, and later amended by T.D. 03–12, published in the **Federal Register** on March 21, 2003. That change is discussed in a separate final rule document that addresses the other statutory changes to the CBERA made by the Act.

The interim regulatory changes to § 10.228 contained in T.D. 03–29 are restated below.

Amendments To Reflect the Statutory Changes

The changes to § 10.228 as set forth in T.D. 03–29 in response to the changes made to paragraph (2)(A)(iv) of the statute by section 3107(a) of the Act were as follows:

1. The definition of ''fabric components formed in the United States'' in paragraph (a)(3) was replaced by a definition of ''fabrics formed in the United States'' to reflect the fact that subclauses (II) and (III) of the statute no longer refer to fabric ''components.'' Similarly, the definition of ''cost'' in paragraph (a)(4) and the definition of ''declared customs value'' in paragraph (a)(5) were modified to refer simply to ''fabrics.''

2. The following changes were made to paragraph (b) which concerns the 75/85 percent U.S. fabric content requirements for preferential treatment in subclauses (II) and (III) of the statute:

a. In the introductory text of paragraph (b)(1), reference was made to the year that begins on ''October 1, 2002'' (rather than ''October 1, 2001'') to reflect the applicable effective date set forth in Proclamation 7626.

b. Throughout the paragraph (b) texts, all references to U.S.-formed ''fabric components'' were replaced by references to U.S.-formed ''fabric,'' the words ''produced and'' were removed from the expression ''produced and entered,'' and the parenthetical reference ''(exclusive of all findings and trimmings)'' has been added as appropriate after references to ''fabrics'' and ''fabric.'' These changes simply conform the regulatory text to the wording changes in the statute.

c. Paragraph (b)(1)(i), which concerns the 75 percent requirement of subclause (II) of the statute, was changed to refer to articles that are ''entered as articles described in § 10.223(a)(6),'' and paragraph (b)(1)(ii), which concerns the 85 percent requirement of subclause (III) of the statute, was changed to refer to articles that ''conform to the production standards set forth in § 10.223(a)(6).'' These wording changes are in response to the statutory wording changes regarding articles that are ''entered'' and that are ''eligible'' under clause (iv). The differences in wording in the two regulatory texts were necessary in order to enable the 85 percent standard to operate. As explained in T.D. 03–29, CBP notes that if the universe of articles that are looked at for purposes of assessing compliance with the 85 percent standard is the same as that used for purposes of the 75 percent standard (that is, articles that were entered under the HTSUS subheading that applies to articles described in paragraph (2)(A)(iv)(I) of the statute and § 10.223(a)(6)), it would be impossible in the first year following the statutory changes (that is, starting on October 1, 2002) for a new producer or entity to enter the program, or for a producer or entity that failed to meet the 75 percent standard in the previous year to reenter the program. This is because application of the 85 percent standard presupposes a failure to have met the 75 percent standard in the preceding year. This would mean that there could not be any entries in the next year under the HTSUS subheading that applies to articles described in paragraph (2)(A)(iv)(I) of the statute and § 10.223(a)(6) against which compliance with the 85 percent standard can be determined. The wording used in paragraph (b)(1)(ii) of the regulatory text (which is also reflected in the general statement of the paragraph (b)(1) introductory text and in the general rule in paragraph (b)(2)(i)(A)), by referring to articles that meet the U.S./Caribbean cutting and assembly production requirement (regardless of the HTSUS subheading under which they are entered), is intended to avoid this anomalous result.

d. In the general rules of application set forth in paragraph (b)(2)(i), two new subparagraphs (C) and (D) were added to clarify the application of the different regulatory language for the 75 and 85 percent standards discussed at point c. above, and former subparagraph (D) was removed because it concerned the year of production which is no longer relevant under the amended statutory text.

e. Also in paragraph (b)(2)(i), former subparagraph (C) was redesignated as subparagraph (E) and the text was modified, and a new subparagraph (L) was added, primarily to reflect that the findings and trimmings referred to in the context of brassieres are not limited to foreign findings and trimmings.

f. Also in paragraph (b)(2)(i), former subparagraph (E) was redesignated as subparagraph (G) and the text, which concerns a new producer or new entity controlling production, was revised to incorporate the new wording (''entered as articles described in § 10.223(a)(6)'') of paragraph (b)(1)(i) and to clarify what CBP believes is a necessary conclusion under the statutory text, that is, that in the described context the producer or entity must first meet the 85 (rather than the 75) percent standard.

g. In paragraph (b)(2)(ii), a new Example 2 and a new Example 3 were added to cover new subparagraphs (C) and (D) of paragraph (b)(2)(i), and Examples 2 through 6 consequently

were redesignated as Examples 4 through 8.

h. Also in paragraph (b)(2)(ii), redesignated Example 6 was revised in order to replace the former ''produced and entered'' in the same year scenario with a factual pattern addressing the 75 versus 85 percent standard and entry in different years.

i. Also in paragraph (b)(2)(ii), redesignated Example 7 was revised in order to reflect that the 85 percent standard (rather than the 75 percent standard) applies to a new producer or entity controlling production, as stated in redesignated and revised subparagraph (G) of paragraph (b)(2)(i).

3. In paragraph (c)(3)(i), the text of the declaration of compliance was modified by removing each reference to ''components'' and by removing the words ''produced and'' before the word ''entered'' in blocks 4 and 6, in each case to reflect changes in statutory language.

4. Finally, in paragraph (d)(1)(v), the next to last sentence was modified to state that the inventory records must indicate that the required production occurred (rather than ''identify the date of'' production), and the last sentence was modified to refer to purchases made during the ''accounting period'' (rather than ''year''), because the year of production is not relevant under the amended statute.

Other Amendments

In addition to the changes described above that result from the changes made to the statute by section 3107(a) of the Act, CBP also included a number of other changes in the revised text of § 10.228 set forth in T.D. 03–29. These additional changes, which were intended to clarify or otherwise improve the previous interim regulatory texts, were as follows:

1. The definition of ''cost'' in paragraph (a)(4) and the definition of ''declared customs value'' in paragraph (a)(5) were revised for purposes of clarity, in particular in order to include rules covering cases in which there is no price based on an exportation to a CBTPA beneficiary country.

2. The definition of ''year'' in paragraph (a)(6) was reworded for purposes of clarity.

3. In Example 1 under paragraph (b)(2)(ii), the words ''in the first year'' were added to the scenario in the first sentence to clarify that the year in question is one during which the 75 percent standard must be met.

4. In Example 5 under paragraph (b)(2)(ii), the references to foreign origin straps were replaced by references to ''strips and labels'' to ensure that the example is clearly directed to findings and trimmings and not to materials that are considered to be components of brassieres.

5. In paragraph (c)(3)(i), the text of the declaration of compliance was modified by replacing the words ''all articles'' with ''brassieres'' in blocks 4 through 6 and by simplifying the wording within block 6.

6. Finally, in paragraph (c)(3)(ii), the subparagraph (E) instruction for completion of block 6 was removed in light of the simplification of the block 6 text, and former subparagraph (F) consequently was redesignated as (E).

CBP is now publishing one document that adopts, as a final rule, the § 10.228 provisions contained in T.D. 03–29 and the other regulatory changes pertaining to brassieres under the CBTPA that were published in T.D. 01–74. This final rule document also summarizes and responds to the public comments previously submitted on the changes to §§ 10.222 and 10.223(a)(7) published in T.D. 01–74 and addresses the comments submitted on the revised § 10.228 text set forth in T.D. 03–29. Because CBP significantly modified § 10.228 in T.D. 03–29, CBP did not consider or address any public comments previously submitted on the text of § 10.228 as published in T.D. 01–74 that were addressed by statutory changes.

Discussion of Comments in Response to T.D. 01–74

A total of 8 commenters responded to the solicitation of public comments in the October 4, 2001, interim rule document referred to above. The comments submitted are summarized and responded to below. To the extent that the comments received regarding § 10.228 were not addressed by the changes made in T.D. 03–29, CBP has responded.

We note that after T.D. 01–74 amended § 10.223(a)(6), T.D. 03–12 again amended § 10.223(a)(6). Therefore, the change to § 10.223(a)(6) and the comments submitted regarding that change are discussed in a separate final rule document that addresses the other statutory changes to the CBERA made by the Trade Act of 2002.

Exclusion of Brassieres From Short Supply Provision

Six commenters disagree with the amendment to § 10.223(a)(7), which excludes brassieres conforming to the description set forth in § 10.223(a)(6) from receiving preferential treatment under the CBTPA short supply provision found in revised § 213(b)(2)(A)(v)(I) of the CBERA (and § 10.223(a)(7)). The specific points made by the commenters on this issue are set forth below.

Comment: There is nothing in the CBTPA or its legislative history to support CBP's interpretation in regard to this issue. While Congress did create a separate provision for brassieres in the CBTPA, with a minimum United States fabric content requirement, there is no evidence that Congress also meant to disqualify brassieres made of fabrics that have already been determined to be in short supply in the U.S., such as silk, from CBTPA eligibility. CBP's interpretation has the absurd consequence of precluding a CBTPA producer or entity that make only silk brassieres from receiving CBTPA treatment even though no silk is made in the United States. Congress intended that the short supply provision be applied equally to all garments.

CBP's Response: As stated in the preamble of the interim regulations, § 10.223(a)(7) provides for apparel articles constructed of fabrics or yarns which for purposes of Annex 401 of the NAFTA are deemed to be in ''short supply.'' There is no list of ''short supply'' fabrics or yarns for purposes of NAFTA. The determination of these ''short supply'' fabrics or yarns is based upon the various provisions of NAFTA and whether, under NAFTA, for the particular apparel article at issue, certain fabrics or yarns are explicitly permitted to be sourced from outside the NAFTA parties for use in the production of an ''originating'' good by omission of the fabrics or yarns from the list of excluded materials in the rule of origin for the particular apparel article. If sourcing of certain fabrics or yarns outside the NAFTA parties is allowed, then those fabrics or yarns are deemed to be in ''short supply'' for that apparel article.

In the case of brassieres under NAFTA, no restrictions or limitations apply regarding fabrics or yarns. Fabrics and yarns may be sourced from anywhere. The only requirement under Annex 401 is that articles classified in subheading 6212.10, HTSUS, must be ''both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or more of the NAFTA parties.'' CBP does not agree with the presumption that since no restrictions exist, then all fabrics or yarns must be in ''short supply.'' If that presumption were true, § 10.223(a)(6) would be rendered meaningless. Accordingly, CBP concludes that the amendment to § 10.223(a)(7) of clarifying language to exclude articles described in § 10.223(a)(6) is appropriate.

Comment: If CBP insists that the CBTPA brassiere provision is *sui*

generis, standing alone, and must be read divorced from the rest of the statute, CBP should make clear that the separate CBTPA provisions relating to ''findings and trimmings,'' *de minimis*, and elastomeric yarn also do not apply to brassieres classified in subheading 6212.10, HTSUS.

CBP's Response: CBP disagrees with the assertion that the CBTPA provisions relating to ''findings and trimmings,'' *de minimis*, and elastomeric yarn do not apply to brassieres classified in subheading 6212.10, HTSUS. These provisions of the CBTPA clearly do apply to the provision of the CBTPA specific to brassieres, as well as the other various provisions described in paragraph (b)(2)(A) of amended section 213. These special rules refer to eligibility for ''preferential treatment under this paragraph.'' The paragraph referred to in these contexts is paragraph (b)(2) of amended section 213, and since the brassiere provision is part of paragraph (b)(2), there is no doubt these ''special rules'' are applicable to goods described in that provision.

Comment: CBTPA provisions that exempt, exclude or deem products ineligible for preferential treatment do so by identifying the product by HTS [HTSUS] number. Had Congress wanted to exclude brassieres of subheading 6212.10, HTSUS, from receiving duty-free treatment under the short supply provision found in § 213(b)(2)(A)(v)(I) of the CBERA, they would have included a specific provision to that effect. An example of a specific limitation in a CBTPA provision is the ''findings and trimmings'' provision where by explicit reference it is stated that elastic strips are findings and trimmings if ''less than one inch in width and used in the production of brassieres.'' In fact, the reference to brassieres in the ''findings and trimmings'' provision confirms that Congress intended for brassieres to be entitled to preference through a variety of CBTPA provisions.

CBP's Response: This comment has been addressed, in part, in the above responses. In addition, however, it is CBP's view that although the ''current short supply'' provision in the CBTPA does not encompass brassieres based upon the application of the ''short supply'' provisions in Annex 401 of the NAFTA, the language in § 211(b)(2)(A)(v), as written, would allow for the designation of new or additional fabrics or yarns as in ''short supply'' for apparel articles including brassieres. If, as suggested by the commenter, Congress had included language in § 211(b)(2)(A)(v)(I) to exclude brassieres of subheading 6212.10, HTSUS, then brassieres would be excluded from possible application of 211(b)(2)(A)(v)(II), thus precluding the designation of new or additional fabrics or yarns as in ''short supply'' for brassiereres.

Comment: The CBTPA and the Africa Growth and Opportunity Act (AGOA) are both part of the Trade and Development Act of 2000. While the CBTPA includes both short supply and brassiere provisions, the AGOA contains short supply provisions but no separate brassiere provision. CBP's instructions to the ports dated September 14, 2001 (TBT–00–023–01) state that the AGOA short supply provisions do not apply to brassieres. This instruction seems to contradict CBP's logic that the presence of the separate CBTPA brassiere provision confirms Congressional intent that the § 10.223(a)(7) short supply provision does not apply to brassieres of subheading 6212.10, HTSUS. CBP's logic is also called into question by the exclusion of brassieres of subheading 6212.10, HTSUS, only from the § 10.223(a)(7) provision. If the presence of the specific brassiere provision in the CBTPA were construed to exclude brassieres from one CBTPA preference provision, it follows that brassieres should be excluded from the other CBTPA preference provisions (including the § 10.223(a)(8) short supply provision) as well.

CBP's Response: CBP's rationale for clarifying that § 10.223(a)(7) does not include brassieres of subheading 6212.10, HTSUS, is based upon the application of the current ''short supply'' provisions in Annex 401 of the NAFTA and the methodology necessary to determine fabrics and yarns deemed to be in ''short supply'' for purposes of NAFTA. In order to qualify for preferential treatment under NAFTA, brassieres need only be cut (or knit to shape) and sewn or otherwise assembled in the territory of one or more of the NAFTA parties. There is no requirement provided for the sourcing of fabrics or yarns used in the production of qualifying brassieres, thus allowing fabrics or yarns to be sourced from anywhere. As it would be nonsensical to view the rule as establishing all fabrics and yarns to be ''short supply'' for brassieres under NAFTA, CBP interprets the rule as not designating any fabrics or yarns as ''short supply'' for brassieres. Based on that rationale, the instructions to the ports dated September 14, 2001 (TBT–00–023–01) stating that the AGOA ''short supply'' provision did not apply to brassieres was appropriate. The reference by CBP in the interim regulations document to § 10.223(a)(6) as support for CBP's view that § 10.223(a)(7) does not include brassieres of subheading 6212.10, HTSUS, was simply, as stated, additional support for the view adopted by CBP. As a result of the amendments to the CBTPA brassiere provision in the Trade Act of 2002, reliance on § 10.223(a)(6) as support for CBP's view would now seem misplaced. However, it was not the basis for that view.

The primary reason that CBP has concluded that the current ''short supply'' provision of the CBTPA does not include brassieres is based upon the manner in which ''short supply'' yarns and fabrics are determined under the NAFTA as has already been explained above.

Comment: The fact that the short supply provision of § 213(b)(2)(A)(v)(I) comes directly after the CBTPA brassieres provision suggests that, contrary to CBP's reasoning, Congress intended the short supply provision to apply to brassieres of subheading 6212.10, HTSUS.

CBP's Response: CBP does not believe that the order of the statutory provisions in question is persuasive, and CBP disagrees with the conclusion of the commenter for the reasons set forth earlier in this comment discussion.

Comment: In support of its interpretation regarding this issue, CBP notes that the NAFTA Annex 401 rule for subheading 6212.10, HTSUS, includes no designation of fabrics or yarns in short supply. This is a misreading of the application of Annex 401 to the CBTPA short supply provision. Congress was using the Annex 401 language as the easiest way of capturing those fabrics and yarns that are already designated as short supply under NAFTA, and not as a re-creation of the basic rule of origin under NAFTA.

CBP's Response: Annex 401 of the NAFTA does not contain a convenient list of ''short supply'' fabrics and yarns. Additionally, for certain apparel, annex 401 specifies distinct fabrics by technical descriptions. The only means by which CBP is able to determine the ''short supply'' fabrics and yarns currently allowed under the NAFTA and thus allowed under the CBTPA is by reviewing the specific rules contained in annex 401.

Declaration of Compliance

Comment: One commenter recommends that § 10.228(c)(1) provide that the declaration of compliance be submitted to CBP no later than 30 days prior to the beginning of the next year (October 1st) to afford CBP sufficient time to evaluate the declaration, assign a distinct and unique identifier, and

notify the ports of the identifier. The 10-day time frame currently specified in this regulation is unrealistic.

CBP's Response: CBP does not agree that it is necessary to make any change in the specified time frame for filing the Declaration of Compliance. CBP notes that the requirement is for submission at least 10 calendar days prior to the date of the first shipment. The reference to the first shipment was intended to accommodate goods shipped after a year has already begun, and the change suggested by this commenter would remove this flexibility. CBP is still of the opinion that the 10-day period is the appropriate minimum period needed for processing the Declaration of Compliance and giving notice of the distinct and unique identifier to the producer or entity controlling production and to the importer. However, CBP would not object to submissions made well in advance of that 10-day period. It is noted that the regulatory text merely sets forth a minimum period and therefore does not preclude earlier submissions.

Comment: Four commenters disagree with the general rule set forth in § 10.228(b)(2)(i)(G), providing that a declaration of compliance prepared by a producer or by an entity must cover all production of that producer or all production that the entity controls. The commenters allege that requiring a declaration to cover all of a producer's production presents confidentiality problems in situations such as presented in Example 6 under § 10.228(b)(2)(ii) where an entity controls a portion of a producer's production but the producer also operates independently by producing for several U.S. importers. The commenters maintain that the entity may be reluctant or may even refuse to provide the producer with the fabric cost and value information needed for the producer to file its declaration of compliance. According to these commenters, the statute does not require that production be reported twice, as it would be in this example. The commenters suggest that the regulations should provide some method through which confidentiality for cost information can be maintained by the producer or entity that has this information but still allow each party to file a declaration based only on that part of the information for which it is directly responsible.

CBP's Response: In the case of the producer, the Declaration of Compliance must include all the production of the producer that meets the description of 19 CFR 10.223(a)(6) and is entered in the United States. In the case of an entity controlling production, the Declaration of Compliance must include all the production that meets the description of § 10.223(a)(6) and is entered in the United States. These requirements reflect the wording of the statute as regards who must bear the burden of meeting the 75 or 85 percent standard. The regulatory provisions are intended to encompass all possible production scenarios that could arise under the statutory framework and therefore include circumstances in which there is an overlap as regards information reported by an entity and information reported by a producer. Since the suggestion of these commenters would lead to a result that is incompatible with the wording of the statute, it cannot be adopted.

With regard to the issue of confidentiality, CBP recognizes that there may be legitimate commercial concerns regarding the information that must be disclosed between producers and entities controlling production in order to demonstrate compliance with the statutory requirements. However, CBP believes that confidentiality issues in this context are a private commercial matter which must be addressed by the private parties directly affected, as part of the process of weighing the advantages and disadvantages of participating in this statutory preferential tariff program. CBP further believes that it would be inadvisable to address those concerns in the manner suggested by these commenters because it would result in a reporting requirement that would not allow CBP to effectively verify compliance with the statutory requirements.

Certificate of Origin

Comment: Four commenters argue that a Certificate of Origin under § 10.224 should not be required for brassieres entered duty-free under subheading 9820.11.15, HTSUS. The commenters state that, because CBTPA eligibility for brassieres is dictated only by the validity of the information on the Declaration of Compliance, a Certificate of Origin should be unnecessary when the declaration identifier number is on the entry.

CBP's Response: Paragraph (b)(4)(A)(i) of amended section 213 provides that ''[a]ny importer that claims preferential treatment under paragraph (2) or (3) shall comply with customs procedures similar in all material respects to the requirements of Article 502(1) of the NAFTA * * *.'' Article 502(1)(a) of the NAFTA obligates each NAFTA Party to require an importer that claims preferential tariff treatment to make a written declaration based on a valid Certificate of Origin. Paragraph (b)(4)(A)(ii) of amended section 213 sets forth certain conditions that must be met in order for a CBTPA beneficiary country's merchandise ''to qualify for the preferential treatment under paragraph (2) or (3) and for a Certificate of Origin to be valid with respect to any article for which such treatment is claimed.'' CBP interprets the references in paragraph (b)(4)(A)(i) to NAFTA Article 502(10) and in paragraph (b)(4)(A)(ii) to a Certificate of Origin to mean that Congress intended to require Certificates of Origin for claims of CBTPA preferential treatment, including for brassieres. The commenters seem to be suggesting that, for brassieres alone, the declaration of compliance should replace the Certificate of Origin.

Furthermore, as a practical matter, the Declaration of Compliance cannot effectively replace the CBTPA Textile Certificate of Origin provided for under § 10.224 because the latter document contains information elements that are not set forth on, or that are useful in verifying information provided on, the Declaration of Compliance.

Recordkeeping and Verification Requirements

Comment: Five commenters allege that the recordkeeping and verification requirements set forth in § 10.228(d) are too onerous, do not conform to the way most companies maintain their records and are not authorized by the CBTPA. The commenters contend that a company should not have to create new accounting records to satisfy this regulatory provision; they note in this regard that many companies do not keep cash disbursement, purchase journals or record the date of production. According to these commenters, so long as the producer or the entity is able to establish that the 75 or 85 percent standard is met in any given year using generally accepted accounting principles, the statutory requirement should be satisfied.

CBP's Response: With regard to the assertion that the § 10.228(d) recordkeeping requirements (such as the cash disbursement or purchase journal) do not conform to the way most companies keep their records, CBP notes that the regulatory text does not mandate the maintenance of specific types of records. Rather, the regulatory text states in this regard that the audit trail documents must consist of a cash disbursement or purchase journal ''or equivalent records'' to establish the purchase of the fabric or component. Therefore, if a company does not maintain a cash disbursement or purchase journal, alternative records

that reflect the purchase of the fabric or component would be acceptable.

The recordkeeping and verification requirements were included in § 10.228 so that the trade community would know what CBP would expect to see when verifying a claim for preferential treatment of brassieres under the CBTPA. These requirements are implicitly authorized by the CBTPA because they are directed to the specific statutory standards that apply in the case of brassieres under the CBTPA and because they are promulgated by the government agency that is charged with responsibility for enforcing those statutory standards. The basic point to remember is that CBP must be able to verify that the requirements of the statute have been met, even if this means that a producer must create certain records that were not maintained prior to the CBTPA (such as records regarding the date of production, which are germane to the year-to-year standard established by the statute). There would be no objection to the use of generally accepted accounting principles (GAAP) to establish that the 75 or 85 percent standard is met, provided that the use of GAAP yields a result that is verifiable and that accurately reflects the applicable CBTPA statutory standards.

Finally, as regards the complaint that the recordkeeping and verification requirements are too onerous, CBP would simply note that a decision whether to enter into transactions under a duty-preference program may require the consideration of a variety of factors, including whether the benefits outweigh the business costs that must be incurred in order to comply with the requirements of the program.

Comments in Response to T.D. 03–29

One comment was received in response to the notice of solicitation of comments on the interim regulations implementing the Preferential Treatment of Brassieres Under the Caribbean Basin Economic Recovery Act (68 FR 56166) which appeared in the **Federal Register** on September 30, 2003. The comment addressed two concerns with regard to the implementing regulations.

Comment: The first concern expressed by the commenter is with regard to the clarity of the regulations as to the entry requirement for brassieres entered into the United States in a prior year which are considered in the calculation to determine whether the U.S. fabric content requirement set forth by Congress has been met in order for imported brassieres to qualify for preferential treatment in a subsequent year. The commenter is concerned that the language of the regulations as drafted suggests that brassieres considered in the fabric content calculation must be produced in the same year in which they are entered. The regulations contain examples of the application of the provisions set forth in the regulations and the commenter acknowledges that Example 6, which illustrates that brassieres may be produced in one year and entered in a different year, is consistent with changes in the brassiere provision enacted by Congress in the Trade Act of 2002. However, the commenter seeks further clarification and suggests the addition of the phrase ''without regard to the year in which the articles were produced'' after the phrase ''within the same year'' in § 10.228(b)(2)(i)(A).

CBP's Response: CBP disagrees with the need for further clarification as suggested by the commenter. The language at issue in § 10.228(b)(2)(i)(A) clearly addresses the manner of production of the brassieres in question and then specifies that the brassieres must all be entered in the same year. Example 6 serves to further clarify that the production of the brassieres under consideration need not occur in the same year as the entry of the brassieres. However, all brassieres considered in determining whether brassieres in a subsequent year will qualify for preferential treatment must be entered in the same program year.

Comment: The commenter's second concern is that the regulations need to be clarified as to the relationship between § 10.223(a)(6), the provision specific to brassieres, and other provisions of the CBTPA. Specifically, the commenter requests that CBP clarify the regulations to provide that brassieres entered under 19 U.S.C. 2703(b)(2)(A)(i), (ii), (iii), (v), or (vi), which are described in § 10.223(a)(1), (2), (3), (4), (7), (8) or (9) of the CBP Regulations, are not to be considered in the fabric content calculation to determine the eligibility of brassieres for preferential treatment in a subsequent year. The commenter suggests as an example that brassieres may be entered under the provision for apparel made of regionally produced knit fabric, § 10.223(a)(4), or under either short supply provision, § 10.223(a)(7) or § 10.223(a)(8), and brassieres so entered would not be considered in calculating the fabric content to determine if the requisite percentage of U.S. fabric had been used to allow for subsequent year preferential treatment.

CBP's Response: CBP disagrees with the commenter. First, CBP cannot agree with the commenter that brassieres entered under other provisions of the CBTPA will not be considered for determining eligibility for preferential treatment under § 10.223(a)(6). CBP agrees with this assertion of the commenter only to the extent that it applies to determining whether the 75 percent threshold U.S. fabric content requirement has been met. With regard to cases when the 75 percent requirement has not been met and a producer or entity controlling production must meet the stricter 85 percent U.S. fabric content requirement, or in the case of a new producer or entity controlling production which did not enter brassieres in the first year of the program and must therefore meet the stricter 85 percent U.S. fabric content requirement, if CBP does not consider brassieres entered under other provisions of the CBTPA, that is, provisions other than § 10.223(a)(6), a producer or entity controlling production would never be able to meet the 85 percent U.S. fabric content requirement.

Secondly, CBP rejects the commenter's suggestion that brassieres currently may be entered under all of the provisions associated with the statutory paragraphs identified in 19 U.S.C. 2703(b)(2)(A)(i), (ii), (iii), (v), or (vi). Section 10.223(a)(9) of the CBP Regulations is associated with 19 U.S.C. 2703(b)(2)(A)(vi) and provides for handloomed, hand-made and folklore articles. At this time, this provision does not include brassieres as eligible for entry under that provision. Therefore, brassieres may not be entered under § 10.223(a)(9). Likewise, § 10.223(a)(7) and (8), the provisions which allow for apparel articles produced from fabrics or yarns determined to be in short supply, do not currently include brassieres as eligible for entry under those provisions.

Additional Change to the Regulations

While CBP has not adopted any changes identified and discussed above in connection with the public comments, CBP has amended blocks 4–6 of the declaration of compliance for brassieres by adding exclusion language regarding findings and trimmings after each reference to fabric(s) as provided for in section 3107(a) of the Act. Additionally, wherever the term ''Customs'' appears in the CBP Regulations affected by this final rule (*i.e.* 19 CFR 10.228), it is replaced with the term ''CBP.''

Conclusion

After analysis of the comments and further review and consideration of the matter, CBP is adopting as a final rule the interim rule set forth in T.D. 01–74

amending § 10.222, paragraph (a)(7) of § 10.223, and the Appendix to Part 163 of the CBP Regulations which was published in the **Federal Register** at 66 FR 50534 on October 4, 2001. CBP is also adopting as a final rule, with the changes discussed above, the interim rule set forth in T.D. 03–29 amending § 10.228 of Part 10 of the CBP Regulations which was published in the **Federal Register** at 68 FR 56166 on September 30, 2003.

It is noted that while T.D. 01–74 amended § 10.223(a)(6), T.D. 03–12 published in the **Federal Register** at 68 FR 59649 on March 21, 2003, set forth additional changes to § 10.223(a)(6). Therefore, as the changes to § 10.223(a)(6) set forth in T.D. 01–74 were further amended, those changes will be finalized in a separate final rule document that addresses the other statutory changes to the CBERA made by the Act.

Executive Order 12866

This document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866. This rule is limited in scope and affects only a small segment of the trade community. Moreover, it sets forth the technical requirements for a statutorily mandated trade benefits program.

Regulatory Flexibility Act

As set forth in the preamble, the regulations to implement the standards for preferential treatment for brassieres imported from Caribbean Basin countries were previously published as interim regulations. Those interim regulations provided trade benefits to the importing public, implemented direct statutory mandates, and were necessary to carry out the preferential treatment and United States tariff changes proclaimed by the President under the Caribbean Basin Economic Recovery Act. Pursuant to the provisions of 5 U.S.C. 553(b)(B), CBP issued the regulations as interim rules because it had determined that prior public notice and comment procedures on these regulations were unnecessary and contrary to the public interest. For these reasons, pursuant to the provisions of 5 U.S.C. 553(d)(1) and (3), CBP also found that there was good cause for dispensing with a delayed effective date. Because no notice of proposed rulemaking was required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Accordingly, this final rule is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collection of information contained in this interim rule has previously been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) under OMB control number 1651–0083.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1).

List of Subjects

19 CFR Part 10

Assembly, Bonds, Caribbean Basin Initiative, Customs duties and inspection, Exports, Imports, Preference programs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ For the reasons stated in the preamble, Part 10 and Part 163 (19 CFR Part 10 and 19 CFR Part 163) are amended to read as follows:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

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

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

Sections 10.221 through 10.228 and §§ 10.231 through 10.237 also issued under 19 U.S.C. 2701 *et seq.*

■ 2. The introductory text in § 10.222 is republished to read as follows:

§ 10.222 Definitions.

When used in §§ 10.221 through 10.228, the following terms have the meanings indicated:

* * * * *

■ 3. In § 10.223, paragraph (a)(7) is republished to read as follows:

§ 10.223 Articles eligible for preferential treatment

* * * * *

(a) * * *

(7) Apparel articles, other than articles described in paragraph (a)(6) of this section, that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries, from fabrics or yarn that is not formed in the United States or in one or more CBTPA beneficiary countries, to the extent that apparel articles of those fabrics or yarn would be eligible for preferential treatment, without regard to the source of the fabrics or yarn, under Annex 401 of the NAFTA;

* * * * *

■ 4. Section 10.228 is revised to read as follows:

§ 10.228 Additional requirements for preferential treatment of brassieres.

(a) *Definitions.* When used in this section, the following terms have the meanings indicated:

(1) *Producer.* ''Producer'' means an individual, corporation, partnership, association, or other entity or group that exercises direct, daily operational control over the production process in a CBTPA beneficiary country.

(2) *Entity controlling production.* ''Entity controlling production'' means an individual, corporation, partnership, association, or other entity or group that is not a producer and that controls the production process in a CBTPA beneficiary country through a contractual relationship or other indirect means.

(3) *Fabrics formed in the United States.* ''Fabrics formed in the United States'' means fabrics that were produced by a weaving, knitting, needling, tufting, felting, entangling or other fabric-making process performed in the United States.

(4) *Cost.* ''Cost'' when used with reference to fabrics formed in the United States means:

(i) The price of the fabrics when last purchased, f.o.b. port of exportation, as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(A) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price; or

(B) If no exportation to a CBTPA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the freight, insurance, packing, and other costs incurred in transporting the fabrics to the place of production if included in that price; or

(ii) If the price cannot be determined under paragraph (a)(4)(i) of this section or if CBP finds that price to be

unreasonable, all reasonable expenses incurred in the growth, production, manufacture, or other processing of the fabrics, including the cost or value of materials (which includes the cost of non-recoverable scrap generated in forming the fabrics) and general expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabrics to the port of exportation.

(5) *Declared customs value.* ''Declared customs value'' when used with reference to fabric contained in an article means the sum of:

(i) The cost of fabrics formed in the United States that the producer or entity controlling production can verify; and

(ii) The cost of all other fabric contained in the article, exclusive of all findings and trimmings, determined as follows:

(A) In the case of fabric purchased by the producer or entity controlling production, the f.o.b. port of exportation price of the fabric as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(*1*) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price, plus expenses for embroidering and dyeing, printing, and finishing operations applied to the fabric if not included in that price; or

(*2*) If no exportation to a CBTPA beneficiary country is involved, the price as set out in the invoice or other commercial documents, plus expenses for embroidering and dyeing, printing, and finishing operations applied to the fabric if not included in that price, but less the freight, insurance, packing, and other costs incurred in transporting the fabric to the place of production if included in that price;

(B) In the case of fabric for which the cost cannot be determined under paragraph (a)(5)(ii)(A) of this section or if CBP finds that cost to be unreasonable, all reasonable expenses incurred in the growth, production, or manufacture of the fabric, including the cost or value of materials (which includes the cost of non-recoverable scrap generated in the growth, production, or manufacture of the fabric), general expenses and embroidering and dyeing, printing, and finishing expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabric to the port of exportation;

(C) In the case of fabric components purchased by the producer or entity controlling production, the f.o.b. port of exportation price of those fabric components as set out in the invoice or other commercial documents, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, or, if the price is other than f.o.b. port of exportation:

(*1*) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify; or

(*2*) If no exportation to a CBTPA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, and less the freight, insurance, packing, and other costs incurred in transporting the fabric components to the place of production if included in that price; and

(D) In the case of fabric components for which a fabric cost cannot be determined under paragraph (a)(5)(ii)(C) of this section or if CBP finds that cost to be unreasonable: all reasonable expenses incurred in the growth, production, or manufacture of the fabric components, including the cost or value of materials (which does not include the cost of recoverable scrap generated in the growth, production, or manufacture of the fabric components) and general expenses, but excluding the cost or value of any non-textile materials, and excluding expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabric components to the port of exportation.

(6) *Year.* ''Year'' means a 12-month period beginning on October 1 and ending on September 30 but does not include any 12-month period that began prior to October 1, 2000.

(7) *Entered.* ''Entered'' means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(b) *Limitations on preferential treatment*—(1) *General.* During the year that begins on October 1, 2002, and during any subsequent year, articles of a producer or an entity controlling production that conform to the production standards set forth in § 10.223(a)(6) will be eligible for preferential treatment only if:

(i) The aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of all of those articles of that producer or that entity controlling production that are entered as articles described in § 10.223(a)(6) during the immediately preceding year was at least 75 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all of those articles of that producer or that entity controlling production that are entered as articles described in § 10.223(a)(6) during that year; or

(ii) In a case in which the 75 percent requirement set forth in paragraph (b)(1)(i) of this section was not met during a year and therefore those articles of that producer or that entity controlling production were not eligible for preferential treatment during the following year, the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of all of those articles of that producer or that entity controlling production that conform to the production standards set forth in § 10.223(a)(6) and that were entered during the immediately preceding year was at least 85 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all of those articles of that producer or that entity controlling production that conform to the production standards set forth in § 10.223(a)(6) and that were entered during that year; and

(iii) In conjunction with the filing of the claim for preferential treatment under § 10.225, the importer records on the entry summary or warehouse withdrawal for consumption (CBP Form 7501, column 34), or its electronic equivalent, the distinct and unique identifier assigned by CBP to the applicable documentation prescribed under paragraph (c) of this section.

(2) *Rules of application*—(i) *General.* For purposes of paragraphs (b)(1)(i) and (b)(1)(ii) of this section and for purposes of preparing and filing the documentation prescribed in paragraph (c) of this section, the following rules will apply:

(A) The articles in question must have been produced in the manner specified

in § 10.223(a)(6) and the articles in question must be entered within the same year;

(B) Articles that are exported to countries other than the United States and are never entered are not to be considered in determining compliance with the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section;

(C) Articles that are entered under an HTSUS subheading other than the HTSUS subheading which pertains to articles described in § 10.223(a)(6) are not to be considered in determining compliance with the 75 percent standard specified in paragraph (b)(1)(i) of this section;

(D) For purposes of determining compliance with the 85 percent standard specified in paragraph (b)(1)(ii) of this section, all articles that conform to the production standards set forth in § 10.223(a)(6) must be considered, regardless of the HTSUS subheading under which they were entered;

(E) Fabric components and fabrics that constitute findings or trimmings are not to be considered in determining compliance with the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section;

(F) Beginning October 1, 2002, in order for articles to be eligible for preferential treatment in a given year, a producer of, or entity controlling production of, those articles must have met the 75 percent standard specified in paragraph (b)(1)(i) of this section during the immediately preceding year. If articles of a producer or entity controlling production fail to meet the 75 percent standard specified in paragraph (b)(1)(i) of this section during a year, articles of that producer or entity controlling production:

(*1*) Will not be eligible for preferential treatment during the following year;

(*2*) Will remain ineligible for preferential treatment until the year that follows a year in which articles of that producer or entity controlling production met the 85 percent standard specified in paragraph (b)(1)(ii) of this section; and

(*3*) After the 85 percent standard specified in paragraph (b)(1)(ii) of this section has been met, will again be subject to the 75 percent standard specified in paragraph (b)(1)(i) of this section during the following year for purposes of determining eligibility for preferential treatment in the next year.

(G) A new producer or new entity controlling production, that is, a producer or entity controlling production which did not produce or control production of articles that were entered as articles described in § 10.223(a)(6) during the immediately preceding year, must first establish compliance with the 85 percent standard specified in paragraph (b)(1)(ii) of this section as a prerequisite to preparation of the declaration of compliance referred to in paragraph (c) of this section;

(H) A declaration of compliance prepared by a producer or by an entity controlling production must cover all production of that producer or all production that the entity controls for the year in question;

(I) A producer is not required to prepare a declaration of compliance if all of its production is covered by a declaration of compliance prepared by an entity controlling production;

(J) In the case of a producer, the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section and the declaration of compliance procedure under paragraph (c) of this section apply to all articles of that producer for the year in question, even if some but not all of that production is also covered by a declaration of compliance prepared by an entity controlling production;

(K) The U.S. importer does not have to be the producer or the entity controlling production who prepared the declaration of compliance; and

(L) The exclusion references regarding findings and trimmings in paragraph (b)(1)(i) and paragraph (b)(1)(ii) of this section apply to all findings and trimmings, whether or not they are of foreign origin.

(ii) *Examples.* The following examples will illustrate application of the principles set forth in paragraph (b)(2)(i) of this section.

Example 1. A CBTPA beneficiary country producer of articles that meet the production standards specified in § 10.223(a)(6) in the first year sends 50 percent of that production to CBTPA region markets and the other 50 percent to the U.S. market; the cost of the fabrics formed in the United States equals 100 percent of the value of all of the fabric in the articles sent to the CBTPA region and 60 percent of the value of all of the fabric in the articles sent to the United States. Although the cost of fabrics formed in the United States is more than 75 percent of the value of all of the fabric used in all of the articles produced, this producer could not prepare a valid declaration of compliance because the articles sent to the United States did not meet the minimum 75 percent standard.

Example 2. A producer sends to the United States in the first year three shipments of articles that meet the description in § 10.223(a)(6); one of those shipments is entered under the HTSUS subheading that covers articles described in § 10.223(a)(6), the second shipment is entered under the HTSUS subheading that covers articles described in § 10.223(a)(12), and the third shipment is entered under subheading 9802.00.80, HTSUS. In determining whether the minimum 75 percent standard has been met in the first year for purposes of entry of articles under the HTSUS subheading that covers articles described in § 10.223(a)(6) during the following (that is, second) year, consideration must be restricted to the articles in the first shipment and therefore must not include the articles in the second and third shipments.

Example 3. A producer in the second year begins production of articles that conform to the production standards specified in § 10.223(a)(6); some of those articles are entered in that year under HTSUS subheading 6212.10 and others under HTSUS subheading 9802.00.80 but none are entered in that year under the HTSUS subheading which pertains to articles described in § 10.223(a)(6) because the 75 percent standard had not been met in the preceding (that is, first) year. In this case the 85 percent standard applies, and all of the articles that were entered under the various HTSUS provisions in the second year must be taken into account in determining whether that 85 percent standard has been met. If the 85 percent was met in the aggregate for all of the articles entered in the second year, in the next (that is, third) year articles of that producer may receive preferential treatment under the HTSUS subheading which pertains to articles described in § 10.223(a)(6).

Example 4. An entity controlling production of articles that meet the description in § 10.223(a)(6) buys for the U.S., Canadian and Mexican markets; the articles in each case are first sent to the United States where they are entered for consumption and then placed in a commercial warehouse from which they are shipped to various stores in the United States, Canada and Mexico. Notwithstanding the fact that some of the articles ultimately ended up in Canada or Mexico, a declaration of compliance prepared by the entity controlling production must cover all of the articles rather than only those that remained in the United States because all of those articles had been entered for consumption.

Example 5. Fabric is cut and sewn in the United States with other U.S. materials to form cups which are joined together to form brassiere front subassemblies in the United States, and those front subassemblies are then placed in a warehouse in the United States where they are held until the following year; during that following year all of the front subassemblies are shipped to a CBTPA beneficiary country where they are assembled with elastic strips and labels produced in an Asian country and other fabrics, components or materials produced in the CBTPA beneficiary country to form articles that meet the production standards specified in § 10.223(a)(6) and that are then shipped to the United States and entered during that same year. In determining whether the entered articles meet the minimum 75 or 85 percent standard, the fabric in the elastic strips and labels is to be disregarded entirely because the strips and labels constitute findings or trimmings for purposes of this section, and all of the fabric

in the front subassemblies is countable because it was all formed in the United States and used in the production of articles that were entered in the same year.

Example 6. A CBTPA beneficiary country producer's entire production of articles that meet the description in § 10.223(a)(6) is sent to a U.S. importer in two separate shipments, one in February and the other in June of the same calendar year; the articles shipped in February do not meet the minimum 75 percent standard, the articles shipped in June exceed the 85 percent standard, and the articles in the two shipments, taken together, do meet the 75 percent standard; the articles covered by the February shipment are entered for consumption on March 1 of that calendar year, and the articles covered by the June shipment are placed in a CBP bonded warehouse upon arrival and are subsequently withdrawn from warehouse for consumption on November 1 of that calendar year. The CBTPA beneficiary country producer may not prepare a valid declaration of compliance covering the articles in the first shipment because those articles did not meet the minimum 75 percent standard and because those articles cannot be included with the articles of the second shipment on the same declaration of compliance since they were entered in a different year. However, the CBTPA beneficiary country producer may prepare a valid declaration of compliance covering the articles in the second shipment because those articles did meet the requisite 85 percent standard which would apply for purposes of entry of articles in the following year.

Example 7. A producer in the second year begins production of articles exclusively for the U.S. market that meet the production standards specified in § 10.223(a)(6), but the entered articles do not meet the requisite 85 percent standard until the third year; the entered articles fail to meet the 75 percent standard in the fourth year; and the entered articles do not attain the 85 percent standard until the sixth year. The producer's articles may not receive preferential treatment during the second year because there was no production (and thus there were no entered articles) in the immediately preceding (that is, first) year on which to assess compliance with the 75 percent standard. The producer's articles also may not receive preferential treatment during the third year because the 85 percent standard was not met in the immediately preceding (that is, second) year. However, the producer's articles are eligible for preferential treatment during the fourth year based on compliance with the 85 percent standard in the immediately preceding (that is, third) year. The producer's articles may not receive preferential treatment during the fifth year because the 75 percent standard was not met in the immediately preceding (that is, fourth) year. The producer's articles may not receive preferential treatment during the sixth year because the 85 percent standard has become applicable and was not met in the immediately preceding (that is, fifth) year. The producer's articles are eligible for preferential treatment during the seventh year because the 85 percent standard was met in the immediately preceding (that is, sixth) year, and during that seventh year the 75 percent standard is applicable for purposes of determining whether the producer's articles are eligible for preferential treatment in the following (that is, eighth) year.

Example 8. An entity controlling production (Entity A) uses five CBTPA beneficiary country producers (Producers 1–5), all of which produce only articles that meet the description in § 10.223(a)(6); Producers 1–4 send all of their production to the United States and Producer 5 sends 10 percent of its production to the United States and the rest to Europe; Producers 1–3 and Producer 5 produce only pursuant to contracts with Entity A, but Producer 4 also operates independently of Entity A by producing for several U.S. importers, one of which is an entity controlling production (Entity B) that also controls all of the production of articles of one other producer (Producer 6) which sends all of its production to the United States. A declaration of compliance prepared by Entity A must cover all of the articles of Producers 1–3 and the 10 percent of articles of Producer 5 that are sent to the United States and that portion of the articles of Producer 4 that are produced pursuant to the contract with Entity A, because Entity A controls the production of those articles. There is no need for Producers 1–3 and Producer 5 to prepare a declaration of compliance because they have no production that is not covered by a declaration of compliance prepared by an entity controlling production. A declaration of compliance prepared by Producer 4 would cover all of its production, that is, articles produced for Entity A, articles produced for Entity B, and articles produced independently for other U.S. importers; a declaration of compliance prepared by Entity B must cover that portion of the production of Producer 4 that it controls as well as all of the production of Producer 6 because Entity B also controls all of the production of Producer 6. Producer 6 would not prepare a declaration of compliance because all of its production is covered by the declaration of compliance prepared by Entity B.

(c) *Documentation*—(1) *Initial declaration of compliance.* In order for an importer to comply with the requirement set forth in paragraph (b)(1)(iii) of this section, the producer or the entity controlling production must have filed with CBP, in accordance with paragraph (c)(4) of this section, a declaration of compliance with the applicable 75 or 85 percent requirement prescribed in paragraph (b)(1)(i) or (b)(1)(ii) of this section. After filing of the declaration of compliance has been completed, CBP will advise the producer or the entity controlling production of the distinct and unique identifier assigned to that declaration. The producer or the entity controlling production will then be responsible for advising each appropriate U.S. importer of that distinct and unique identifier for purposes of recording that identifier on the entry summary or warehouse withdrawal. In order to provide sufficient time for advising the U.S. importer of that distinct and unique identifier prior to the arrival of the articles in the United States, the producer or the entity controlling production should file the declaration of compliance with CBP at least 10 calendar days prior to the date of the first shipment of the articles to the United States.

(2) *Amended declaration of compliance.* If the information on the declaration of compliance referred to in paragraph (c)(1) of this section is based on an estimate because final year-end information was not available at that time and the final data differs from the estimate, or if the producer or the entity controlling production has reason to believe for any other reason that the declaration of compliance that was filed contained erroneous information, within 30 calendar days after the final year-end information becomes available or within 30 calendar days after the date of discovery of the error:

(i) The producer or the entity controlling production must file with the CBP office identified in paragraph (c)(4) of this section an amended declaration of compliance containing that final year-end information or other corrected information; or

(ii) If that final year-end information or other corrected information demonstrates noncompliance with the applicable 75 or 85 percent requirement, the producer or the entity controlling production must in writing advise both the CBP office identified in paragraph (c)(4) of this section and each appropriate U.S. importer of that fact.

(3) *Form and preparation of declaration of compliance*—(i) *Form.* The declaration of compliance referred to in paragraph (c)(1) of this section may be printed and reproduced locally and must be in the following format:

CARIBBEAN BASIN TRADE PARTNERSHIP ACT DECLARATION OF COMPLIANCE FOR BRASSIERES

[19 CFR 10.223(a)(6) and 10.228]

1. Year beginning date: October 1, ____.
   Year ending date: September 30, ____.

Official U.S. Customs and Border Protection Use Only
Assigned number: _____
Assignment date: _____

2. Identity of preparer (producer or entity controlling production):
   Full name and address:

Telephone number: _____
Facsimile number: _____
Importer identification number: _____

3. If the preparer is an entity controlling production, provide the following for each producer:
   Full name and address:

Telephone number: _____
Facsimile number: _____

4. Aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of brassieres that were entered during the year: _____
5. Aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in brassieres that were entered during the year: _____
6. I declare that the aggregate cost of fabric (exclusive of all findings and trimmings) formed in the United States was at least 75 percent (or 85 percent, if applicable under 19 CFR 10.228(b)(1)(ii)) of the aggregate declared customs value of the fabric contained in brassieres entered during the year.
7. Authorized signature:

_____
Date:

8. Name and title (print or type):

(ii) *Preparation.* The following rules will apply for purposes of completing the declaration of compliance set forth in paragraph (c)(3)(i) of this section:

(A) In block 1, fill in the year commencing October 1 and ending September 30 of the calendar year during which the applicable 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section was met;

(B) Block 2 should state the legal name and address (including country) of the preparer and should also include the preparer's importer identification number (see § 24.5 of this chapter), if the preparer has one;

(C) Block 3 should state the legal name and address (including country) of the CBTPA beneficiary country producer if that producer is not already identified in block 2. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers;

(D) Blocks 4 and 5 apply only to articles that were entered during the year identified in block 1; and

(E) In block 7, the signature must be that of an authorized officer, employee, agent or other person having knowledge of the relevant facts and the date must be the date on which the declaration of compliance was completed and signed.

(4) *Filing of declaration of compliance.* The declaration of compliance referred to in paragraph (c)(1) of this section:

(i) Must be completed either in the English language or in the language of the country in which the articles covered by the declaration were produced. If the declaration is completed in a language other than English, the producer or the entity controlling production must provide to CBP upon request a written English translation of the declaration; and

(ii) Must be filed with the New York Strategic Trade Center, Customs and Border Protection, 1 Penn Plaza, New York, New York 10119.

(d) *Verification of declaration of compliance*—(1) *Verification procedure.* A declaration of compliance filed under this section will be subject to whatever verification CBP deems necessary. In the event that CBP for any reason is prevented from verifying the statements made on a declaration of compliance, CBP may deny any claim for preferential treatment made under § 10.225 that is based on that declaration. A verification of a declaration of compliance may involve, but need not be limited to, a review of:

(i) All records required to be made, kept, and made available to CBP by the importer, the producer, the entity controlling production, or any other person under part 163 of this chapter;

(ii) Documentation and other information regarding all articles that meet the production standards specified in § 10.223(a)(6) that were exported to the United States and that were entered during the year in question, whether or not a claim for preferential treatment was made under § 10.225. Those records and other information include, but are not limited to, work orders and other production records, purchase orders, invoices, bills of lading and other shipping documents;

(iii) Evidence to document the cost of fabrics formed in the United States that were used in the production of the articles in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents, work orders and other production records, and inventory control records;

(iv) Evidence to document the cost or value of all fabric other than fabrics formed in the United States that were used in the production of the articles in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents, work orders and other production records, and inventory control records; and

(v) Accounting books and documents to verify the records and information referred to in paragraphs (d)(1)(ii) through (d)(1)(iv) of this section. The verification of purchase orders, invoices and bills of lading will be accomplished through the review of a distinct audit trail. The audit trail documents must consist of a cash disbursement or purchase journal or equivalent records to establish the purchase of the fabric. The headings in each of these journals or other records must contain the date, vendor name, and amount paid for the fabric. The verification of production records and work orders will be accomplished through analysis of the inventory records of the producer or entity controlling production. The inventory records must reflect the production of the finished article which must be referenced to the original purchase order or lot number covering the fabric used in production. In the inventory production records, the inventory should show the opening balance of the inventory plus the purchases made during the accounting

period and the inventory closing balance.

(2) *Notice of determination*. If, based on a verification of a declaration of compliance filed under this section, CBP determines that the applicable 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section was not met, CBP will publish a notice of that determination in the **Federal Register**.

PART 163—RECORDKEEPING

■ 5. The authority citation for Part 163 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

■ 6. In the Appendix to Part 163 the listing under section IV of ''§ 10.228 CBTPA Declaration of Compliance for brassieres'' is republished.

* * * * *

Approved: November 23, 2004.

Robert C. Bonner,

Commissioner of Customs and Border Protection.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 04–26359 Filed 11–29–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 522

New Animal Drugs; Meloxicam

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADAs) filed by Boehringer Ingelheim Vetmedica, Inc. The first supplemental NADA provides for use of meloxicam injectable solution in cats for control of postoperative pain and inflammation associated with orthopedic surgery, ovariohysterectomy, and castration when administered prior to surgery. It also provides revised dosage labeling for this product in dogs. The other supplemental NADA provides revised dosage labeling for use of meloxicam oral suspension in dogs.

DATES: This rule is effective November 30, 2004.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540, e-mail: *melanie.berson@fda.gov*.

SUPPLEMENTARY INFORMATION: Boehringer Ingelheim Vetmedica, Inc., 2621 North Belt Hwy., St. Joseph, MO 64506–2002, filed a supplement to NADA 141–219 that provides for use of METACAM (meloxicam) Solution for Injection in cats for control of postoperative pain and inflammation associated with orthopedic surgery, ovariohysterectomy, and castration when administered prior to surgery, and also revises dosage information for use of this product in dogs. Boehringer Ingelheim Vetmedica, Inc., also filed a supplement to NADA 141–213 that provides revised dosage information for use of METACAM (meloxicam) Oral Suspension in dogs. The supplemental NADAs are approved as of October 28, 2004, and the regulations are amended in 21 CFR 520.1350 and 522.1367 to reflect the approval. The basis of approval is discussed in the freedom of information summaries.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), summaries of safety and effectiveness data and information submitted to support approval of these applications may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(c)(2)(F)(iii)), the supplemental approval of meloxicam injectable solution for use in cats qualifies for 3 years of marketing exclusivity beginning October 28, 2004.

The agency has determined under 21 CFR 25.33(d)(5) that these actions are of a type that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Parts 520 and 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520 and 522 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 520.1350 is amended by revising paragraph (c)(1) to read as follows:

§ 520.1350 Meloxicam.

* * * * *

(c) * * *

(1) *Amount*. Administer orally as a single dose at 0.09 mg per pound (mg/lb) body weight (0.2 mg per kilogram (mg/kg)) on the first day of treatment. For all treatment after day 1, administer 0.045 mg/lb (0.1 mg/kg) body weight once daily.

* * * * *

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 4. Section 522.1367 is amended by revising paragraph (c) to read as follows:

§ 522.1367 Meloxicam.

* * * * *

(c) *Conditions of use*—(1) *Dogs*—(i) *Amount*. Administer 0.09 mg per pound (mg/lb) body weight (0.2 mg per kilogram (mg/kg)) by intravenous or subcutaneous injection on the first day of treatment. For treatment after day 1, administer meloxicam suspension orally at 0.045 mg/lb (0.1 mg/kg) body weight once daily as in § 520.1350(c) of this chapter.

(ii) *Indications for use*. For the control of pain and inflammation associated with osteoarthritis.

(iii) *Limitations*. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Cats*—(i) *Amount*. Administer 0.14 mg/lb (0.3 mg/kg) body weight as a single, one-time subcutaneous injection.

(ii) *Indications for use*. For the control of postoperative pain and inflammation associated with orthopedic surgery, ovariohysterectomy, and castration when administered prior to surgery.

(iii) *Limitations*. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: November 18, 2004.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 04–26380 Filed 11–29–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[TTB T.D.–18; Re: Notice No. 14]

RIN: 1513–AA50

Establishment of the Dundee Hills Viticultural Area (2002R–218P)

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

ACTION: Final rule; Treasury decision.

SUMMARY: This Treasury decision establishes the Dundee Hills viticultural area in Yamhill County, Oregon. This new area is entirely within the existing Willamette Valley viticultural area. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

EFFECTIVE DATES: January 31, 2005.

FOR FURTHER INFORMATION CONTACT: N. A. Sutton, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville St., #158, Petaluma, CA 94952; telephone 415–271–1254.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (the FAA Act, 27 U.S.C. 201 *et seq.*) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity and prohibits the use of misleading information on such labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out its provisions. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers these regulations.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographical features, such as climate, soils, elevation, and physical features, that distinguish the proposed viticultural area from surrounding areas;
- A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and
- A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

Dundee Hills Petition

General Background

In 2002, TTB received a petition from Alex Sokol Blosser, secretary of the North Willamette Valley AVA Group, proposing the establishment of the 6,490-acre ''Red Hills'' viticultural area in Yamhill County, Oregon. As explained below, the petitioner subsequently amended the area's name to ''Dundee Hills.'' Located in northwest Oregon near the town of Newberg, the Dundee Hills viticultural area is about 28 miles southwest of Portland and 40 miles inland from the Pacific Ocean. The Dundee Hills area is entirely within the established Willamette Valley viticultural area (27 CFR 9.90). At the time of the petition, the Dundee area had 1,264 acres planted to grapes, with another 800 acres available for future vineyard use.

The Dundee Hills rise above the low, flat floors of the surrounding Willamette and Chehalem Valleys. These hills generally have peaks above 700 feet, with the highest peak rising to 1,067 feet. In addition to their higher elevation, warmer nighttime temperatures and less low-elevation fog and frost distinguish the Dundee Hills area from the surrounding valleys.

Below, we summarize the evidence presented in the petition.

Name Evidence

The North Willamette Valley AVA Group originally proposed the name ''Red Hills,'' for this area, but after learning of other petitioners proposing the same (or a similar) name for other viticultural areas, the Group amended its petitioned name to ''Red Hills of Dundee.'' The Group later amended its petitioned name to ''Dundee Hills'' to avoid possible confusion with other domestic and international ''Red Hill'' or ''Red Hills'' viticultural regions.

The amended petition included evidence showing that local residents, vintners, and others know the region as the ''Dundee Hills.'' The October 2002 Yamhill County, Oregon, Verizon Super Pages telephone book includes ''Dundee Hills Estate,'' while the ''Shop Newberg'' Web site lists ''Dundee Hills Farm.'' Ellen McCornack's March 1912, Oregon Historical Society Quarterly article, ''A Glimpse into Prehistoric Oregon,'' explains the Willamette Valley was a large, prehistoric body of water, and that ''[a]cross a narrow straight from Chehalem was the island of the Dundee Hills * * *.''

''In with the New World,'' an article in the fall/winter 1998 issue of Wine Press Northwest, lists several pioneer Oregon wine growers, including David Lett, who arrived in 1965 with:

> a degree in viticulture from the University of California-Davis and a plan to find a cool climate suitable for planting pinot noir and other varieties from Burgundy. Lett decided on the Dundee Hills in the Willamette Valley * * *. Another early pioneer is Dick Erath of Erath Vineyards, also still producing great wine in the Dundee Hills near Newberg.

Fred Delkin, in a 2002 Oregon Magazine article, ''Papa Pinot Still Preaching Gospel That Created an Industry,'' also notes that, in 1966, Lett planted ''Pinot Noir and its cousin, Pinot Gris, in the Dundee hills area.'' A

November 14, 2002, Seattle Times article, ''Wine Is the Main Course this Thanksgiving Celebration,'' adds, ''Erath Vineyards, high in the Dundee hills, is one of the Willamette Valley's pioneer wineries.''

The 1989 Parker's Wine Buyer's Guide explains, ''Pinot Noir from the Dundee Hills, a subregion of the Willamette Valley, has a more herbaceous, bing-cherry fruitiness'' (page 814). In Marne Coggan's Vineyards and Winery Management article, ''Vineyard Land Values Part 2: What's Happening Beyond the North Coast'' (Vol. 27, No. 4, 2001), states:

> The premier Oregon wine growing area is called the Dundee Hills * * *. Vacant land values in the Dundee Hills have climbed from $8,000–$10,000 to $10,000–$15,000 per acre. But those prices drop dramatically as you head south toward Salem and the Polk County area, where values are probably half of the Dundee Hills levels.

The October 2001 Oregon Wine Magazine article (page 20) describes a French-owned gravity-fed winery, Domaine Drouhin, which ''clings to the heights of the Dundee Hills.''

Boundary Evidence

The Dundee Hills viticultural area's boundaries are based on a number of distinguishing features, including elevation, terrain, climate, and soils, as well as the modern viticultural history of the area.

The Dundee Hills viticultural area consists of a single, continuous uplifted landmass that rises above the surrounding valley floors. The lower and flatter land along the Willamette River and its tributary, the Yamhill River, defines the Dundee Hills viticultural area to the east and south. Millican Creek, a southward flowing tributary of the Yamhill River, and a smaller drainage flowing north into Chehalem Creek, which empties into the Willamette River, border the hills to the west. The Chehalem Valley defines the northern limits of Dundee Hills.

The viticultural area's boundary is an irregular circle encompassing the Dundee Hills. The 200-foot contour line constitutes most of the boundary, which divides the base of the hills' slopes from the surrounding valley floors. On much of the area's western side, a roadway that varies between 200 and 300 feet in elevation is used in lieu of the 200-foot elevation line, which meanders far from the logical perimeter of the Dundee Hills viticultural area.

Portions of the towns of Dundee and Lafayette, where the Dundee Hills area's 200-foot elevation boundary crosses the towns' boundaries, are included within the viticultural area. Oregon State Route 99W, a heavy-duty road to the east and south of Dundee Hills, and State Route 240, a medium-duty road to the north, are generally outside the established boundary line, but occasionally cross into the viticultural area. The town of Dundee straddles the area's eastern border, the Yamhill River runs near its southern boundary, Millican Creek and the Trappist Abbey of Our Lady of Guadalupe anchor its west side, and the Chehalem Valley lies beyond its northern boundary.

Viticultural Growth

Wine grapes planted in 1969 at Erath Vineyards produced 216 cases of Pinot noir in 1972, and, in 1971, five acres of Pinot noir grapes were planted at the Sokol Blosser vineyard. Statistics from the petition show the viticultural growth of the proposed Dundee Hills area:

VITICULTURAL GROWTH IN DUNDEE HILLS AREA

	Decade ending 1980	Decade ending 1990	Decade ending 2000	As of 2002
Acreage	299	577	1,161	1,264
Vineyards	13	22	38	44

Distinguishing Features

Elevation, terrain, climate, and soil factors distinguish the Dundee Hills viticultural area from the grape-growing regions found on the surrounding valley floors. As noted earlier, the 200-foot contour line is used for most of the boundary between the Dundee Hills viticultural area and the surrounding, lower and flatter valley floors.

Elevation and Terrain

The Dundee Hills viticultural area elevation rises from the 200-foot contour line to the highest hill's peak of 1,067 feet. These heights contrast with the lower elevation Chehalem and Willamette Valleys, which flank the north, east, and south sides of the viticultural area. The area's western boundary, along Abbey and Kuehne Roads, is marked by a natural depression with drainage south to the Yamhill River via Millican Creek, while a smaller unnamed drainage flows north into the Chehalem Valley.

The Dundee Hills viticultural area's topography consists of a north-south spine with ridges and small valleys on the east, south and west sides of the landmass. This hilly area is above the Willamette and Chehalem Valleys' flood plains. Numerous small streams originate in the Dundee area's higher elevations and the area is dotted with small reservoirs. Light-duty and unimproved roads service the Dundee Hills area.

The 5th edition of the ''Geology of Oregon'' by Elizabeth and William Orr explains that the geological history of the Dundee Hills area dates back 66 million years with the uplifting of the North American tectonic plate, which formed the Coast Range mountains and the inland ridges and valleys. Lava flows, dating back 15 million years, pushed into the area from northeast Oregon, depositing Columbia River basalts and restructuring the landscape with hills and broken ridges.

To the west, the huge uplifted mass of the Coast Range parallels the Pacific Ocean coastline. Between the Coast Range on the west, and the Dundee Hills to the east, is the inland Yamhill-Carlton region, which is also a proposed viticultural area. The Yamhill-Carlton area has small uplifted slopes that drain entirely into the Yamhill River system, while only the west side of the Dundee Hills area drains into this watershed.

To the north, the Chehalem Mountains, with an east to west orientation, have a large footprint and cover more surface area than Dundee Hills. These taller mountains provide the Dundee Hills viticultural area with some protection from the climatic extremes found further to the north.

To the east and immediate south of the Dundee Hills viticultural area, the lower-elevation Willamette Valley floor has different soils and growing conditions, and is subject to standing water in the winter and spring. The Eola Hills, 20 miles south of the Dundee area, have a north-south orientation, a large footprint, and a strongly marine-influenced climate.

Climate

The Dundee Hills viticultural area, with warmer nights and less frost than the adjacent valley floors, is protected from great climatic variations by surrounding geographic features. To the north, the tall Chehalem Mountains buffer the climatic influence of the Columbia River Gorge, which funnels cold air in the winter and warm air in the summer into the Willamette Valley from the interior of northern Oregon. In addition, the Willamette Valley, located to the east and south of the Dundee Hills area, has spring and fall fog and frost, which is created as cool night air drains from the hillsides onto the valley floor.

The Coast Range, to the west of the Dundee Hills area, lessens the harsh effects of the Pacific Ocean's heavy rains and windstorms, and causes a rain shadow effect in the Dundee Hills area. Annually, the Coast Range receives 90 to 135 inches of rain, while the Dundee Hills area gets about a third that much—30 to 45 inches of rain annually.

The proposed Yamhill-Carlton viticultural area, located between the Coast Range and the Dundee Hills area, has a stronger marine-influenced climate, with more wind and rainfall, than the Dundee Hills viticultural area. The Yamhill-Carlton region averages 60 inches of annual precipitation and has 150 fewer degree-growing days than the Dundee area.

The Eola Hills, 20 miles to the south of the Dundee Hills, receive a strong cooling marine influence that pushes inland from the Pacific Ocean through the Van Duzer Corridor, an opening in the Coast Range. This marine effect loses most of its cooling benefit before reaching the Dundee Hills viticultural area.

Soils

The ''Soil Survey of the Yamhill Area, Oregon,'' issued by the U.S. Department of Agriculture's Soil Conservation Service in January 1974, documents that the reddish color in the Dundee Hills area's soil is derived from the Columbia River basalt lavas, including the Jory soil series, which cover approximately 80 percent of the area. These lava-based soils decompose quickly with the high rain amounts found in northwestern Oregon, which helps produce the area's Jory series of reddish silt, clay, and loam soils. This soil series, found predominantly on the Dundee Hills' eastern side, is moderately fertile and well drained, with slight to moderate erosion levels.

The sedimentary Willakenzie soil series covers the steeper slopes of the Dundee Hills area's western side. This soil series is categorized as well drained with moderate to high erosion levels. A smaller amount of the Jory soil series exists on the area's western side where the Columbia River lava flows cover the sedimentary formations.

Outside the Dundee Hills viticultural area's boundary, the soils of the Coast Range, the Yamhill-Carlton area, the Chehalem Mountains, the Willamette Valley floor, and the Eola Hills contrast with the soils found within the Dundee Hills area. The Coast Range to the west has marine volcanic and sedimentary soils, with high water holding capacity silts and basalt layers sandwiched between marine sediments.

The Yamhill-Carlton region, to the Dundee area's west and northwest, has soils derived from marine sediments and ocean floor volcanic basalt with high water holding capacity. The Chehalem Mountains, to the north and northeast, have the Columbia River basalt, ocean sedimentation, and wind-blown loess derivation soil types. The Willamette Valley floor, to the east and south, has deep, alluvial soils with high water holding capacity. In the Eola Hills region to the south, low water holding capacity, slow permeability, and moderate erosion levels characterize the predominant Gelderman and Ritner basalt soil series found there.

Boundary Description

See the narrative boundary description of the viticultural area in the regulatory text published at the end of this notice.

Maps

The petitioner(s) provided the required maps, and we list them below in the regulatory text.

Notice of Proposed Rulemaking and TTB Finding

TTB published a notice of proposed rulemaking regarding the establishment of the Dundee Hills viticultural area in the August 15, 2003, **Federal Register** as Notice No. 14 (68 FR 48839). In that notice, TTB requested comments by October 14, 2003, from all interested persons. TTB received 13 comments in response. All comments supported the Dundee Hills area's establishment, and most noted its distinctive geography, climate, and soils.

After careful review, TTB finds that the evidence submitted with the petition supports the establishment of the proposed viticultural area. Therefore, under the authority of the Federal Alcohol Administration Act and part 4 of our regulations, we establish the ''Dundee Hills'' viticultural area in Yamhill County, Oregon, effective 60-days from this document's publication date.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. With the establishment of this viticultural area and its inclusion in part 9 of the TTB regulations, its name, ''Dundee Hills,'' is recognized as a name of viticultural significance. Consequently, wine bottlers using ''Dundee Hills'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, must ensure that the product is eligible to use the viticultural area's name as an appellation of origin.

For a wine to be eligible to use as an appellation of origin the name of a viticultural area specified in part 9 of the TTB regulations, at least 85 percent of the grapes used to make the wine must have been grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible to use the viticultural area name as an appellation of origin and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label.

Different rules apply if a wine has a brand name containing a viticultural area name that was used as a brand name on a label approved before July 7, 1986. *See* 27 CFR 4.39(i)(2) for details.

Regulatory Analyses and Notices

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name is the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This rule is not a significant regulatory action as defined by Executive Order 12866 (58 FR 51735). Therefore, it requires no regulatory assessment.

Drafting Information

N.A. Sutton of the Regulations and Procedures Division drafted this document.

List of Subjects in 27 CFR Part 9

Wine.

The Final Rule

■ For the reasons discussed in the preamble, we amend 27 CFR, chapter I, part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

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

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Amend subpart C by adding § 9.180 to read as follows:

§ 9.180 Dundee Hills.

(a) *Name.* The name of the viticultural area described in this section is ''Dundee Hills''.

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Dundee Hills viticultural area are three United States Geological Survey (USGS) 1:24,000 scale maps. They are titled:

(1) Dundee Quadrangle, Oregon, 1956, revised 1993;

(2) Newberg Quadrangle, Oregon, 1961, photorevised 1985; and

(3) Dayton Quadrangle, Oregon, 1957, revised 1992.

(c) *Boundary.* The Dundee Hills viticultural area is located in Yamhill County, Oregon, near the town of Newberg, and is entirely within the Willamette Valley viticultural area. The boundary of the Dundee Hills viticultural area is as described below:

(1) The beginning point is on the Dundee map at the intersection of the 200-foot contour line with Kuehne Road at the common boundary line of sections 47 and 48, T3S, R3W;

(2) From the beginning point, proceed east then south along the meandering 200-foot contour line, crossing over to and back off the Newberg map, and then cutting diagonally southwest through the town of Dundee to the 200-foot contour line's intersection with Hess Creek, section 34, T3S, R3W (Dundee Quadrangle); then

(3) Proceed south, then west, and then northeast, along the meandering 200-foot contour line, twice crossing over to and back off the Dayton map, to the contour line's intersection with Abbey Road after the line passes a quarry and crosses the two forks of Millican Creek in section 52, T3S, R3W (Dundee Quadrangle); then

(4) Proceed generally north on Abbey Road to Kuehne Road and then follow Kuehne Road northeasterly to the beginning point.

Signed: October 21, 2004.

Arthur J. Libertucci,

Administrator.

Approved: November 9, 2004.

Timothy E. Skud,

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

[FR Doc. 04–26330 Filed 11–29–04; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[CGD01–03–107]

1625–AA01

Anchorage Regulations: Yonkers, NY

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the anchorage regulations for the Hudson River, New York by establishing two Special Anchorage areas adjacent to the City of Yonkers. This action is necessary to facilitate safe navigation in that area and provide safe and secure anchorages for vessels not more than 20 meters in length. This action is intended to increase the safety of life and property on the Hudson River, improve the safety of anchored vessels in both anchorages, and provide for the overall safe and efficient flow of recreational vessel traffic and commerce.

DATES: This rule is effective December 30, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–03–107), and are available for inspection or copying at Room 628, First Coast Guard District Boston, 408 Atlantic Avenue, Boston, MA 02110, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Mauro, Commander (oan), First Coast Guard District, 408 Atlantic Avenue, Boston, MA 02110; telephone (617) 223–8355; e-mail *jmauro@d1.uscg.mil.*

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 30, 2004, we published a notice of proposed rulemaking (NPRM) entitled ''Anchorage Regulations: Yonkers, New York'' in the **Federal Register** (69 FR 39380). We received two comments on the proposed rule. No public hearing was requested and none was held.

Background and Purpose

A request was made by the City of Yonkers, New York to establish two special anchorage areas as part of a waterfront revitalization and redevelopment effort. The City of Yonkers is proactively encouraging waterfront use by the general public. This rule is in response to that request to help ensure the safe navigation of increased vessel traffic expected to arrive along the city waterfront due to this revitalization effort.

The Coast Guard is designating the areas as special anchorage areas in accordance with 33 U.S.C. 471. In accordance with that statute, vessels will not be required to sound signals or exhibit anchor lights or shapes which are otherwise required by rule 30 and 35 of the Inland Navigation Rules, codified at 33 U.S.C. 2030 and 2035. The two special anchorage areas will be located on the East side of the Hudson River in the vicinity of Main Street and the JFK Marina, well removed from the channel and located where general navigation will not endanger or be endangered by unlighted vessels. Providing anchorage well removed from the channel and general navigation will greatly increase navigational safety.

While developing this rule, in accordance with 33 CFR 109.05(b), the Coast Guard consulted with the U.S. Army Corps of Engineers, New York District, located at 26 Federal Plaza, New York, NY 10278. The U.S. Army Corps of Engineers has determined that the proposed Special Anchorage Areas would not have an adverse affect on any federally maintained navigation channels in the area, structures the U.S. Army Corps of Engineers has permitted, or any pending permit applications submitted to the U.S. Army Corps of Engineers in this area.

Discussion of Comments and Changes

We received a letter from the City of Yonkers requesting that the Main Street Special Anchorage be modified to accommodate the high speed ferry service to the City's Main Street Pier. This final rule incorporates the City's modifications to the Special Anchorage. As requested by the City of Yonkers, the southern boundary of the Main Street

anchorage area is moved 350 yards north thereby reducing the size of the Main Street anchorage from .04 square nautical miles to .02 square nautical miles.

We also received a letter from the Hudson River Pilots Association advising that the northern edge of the Main Street Anchorage, being approximately 550 feet south of their dock, does not provide an adequate transit route for their pilot boat, especially during certain tide and current conditions. The Pilots requested a minimum 1000-foot buffer to ensure safe passage for all mariners involved. The Coast Guard has considered the Pilots' request and concluded that the 550-foot buffer does provide adequate room for all mariners to navigate within and around the Special Anchorage Area. Therefore no change from the proposed anchorage is made to the final rule.

A slight revision was made to the position of the anchorage area at JFK Marina. During the NPRM process, the Coast Guard requested that NOAA review the coordinate conversion process we used to convert the coordinates from the City's municipal maps to the navigational charts. NOAA advised us that we had made an error in the conversion process. Based upon this information, the Coast Guard advised the public of the new coordinates through Local Notice to Mariners 35/04. No change was made to the size or the shape of the anchorage, only the coordinates were changed. Therefore a change from the proposed anchorage is made to the final rule.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of Department of Homeland Security is unnecessary. This finding is based on the fact that this rule conforms to the changing needs of the City of Yonkers and the changing needs of recreational vessels along the Hudson River. This rule is in the interest of safe navigation and property protection.

Small Entities

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

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. John J. Mauro at the address listed in **ADDRESSES** above.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism. The two comments received by the Coast Guard which resulted in a change to this Final Rule do not affect our analysis under Federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an

explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule did not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 34(f), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environment documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.** This rule fits paragraph 34(f) of Commandant Instruction M16475.1D as it establishes two special anchorage areas.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Regulations

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471; 1221 through 1236, 2030, 2035 and 2071; 33 CFR 1.05–1(g); and Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 110.60 add new paragraphs (o–4) and (o–5) to read as follows:

§ 110.60 Port of New York and vicinity

* * * * *

(o) * * *

(o–4) *Hudson River, at Main Street, Yonkers.* That portion of the Hudson River starting on shore at point 40°56′15.4″ N, 073°54′11.2″ W; thence northwest to point 40°56′16.7″ N, 073°54′20.2″ W; thence south to point 40°56′08.9″ N, 073°54′22.6″ W; thence southeast to point 40°56′07.9″ N, 073°54′16.9″ W; thence south to the Recreational Pier of the City of Yonkers at point 40°56′07.0″ N, 073°54′17.3″ W.

Note: This area is limited to vessels no greater than 20 meters in length and is primarily for use by recreational craft on a seasonal or transient basis. These regulations do not prohibit the placement of moorings within the anchorage area, but requests for the placement of moorings should be directed to the local government to ensure compliance with local and state laws. All moorings shall be so placed that no vessel, when anchored, will at any time extend beyond the limits of the area. Fixed mooring piles or stakes are prohibited. Mariners are encouraged to contact the local harbormaster for any additional ordinances and to ensure compliance with additional applicable state and local laws.

(o–5) *Hudson River, at JFK Marina, Yonkers.* That portion of the Hudson River starting on shore at point 40°57′28.0″ N, 073°53′46.1″ W; thence west to point 40°57′30.5″ N, 073°53′56.7″ W; thence southwest to point 40°57′07.5″ N, 073°54′06.2″ W; thence east to shore at point 40°57′06.0″ N, 073°53′59.5″ W.

Note: This area is limited to vessels no greater than 20 meters in length and is primarily for use by recreational craft on a seasonal or transient basis. These regulations do not prohibit the placement of moorings within the anchorage area, but requests for the placement of moorings should be directed to the local government to ensure compliance with local and state laws. All moorings shall be so placed that no vessel, when anchored, will at any time extend beyond the limits of the area. Fixed mooring piles or stakes are prohibited. Mariners are encouraged to contact the local harbormaster for any additional ordinances and to ensure compliance with additional applicable state and local laws.

* * * * *

Dated: November 9, 2004.

John L. Grenier,

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

[FR Doc. 04–26337 Filed 11–29–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–04–010]

RIN 1625–AA09

Drawbridge Operation Regulation; Bayou Portage, Pass Christian, MS

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the requirements for the operation of the draw of the Henderson Avenue bascule bridge across Portage Bayou, mile 2.0 at Pass Christian, MS. The old low-level bascule span has been removed and the new mid-level bascule span bridge has been constructed on the same alignment and completed. This final rule establishes a two-hour notice requirement for an opening of the draw for the bridge.

DATES: This rule is effective December 30, 2004.

ADDRESSES: Documents referred to in this rule are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, 500 Poydras Street, New Orleans, Louisiana 70130–3310, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. The Eighth District Bridge Administration Branch maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, at (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Regulatory History

On April 1, 2004 we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Bayou Portage, Pass Christian, MS in the **Federal Register** [69 FR 17122]. Concurrent with publishing the NPRM, the Coast Guard published a temporary rule in the same **Federal Register** [69 FR 17055] that established a two-hour notice requirement for an opening of the draw to navigation. The temporary rule was in effect from April 10, 2004 through October 10, 2004. The purpose of the temporary rule was to provide interim operating requirements for the Henderson Avenue bascule span bridge while the Coast Guard conducted the rulemaking to implement permanent regulations for the operation of the bridge. We received one letter commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The old Henderson Avenue low-level bascule span bridge across Bayou Portage at Pass Christian, MS has been demolished and removed and the new, mid-level bascule span bridge has been constructed on the exact same alignment. It was opened to vehicular traffic and placed in service on April 10, 2004. A special operating regulation previously existed for the old bridge,

which stated that the draw of the bridge would open on signal if at least two hours notice was given. When the old bridge was removed, the special operating regulation was removed. The new bridge would normally have been required to open on signal as per 33 CFR 117.5. However, since the new bridge provides significantly greater vertical clearance in the closed-to-navigation position than the old bridge, it was anticipated that even fewer navigation openings would be required than was required for the old bridge and that it is not necessary to have the bridge manned 24 hours per day, seven days per week. Therefore, the Harrison County Board of Supervisors requested that the same two-hour notice for an opening to navigation be required for the new bridge as was for the old bridge.

During the period the temporary rule has been in effect, an average of 11 vessels per month required openings for passage through the bridge. Bridge openings for the months of June, July and August, 2004 are considered valid and were used in this average. The month of September was discounted due to the passing of several tropical storms and Hurricane Ivan, which created a highly unusual demand for the bridge to open for vessels seeking safe harbor in emergency situations. The average for bridge openings of the old bridge, during the two years prior to its removal was approximately 64 openings per month. After evaluating this data, the Coast Guard has determined that it is unnecessary for a bridge tender to man the bridge 24 hours per day and that a permanent special drawbridge operating regulation is warranted.

This final rule provides that the draw of the Henderson Avenue bascule span bridge across Bayou Portage, mile 2.0 at Pass Christian, MS will open on signal if at least two hours notice is given to the Harrison County Board of Supervisors.

Discussion of Comments and Changes

One comment was received in response to the NPRM. The U.S. Fish and Wildlife Service sent a letter dated May 19, 2004 stating that they have no objection to the proposed special operating regulation. No changes were made to the proposed regulation.

Regulatory Evaluation

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

A special operating regulation existed for the old, low-level span bridge, which required a two-hour notice for an opening of the draw. During the many years that the old bridge operated under that regulation, the Coast Guard has not received any complaints regarding the drawbridge operating schedule. The new bridge has been constructed on exactly the same alignment as the old bridge. Since the navigational clearances of the new bridge exceed those of the old bridge the number of requests for openings were predicted to be fewer. Data collected during the approximate 3-month test period indicate that this prediction was accurate. We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will have no impact on any small entities because the regulation will apply to a new bridge, which replaced a bridge on which the same regulation previously existed.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism. No comments were received as a result of the NPRM, relative to federalism and no changes to the proposed regulation were made.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in the preamble. No comments were received as a result of the NPRM, relative to unfunded mandates and no changes to the proposed regulation were made.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. No comments were received as a result of the NPRM, relative to the taking of private property and no changes to the proposed regulation were made.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. No comments were received as a result of the NPRM, relative to civil justice reform and no changes to the proposed regulation were made.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not cause an environmental risk to health or risk to safety that might disproportionately affect children. No comments were received as a result of the NPRM, relative to protection of children and no changes to the proposed regulation were made.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. No comments were received as a result of the NPRM, relative to Indian tribal governments and no changes to the proposed regulation were made.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211. No comments were received as a result of the NPRM, relative to energy effects and no changes to the proposed regulation were made.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Paragraph (32)(e) excludes the promulgation of operating regulations or procedures for drawbridges from the environmental documentation requirements of NEPA. Since this proposed rule will alter the normal operating conditions of the drawbridges, it falls within this exclusion. A ''Categorical Exclusion Determination'' is available in the docket indicated under **ADDRESSES.** No comments were received as a result of the NPRM, relative to any environmental issues and no changes to the proposed regulation were made.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. Section 117.684 is added to read as follows:

§ 117.684 Bayou Portage.

The draw of the Henderson Avenue Bridge, mile 2.0, at Pass Christian, MS shall open on signal if at least two hours notice is given to the Harrison County Board of Supervisors.

Dated: November 10, 2004.

J.W. Stark

Acting Captain, U.S. Coast Guard, Commander, 8th Coast Guard Dist.

[FR Doc. 04–26338 Filed 11–29–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R05–OAR–2004–IN–0005; FRL–7838–3]

Approval and Promulgation of State Implementation Plans; Indiana; Rules To Control Particulate Matter and Carbon Monoxide From Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On October 30, 2002, and January 10, 2003, Indiana submitted a plan to EPA which contained revised and updated rules to control emissions of particulate matter (PM) from incinerators and carbon monoxide (CO) from incinerators and other industrial categories. The rule changes accomplish several objectives. First, they re-adopt useful elements of regulations which were scheduled to expire because of ''sunset requirements'' under the Indiana Code. In addition, they incorporate by reference a number of applicable EPA rules affecting certain types of incineration units and clarify which limits pertain to other types of units. The revised requirements will apply to those incinerators in the State where Federal rules or guidelines do not apply. Finally, Indiana has eliminated references to language which is outdated and unclear. EPA is taking final action to approve this State plan revision.

DATES: This rule is effective January 31, 2005, unless EPA receives relevant adverse written comments by December 30, 2004. If EPA receives adverse comment, we will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit comments, identified by Regional Material in e-Docket (RME) ID No. R05–OAR–2004–IN–0005 by one of the following methods:

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

Agency Web site: *http://docket.epa.gov/rmepub/index.jspal* Regional Material in e-Docket (RME), EPA's electronic public docket and

comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search'' then key in the instructions for submitting comments.

E-mail: bortzer.jay@epa.gov.

Fax: (312) 886–5824.

Mail: You may send written comments to: J. Elmer Bortzer, Chief, Air Programs Branch, (AR–18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: J. Elmer Bortzer, Chief, Air Programs Branch (AR–18J), 18th floor, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to RME ID No. R05–OAR–2004–IN–0005. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME *regulations.gov*, or e-mail. The EPA RME Web site and the Federal *regulations.gov* Web site are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of the related proposed rule which is published in the Proposed Rules section of this **Federal Register**.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.epa.gov/rmepub/index.jsp*. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in RME or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone John Paskevicz, Engineer at (312) 886–6084 before visiting the Region 5 office.) This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6084. *paskevicz.john@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, the terms ''you'' refer to the reader of this rule and/or to sources subject to the State rule, and the terms ''we'', ''us'', and ''our'' refer to EPA.

Table of Contents

I. General Information.
A. Does this action apply to me?
B. How can I get copies of this document and other related Information?
C. How and to whom do I submit comments?
II. What is EPA Approving in This Action?
III. Summary of the State Submittal
What information did Indiana submit to support the revision?
Why did Indiana change these rules?
What changes did Indiana make?
What other changes did the Indiana plan revision include?
What public review opportunities did Indiana provide?
IV. EPA Review and Action
Why is the Indiana plan revision approveable?
What action is EPA taking?
V. How Can I Get Copies of This Document and Other Related Information?
VI. Statutory and Executive Order Reviews

I. General Information

A. Does This Action Apply to Me?

This action applies to particulate matter and carbon monoxide emission limitations for incinerators.

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

1. The Regional Office has established an electronic public rulemaking file available for inspection at Regional Material in EDocket (RME) under RME ID No. R05–OAR–2004–IN–0005, and a hard copy file which is available for inspection at the Regional Office. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include any material claimed by the submittal to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact John Paskevicz, listed in the **FOR FURTHER INFORMATION CONTACT** section, to schedule your inspection of the file. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

2. Electronic Access. You may access this **Federal Register** document electronically through the regulations.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

C. How and to Whom do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text ''Public comment on proposed rulemaking Region 5 Air

Docket ''R05–OAR–2004–IN–0005'' in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

For detailed instructions on submitting public comments and on what to consider as you prepare your comments see the **ADDRESSES** section and the section I General Information of the **SUPPLEMENTARY INFORMATION** section of the related proposed rule which is published in the Proposed Rules section of this **Federal Register**.

II. What Is EPA Approving in This Action?

We are approving revised rules submitted by the State of Indiana that control the emission of PM from incinerators, 326 Indiana Administrative Code (IAC) 4–2; and of CO emissions from incinerators and other industrial categories, 326 IAC 9–1. The State's rules are part of the Indiana plan which, when approved and implemented, will contribute to the continued attainment of the air quality standards for these two criteria pollutants.

Rule 326 IAC 4–2 restricts the amount of PM allowed to be emitted for all incinerators, except those in residential units of four or fewer families and those incinerators identified in the ''Incorporation by Reference'' (IBR) provisions. Rule 326 IAC 4–2–1 lists the applicable exceptions, including sources already subject to a number of Federal rules and federally-approved State rules which the State incorporates by reference.

Rule 326 IAC 4–2–2 identifies requirements with which all other incinerators must comply. These include a requirement that all incinerators be maintained, operated, and burn waste in accordance with the manufacturer's specifications or in accordance with an operation and maintenance plan, as specified in the rule. In addition, 326 IAC 4–2–2 establishes an emission rate for sources with a solid waste charging capacity of less than 200 pounds per hour, and retains the emission rate for sources larger than 200 pounds per hour charging capacity.

Rule 326 IAC 9–1 restricts the amount of CO allowed to be emitted from incinerators and several other industrial categories. Rule 326 IAC 9–1–1(a) contains the general applicability provisions, *i.e.*, all stationary sources of CO emissions commencing operation after March 21, 1972 and for which an emission limit has been established in section 2 of the rule. Rule 326 IAC 9–1–1(b) lists the applicable exceptions, including sources already subject to a certain Federal rules and federally-approved State rules which the State incorporates by reference.

Rule 326 IAC 9–1–2 specifies emission limits for sources of CO affected by this rule change. They include: Petroleum refineries, ferrous metal smelters and refuse incinerators and refuse burning equipment. All of these sources are required to control their CO emissions by incineration, in a CO boiler, a direct flame afterburner, a secondary chamber or a recuperative incinerator, as specified in the revised rule. The Indiana rule also provides alternatives to these control methods if the method proposed by a source is submitted as an amendment to the State implementation plan and approved by the EPA.

III. Summary of the State Submittal

What Information Did Indiana Submit To Support the Revision?

Indiana submitted material supporting this revision to the State implementation plan on two separate dates. The first was submitted by cover letter of October 30, 2002, and included notices of public hearings, publishers' affidavits, transcripts of public hearings, and a letter requesting the plan revision. The document dated January 10, 2003, included both final rules 326 IAC 4–2, and 326 IAC 9–1, as LSA Document #00–44(F)(2) published in the Indiana Register on January 1, 2003, 26 Indiana Rule 1070.

It should be noted that EPA originally approved PM rule 326 IAC 4–2 on June 22, 1978 (43 FR 26722), as APC 7. In addition, EPA originally approved CO rule 326 IAC 9–1 on August 24, 1976 (41 FR 35677), as APC 16. Both rules have been reissued on several occasions after being recodified, and are about to expire (sunset).[1] Indiana identified these rules for re-adoption because there are sources in the State which should still be regulated by these rules.

In addition, the Indiana amended rule incorporates by reference applicable federal New Source Performance Standards at 40 CFR part 60; applicable State plans for designated facilities and pollutants at 40 CFR part 62; and applicable National Emission Standards for Hazardous Air Pollutants at 40 CFR parts 61 and 63. A more detailed list of these provisions is provided below.

Indiana has also eliminated references to language which is outdated and unclear. For instance, 326 IAC 4–2 no longer refers to ''hazardous materials, pathogenic bacteria, dangerous chemicals or gases, and noxious odors.''

Why Did Indiana Change These Rules?

The rulemaking action is required by Indiana Code (IC) 13, which regulates the expiration and re-adoption of administrative rules. For example, a rule that was adopted under provision of IC 13 and was in force on December 31, 1995, expired on January 1, 2002. The two rules addressed in this action are being revised and re-adopted in order to retain coverage of sources which would otherwise not be covered by any rule if the amended rules were to expire.

What Changes Did Indiana Make?

Indiana requested approval of two amendments to the State rules 326 IAC 4–2 and 326 IAC 9–1. The amendments in 326 IAC 4–2 change the language in the rules to require that incinerators operate and burn waste in accordance with the manufacturer's specifications or with an operation and maintenance plan, as directed in the rule. PM limits remain the same as in the original rule, but are relocated within the rule to accommodate the new and added provisions. Indiana exempted from the rule incinerators that were subject to more stringent PM limits provided in listed Federal and federally-approved State rules. The revised rule outlines elements of an operation and maintenance plan and the responsibilities of the owner or operator with regard to communication with the Indiana Department of Environmental Management (IDEM) on matters of compliance with the rule. This rule revision does not change the provision which exempts residential units consisting of four or fewer families.

The changes in 326 IAC 9–1 eliminate specific references, in the boiler or direct flame afterburner, to flame temperature and retention time in controlling emissions of CO. The rule change directs a source not to operate an incineration unit unless the waste gas stream is burned in a boiler, direct-flame afterburner, recuperative incinerator, or secondary chamber. This rule applies to grey iron cupolas, blast furnaces, basic oxygen steel furnaces, or other ferrous metal smelting equipment

[1] The Indiana rulemaking was required pursuant to Indiana Code (IC) 13–14–9.5, which provides for the expiration and readoption of administrative rules. A rule that was adopted under provision of IC 13 and was in effect on December 31, 1995, expires not later than January 1, 2002. All rules adopted after that date under IC 13–14–9, with some exception, expire on January 1 of the seventh year after the year in which each rule takes effect. Rules that incorporate a Federal regulation by reference are not subject to the readoption process.

having a capacity of ten tons per hour or more process weight. The rule also applies to sources of CO in petroleum refining operations where catalyst regeneration and petroleum fluid coking units (known as cokers) must be controlled by a device noted above.

What Other Changes Did the Indiana Plan Revision Include?

Indiana incorporated by reference a number of Federal and federally-approved State rules into the State plan. Sources covered by the identified Federal rules are not subject to the revised State rules (326 IAC 4–2 and 326 IAC 9–1).

The regulations listed below have been incorporated by reference in 326 IAC 4–2–1(b)(2). Sources covered by these rules are exempted by the Indiana amended PM rule:

1. 40 CFR part 60, subpart Eb, Large Municipal Waste Combustors for which Construction Commenced after September 20, 1994.

2. 40 CFR part 60, subpart Ec, Hospital/Medical/ Infectious Waste Incinerators for which Construction Commenced after June 20, 1996.

3. 40 CFR part 60, subpart CCCC, Commercial and Industrial Solid Waste Incineration Units for Construction Commenced after November 30, 1999.

4. The State Plan approved under 40 CFR 62.3640 through 40 CFR 62.3642, Hospital/Medical/Infectious Waste Incinerators.

5. The State Plan approved under 40 CFR 62.3650 through 40 CFR 62.3652, Large Municipal Waste Combustors.

6. 40 CFR part 63, subpart EEE, Hazardous Waste Combustors.

The regulations listed below have been incorporated by reference in 326 IAC 9–1(b). Sources covered by these rules are exempted by the Indiana amended CO rule:

1. 40 CFR part 60, Standards of Performance for New Stationary Sources.

2. The State Plan approved under 40 CFR part 62, subpart P, Approval and Promulgation of State Plans for Specific Sources and Facilities in Indiana.

3. 40 CFR part 62, subpart FFF, Federal Plan Requirements for Large Municipal Waste Combustors Constructed on or before September 20, 1994.

4. 40 CFR part 62, subpart HHH, Federal Plan Requirements for Hospital/ Medical/Infectious Waste Incinerators Constructed on or before June 20, 1996.

5. 40 CFR part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories.

What Public Review Opportunities Did Indiana Provide?

Indiana published notices of these proposed rule revisions on March 1, 2000, and May 1, 2000, giving first notice to the public of the intent to re-adopt rules 326 IAC 4–2 and 326 IAC 9–1. Indiana announced a second notice of the comment period on October 1, 2000, and January 1, 2001. Indiana held public hearings on March 7, 2001, and August 7, 2002, following publication of notices in newspapers around the State. Indiana provided to EPA copies of the public record of these hearings as part of the submittal of the rule changes. EPA is satisfied that Indiana provided adequate opportunity for public review and comment on this rule revision.

IV. EPA Review and Action

Why Is the Indiana Plan Revision Approveable?

EPA has reviewed the rule changes and found them to be approveable because they continue to provide for attainment and maintenance of the CO and PM air quality standards. This is consistent with section 110 of the Clean Air Act (CAA), which requires State plans to contain control measures to meet requirements of the CAA.

What Action Is EPA Taking?

In this direct final rule, EPA is approving the amended rules 326 IAC 4–2, concerning PM, and 326 IAC 9–1, concerning CO, as submitted by Indiana on January 10, 2003. EPA is publishing this action without prior proposal because we view this as a noncontroversial revision to the State plan and we anticipate no adverse comment. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the State's revised plan in the event that adverse comments are filed. The action will be effective without further notice unless EPA receives relevant adverse written comment by December 30, 2004. Should EPA receive such comments, we will publish a final rule informing the public that this action will not take effect. Any citizens and/or the affected community interested in commenting on this action are asked to submit comments to the individual listed at the front of this action. If no comments are received, the public is advised that this action will be effective on January 31, 2005.

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

1. The Regional Office has established an electronic public rulemaking file available for inspection on RME and a hard copy file which is available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under RME ID No. R05–OAR–2004–IN–0005. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact John Paskevicz in the **FOR FURTHER INFORMATION CONTACT** section, to schedule your inspection of this file. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the regulations.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text ''Public comment on proposed rulemaking Region 5 in RME

''R05–OAR–2004–IN–0005'' in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

For detailed instructions on submitting public comments and on what to consider as you prepare your comments see the **ADDRESSES** section and the section I General Information of the **SUPPLEMENTARY INFORMATION** section of the related proposed rule which is published in the Proposed Rules section of this **Federal Register**.

VI. Statutory and Executive Order Reviews

Executive Order 12866; Regulatory Planning and Review

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.

Executive Order 13211 Actions That Significantly Affect Energy Supply, Distribution, or Use

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).

Regulatory Flexibility Act

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.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

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).

Executive Order 13132 Federalism

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.

Executive Order 13045 Protection of Children From Environmental Health and Safety Risks

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.

National Technology Transfer Advancement Act

In reviewing plan 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 plan 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.

Paperwork Reduction Act

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.*).

Congressional Review Act

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. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

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 31, 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 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, Particulate matter, Carbon monoxide, Reporting and recordkeeping requirements.

Dated: November 3, 2004.

Norman Niedergang,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart P—Indiana

■ 2. Section 52.770 is amended by adding paragraph (c)(161) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(161) On October 30, 2002 and January 10, 2003, the Indiana Department of Environmental Management submitted revisions to Chapter 326 IAC 4–2 and 9–1 of the Indiana Administrative Code (IAC), an incineration plan for selected sources in

Indiana, with a request that the Indiana State Implementation Plan be revised to include these amended carbon monoxide and particulate matter rules.

(i) Incorporation by reference.

(A) *Indiana rule:* 326 IAC 4–2–1 and 326 IAC 4–2–2 (particulate matter), published at *Indiana Register,* January 1, 2003, 26 IR 1070, with an effective date of December 15, 2002.

(B) *Indiana rule:* 326 IAC 9–1–1 and 326 IAC 9–1–2 (carbon monoxide), published at *Indiana Register,* January 1, 2003, 26 IR 1072, with an effective date of December 15, 2002.

[FR Doc. 04–26401 Filed 11–29–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 403, 412, 413, 418, 460, 480, 482, 483, 485, and 489

[CMS–1428–N]

RIN 0938–AM80

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2005 Rates; Extension for the Hospital Applications To Receive Increases in Full Time Equivalent Resident Caps for Graduate Medical Education Payment

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Extension of application deadline.

SUMMARY: This document extends the deadline for hospitals to submit applications to CMS in order to receive increases in full-time equivalent (FTE) resident caps for graduate medical education (GME) payment purposes under section 1886(h)(7)(B) of the Social Security Act, added by section 422 of the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003.

DATES: The deadline for receipt of applications to receive increases in FTE resident caps for GME payments is extended to December 15, 2004.

FOR FURTHER INFORMATION CONTACT: Heath Westcott, (410) 786–4515.

SUPPLEMENTARY INFORMATION:

I. Background

We published a final rule in the **Federal Register** (69 FR 48916) that revised the Medicare hospital inpatient prospective payments systems for operating and capital related costs to implement a number of changes made by the MMA.

Section 422 of the MMA (Pub. L. 108–173) provides for a reduction in the statutory resident caps under Medicare for certain hospitals and authorizes a ''redistribution'' of those FTE resident slots to other hospitals. Qualifying hospitals that submit a timely application may receive up to 25 additional FTE resident cap slots for direct GME and indirect medical education purposes.

II. Provisions of the Notice

In the Fiscal Year (FY) 2005 final rule (69 FR 49141 and 69 FR 49169), we stated that any hospital that wishes to receive an increase in its FTE resident cap(s) under section 1886(h)(7)(B) of the Social Security Act (the Act) must submit an application to the CMS Central Office and to the CMS Regional Office for the region in which the applicant hospital is located, and that the application must be received on or before December 1, 2004. In order to give hospitals more time to complete these applications, we are extending this deadline to December 15, 2004.

Additional information regarding reductions and increases in hospitals' FTE resident caps for purposes of direct and indirect GME payments under section 1886(h)(7) of the Act can be found in the August 11, 2004 **Federal Register** (69 FR 49112).

III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

Authority: Section 1886(h)(7)(B) of the Social Security Act (42 U.S.C. 1395ww(h)(7)(B)).

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program)

Dated: November 18, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: November 23, 2004.

Tommy G. Thompson,

Secretary.

[FR Doc. 04–26356 Filed 11–24–04; 9:24 am]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 041102303–4303–01; I.D. 101804A]

RIN 0648–AS76

Regulations Governing the Approach to North Atlantic Right Whales

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

ACTION: Final rule; technical amendment.

SUMMARY: NMFS issues a correcting amendment to clarify the regulations that prohibit approaches within 500 yards (460 m) of North Atlantic right whales (right whales). The purpose of this action is to correct errors contained in the text of the regulation that inadvertently refers to regulations contained in the previous paragraph within 50 CFR part 224. These technical amendments will not change the regulations for approaching right whales found in § 224.103.

DATES: Effective November 30, 2004.

FOR FURTHER INFORMATION CONTACT: Brian D. Hopper, NMFS, Northeast Region, 978–281–9328; Barb Zoodsma, NMFS, Southeast Region, 904–321–2806; or Kristy Long, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Background

The interim final rule implementing approach limits for right whales was published on February 13, 1997 (62 FR 6729), and codified at 50 CFR 222.32, subpart D of part 222. As part of an action taken to consolidate and reorganize existing NMFS regulations implementing the Endangered Species Act (ESA) pursuant to the President's Regulatory Reinvention Initiative (RRI), subpart D was removed from part 222 and relocated to part 224 (64 FR 14066, March 23, 1999). As a result of this reorganization, a new section was created in 50 CFR part 224 for the special prohibitions for endangered marine mammals, which included the regulations for approaching right and humpback whales.

Subsequent to the 1999 reorganization initiative, NMFS published a final rule to establish approach regulations for humpback whales within Alaskan waters (66 FR 29502, May 31, 2001). The final rule redesignated paragraphs

(b) and (c) under § 224.103, as paragraphs (c) and (d), respectively, and a new paragraph (b) was added for the Alaska humpback whale approach regulations. However, the final rule did not make the changes to the right whale approach regulations, which were previously codified as paragraph (b), necessary to reflect the redsignation as paragraph (c). In other words, the subparagraphs under the right whale approach regulations still referred to its previous location in paragraph (b).

This rule does not substantively impact the public's current expectations, increase the scope of the regulated community, or add any new requirements to these regulations. This rule makes a minor change to the regulations for approaching right whales, which corrects an unintended error caused by a previous final rule that reordered the paragraphs in § 224.103.

Need for Correction

As published, the regulations governing approaches to right whales contain errors that may be misleading and need to be corrected.

Classification

The Assistant Administrator for Fisheries, NMFS (AA) finds that good cause exists to waive the requirement for prior notice and the opportunity for comment, pursuant to 5 U.S.C. 553(b)(B). Such procedures would be unnecessary because the changes made in this rule do not substantively change the regulations for approaching right whales. Therefore, it does not alter the scope of the regulated community nor add any new requirements. For the same reasons, the AA finds that good cause exists to waive the 30–day delay in effective date. Any delay in implementing this technical change would be impracticable, unnecessary, and contrary to the public interest. A delay in implementing these changes would be unnecessary because they do not substantively alter the regulations for approaching right whales by increasing the scope of the regulated community or adding any new requirements. Accordingly, pursuant to 5 U.S.C. 553(d)(3), a delay in the effective date is waived.

In addition, because general notice of proposed rulemaking is not required under 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.

This action is not subject to review under Executive Order 12866 because the changes made are non-substantive.

This final rule does not impact the human environment, therefore, NMFS has determined that this action is not subject to the analytical requirements of the National Environmental Policy Act.

This final rule does not contain policies with federalism implications under Executive Order 13132.

List of Subjects in 50 CFR part 224

Endangered and threatened species, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, 50 CFR part 224 is corrected by making the following correcting amendments:

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

§ 224.103 [Amended]

2. In the table below, in § 224.103, for each paragraph indicated in the left column, remove text from the middle column from wherever it appears in the paragraph, and add the text indicated in the right column:

Paragraph	Remove	Add
(c)(1)	(b)(3)	(c)(3)
(c)(1)(ii)	(b)(2)	(c)(2)
(c)(2)	(b)(3)	(c)(3)
(c)(3)(i)	(b)(1) and (b)(2)	(c)(1) and (c)(2)
(c)(3)(ii)	(b)(1) and (b)(2)	(c)(1) and (c)(2)
(c)(3)(iii)	(b)(1) and (b)(2)	(c)(1) and (c)(2)
(c)(3)(iv)	(b)(1) and (b)(2)	(c)(1) and (c)(2)
(c)(3)(v)	(b)(2)	(c)(2)

Dated: November 23, 2004.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 04–26413 Filed 11–29–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 040910261–4325–02; I.D. 072704A]

RIN 0648–AS08

Atlantic Highly Migratory Species; Atlantic Commercial Shark Management Measures

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

ACTION: Final rule; fishing season notification.

SUMMARY: This final rule adjusts the regional quotas and establishes new trimester season quotas for large coastal sharks (LCS) and small coastal sharks (SCS) based on updated landings information. This final rule includes a framework mechanism for the annual adjustment of quotas, a method of accounting for over- or underharvests in the transition from semi-annual to trimester seasons, and a new process for notifying participants of season opening and closing dates and quotas. This final rule also announces the opening and closing dates for the LCS fishery based on adjustments to the regional and trimester quotas. This action is necessary to ensure that the landings quotas in the Atlantic commercial shark fishery represent the latest landings data and accurately reflect historic and current fishing effort.

DATES: This final rule is effective on January 1, 2005. The Atlantic commercial shark fishing season opening and closure dates are provided in Table 1 under **SUPPLEMENTARY INFORMATION.** The 2005 second and third trimester season dates will be published at a later date in the **Federal Register**.

ADDRESSES: For copies of the Final Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) contact Chris Rilling, Highly Migratory Species Management Division at 1315 East-West Highway, Silver Spring, MD 20910 or at (301) 713–1917 (fax). Copies are also available on the internet at *http://www.nmfs.noaa.gov/sfa/hms*.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz, Chris Rilling, or Mike Clark by phone: 301–713–2347 or by fax: 301–713–1917.

SUPPLEMENTARY INFORMATION:

Opening and Closure Dates

The Atlantic commercial shark fishing season opening and closure dates are provided in the following table:

TABLE 1 – OPENING AND CLOSURE DATES

Species Group	Region	First Trimester Season Opening Dates	First Trimester Season Closure Dates
Large Coastal Sharks	Gulf of Mexico	January 1 - February 28, 2005, 11:30 p.m. local time.	February 15, - April 30, 2005, 11:30 pm local time
	South Atlantic	January 1 - February 15, 2005, 11:30 p.m. local time.	February 28, - April 30, 2005, 11:30 pm local time
	North Atlantic	January 1 - April 30, 2005, 11:30 p.m. local time.	April 30, 2005, 11:30 pm local time
Small Coastal Sharks	Gulf of Mexico	January 1 - April 30, 2005, 11:30 p.m. local time.	April 30, 2005, 11:30 pm local time
	South Atlantic		April 30, 2005, 11:30 pm local time
	North Atlantic		April 30, 2005, 11:30 pm local time
Blue sharks	No regional quotas	January 1 - April 30, 2005, 11:30 p.m. local time.	April 30, 2005, 11:30 pm local time
Porbeagle sharks	No regional quotas		April 30, 2005, 11:30 pm local time
Pelagic sharks other than blue or porbeagle.	No regional quotas		April 30, 2005, 11:30 pm local time

Background

The Atlantic shark fishery is managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. The Fisheries Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) and Amendment 1 to the HMS FMP are implemented by regulations at 50 CFR part 635.

On December 24, 2003, NMFS published a final rule (68 FR 74746) for Amendment 1 to the HMS FMP that established, among other things, the 2004 annual landings quota for LCS at 1,017 metric tons (mt) dressed weight (dw) and the 2004 annual landings quota for SCS at 454 mt dw. The final rule also established regional LCS and SCS quotas for the commercial shark fishery in the Gulf of Mexico (Texas to the West coast of Florida), South Atlantic (East coast of Florida to North Carolina and the Caribbean), and North Atlantic (Virginia to Maine). The quota for LCS was split among the three regions as follows: 42 percent to the Gulf of Mexico, 54 percent to the South Atlantic, and 4 percent to the North Atlantic. The quota for SCS was split among the three regions as follows: 4 percent to the Gulf of Mexico, 83 percent to the South Atlantic, and 13 percent to the North Atlantic.

On September 17, 2004, NMFS published a proposed rule (69 FR 56024) to: update the regional quotas that were established in Amendment 1, implement new trimester season quotas, and account for over- or underharvests in the transition from semi-annual to trimester seasons. The proposed rule also considered a framework mechanism to adjust regional quotas on an annual basis, as necessary. NMFS held three public hearings during the public comment period, which closed on October 18, 2004, for both the proposed rule and the Draft EA.

Recent updates to the regional landings data and new data collected since the publication of the December 24, 2003, final rule (68 FR 74746) indicate that the regional quotas need to be adjusted. The preamble of the September 17, 2004 proposed rule (69 FR 56024) contains the alternatives that were considered and is not repeated here.

Additionally, beginning on January 1, 2005, each regional quota will be divided among three trimester seasons rather than two semi-annual seasons. The first trimester season will operate between January 1 and April 30, the second trimester season will operate between May 1 and August 31, and the third trimester season will operate between September 1 and December 31. This final rule divides each region's quota among the three trimester seasons, and accounts for over- or underharvests in the transition from semi-annual to trimester seasons.

Response to Comments

Comments on the September 17, 2004, proposed rule (69 FR 56024) received during the public comment period are summarized below and are organized according to the alternatives considered in the proposed rule, together with NMFS' responses.

Regional Quota Adjustment

Comment 1: NMFS should make as few changes as possible until it has a better handle on the data.

Response: NMFS has updated landings information that represents the best information available and indicates that updates to the regional quotas are warranted. The updated information is based on several different databases that were analyzed for shark landings as part of this rulemaking, including: the canvass, quota monitoring, Northeast Commercial Fisheries database system (CFDBS), and snapper grouper logbook databases. NMFS believes that by considering a cross-section of different databases the reliability of the data is enhanced and any potential errors will be minimized and mitigated to the extent possible.

Comment 2: The North Atlantic region landings outlined in the Draft EA do not appear to be accurate.

Response: NMFS agrees that the landings data referred to by the commenter on page 21 of the Draft EA were incorrect. This discrepancy resulted from the inclusion of North Carolina landings in the North Atlantic region. The North Carolina landings should have been included in the South Atlantic region. This error has been corrected in the final EA and the final rule. As a result of this correction, the percentages for the Gulf of Mexico and South Atlantic increased by 3 percent, and the North Atlantic decreased by 3 percent.

Comment 3: NMFS should select the single LCS and single SCS quota (Alternative A4) as the preferred alternative because the current accounting method (of regional landings) is not accurate.

Response: While selecting a single quota for LCS and SCS may simplify management, it does not account for regional differences in shark availability, current and historic landings, or timing of seasons. For example, the potential exists for the entire quota to be harvested in the South Atlantic and Gulf of Mexico during the first trimester season before the North Atlantic has had an opportunity to fish. Regional quotas help address these differences in shark availability and timing of seasons. NMFS believes that regional quotas provide a more equitable means of allocating quota and

ensure that each region is given the opportunity to harvest a quota that reflects historic landings in the region.

Comment 4: The effort shift to the Gulf of Mexico happened because of the ridgeback/non-ridgeback switch in 2003. Everyone was allowed to fish for blacktip sharks until May 15, but there are no blacktip sharks in North Carolina. Thus, the South Atlantic season has been unfairly shortened.

Response: While it is true that the ridgeback/non-ridgeback categories provided a larger quota for blacktip sharks (non-ridgeback) when compared with sandbar sharks (ridgeback) - which resulted in a longer season for ridgebacks in 2003 - the season lengths were longer in all regions, not just the Gulf of Mexico. Higher landings of blacktip sharks may have occurred in the Gulf of Mexico in 2003 as a result, however, NMFS analyzed several years of data in establishing regional quotas (1999–2003) to account for interannual variability and minimize the overall impact of landings in a single year. The shift in effort from the South Atlantic to the Gulf of Mexico has taken place over a number of years as a result of a number of factors including closures of the Florida East Coast to pelagic longline gear and the Oculina Banks. Therefore, NMFS does not believe that the season for the South Atlantic region is being unfairly shortened.

Comment 5: NMFS should explain why the regional quotas are so different from what they were in Amendment 1.

Response: Regional quotas in this final rule and Environmental Assessment are different from Amendment 1 to the HMS FMP because of errors in the data that have been corrected since Amendment 1 as well as the consideration of two additional years of landings data (from 2002–2003) which were included in the analysis. These data indicate an increase in landings in the Gulf of Mexico over the past several years and a leveling off or decrease in landings in the South Atlantic, depending on which database is analyzed. Since NMFS took the average of three databases that were available for the Southeast, the result was a net decrease in quota for the South Atlantic. This shift in effort is evident in landings data from years prior to the establishment of regional quotas in Amendment 1, in which the fishery was operating under a single quota for LCS and SCS. Thus, it is not likely that regional quotas were the causative factor in the shift in landings. The current regional quotas provide the best estimate of historic and current landings and fishing effort in the various regions.

Comment 6: NMFS is doing the right thing by developing a quota distribution scheme that will preclude one region from receiving an inequitable share of the overall quota.

Response: NMFS believes that the framework mechanism for adjusting regional quotas will cap the amount of quota that may be transferred from one region to another in any given year. This should prevent a drastic shift in quota from one region to another.

Trimester Season Allocations

Comment 7: NMFS should select the equal distribution of trimester season quotas for each region (Alternative B1) as the preferred alternative because it represents the fairest distribution of quota and would have the least impact on fishermen impacted by the mid-Atlantic closure.

Response: NMFS agrees that the equal distribution of trimester season quotas may be appropriate from some regions such as the Gulf of Mexico and the South Atlantic where harvest rates remain fairly stable throughout the year. However, the quotas should be allocated according to historic landings in the North Atlantic region. The North Atlantic region has historically harvested less than 20 percent of its annual landings during the first semi-annual season because sharks have not yet migrated into the region.

Comment 8: The current trimester season preferred alternative only allows approximately 16 trips in the South Atlantic during the third trimester season. NMFS should consider transferring the portion of the quota that would have been caught by North Carolina fishermen in the time/area closure during the first trimester season to the second and third trimester seasons.

Response: The final preferred alternative will divide the Gulf of Mexico and the South Atlantic trimester season quotas equally. See response to comment 7 above. As a result, the second and third trimester season quotas in the South Atlantic will be higher than they were in the proposed rule and should result in greater than 16 trips per season.

Comment 9: The North Atlantic region should not have any quota during the first trimester season. Its quota should be allocated to second and third trimester seasons when sharks are available.

Response: NMFS agrees that the North Atlantic trimester season quotas should be allocated according to historic landings in the region. A majority of the overall LCS quota for the North Atlantic will thus be available during the second and third trimester seasons. Some LCS quota will be available for the first trimester season to account for nominal landings that have occurred during this period.

Comment 10: The way the seasons are set up now will result in catches of juvenile sharks. The summer season is when adults are caught; spring and fall are when juveniles and spawning females are caught. Dusky sharks are rarely caught in the summer. There should be no fishing in May or June for any participants in the fishery because this is the prime shark pupping season.

Response: The shark pupping season occurs from March through September in the Atlantic Ocean and Gulf of Mexico with a possible peak from May through June. The LCS fishery has usually been closed for at least some of the time during these peak pupping months. In order to reduce the likelihood of interactions with juvenile and reproductive female sharks, NMFS is considering a delay to the start of the second trimester season. A proposed start date for the second trimester season will be filed with the Office of the **Federal Register** for publication in early 2005.

Accounting for Over- or Underharvest in the Transition from Semi-Annual to Trimester Seasons

Comment 11: NMFS should select Alternative C4 to divide any over- or underharvest from the first semi-annual season between the first and second trimester seasons, and any over- or underharvest from the second semi-annual season to the second and third trimester seasons. This would give North Carolina fishermen a better chance at catching some of the quota since portions of North Carolina will be closed from January 1 to July 30 due to the time/area closure.

Response: NMFS received several comments in support of this alternative and agrees that this would be an appropriate method of accounting for over- or underharvest in the transition from semi-annual to trimester seasons. Thus, NMFS has selected it as the final preferred alternative in this final rule.

General

Comment 12: All shark catching and killing should be banned.

Response: NMFS does not believe that banning all shark fishing is warranted for the following reasons: a number of businesses, including fishermen, processors, suppliers, and dealers could be forced out of business and a number of communities, including recreational fishing communities, would be adversely affected. In addition, the current rebuilding plans that are in

place ensure a sustainable fishery and viability of Atlantic shark populations, as well as the requirements of the Magnuson-Stevens Act and other domestic laws.

Comment 13: A number of commenters suggested that NMFS should consider starting the second trimester season on either July 6, 2005, at the earliest, or on August 1 to help market balance and ease the economic hardship on fishermen in North Carolina who will be impacted by the time/area closure.

Response: NMFS is aware of concerns that starting the shark fishing season just prior to the Fourth of July weekend is not conducive to the sale and marketing of shark product. Consequently, NMFS will consider alternative start dates in a proposed rule regarding the second trimester season lengths and quotas in early 2005.

Comment 14: NMFS should set aside adequate incidental quota to reduce/eliminate regulatory discards by covering the inevitable incidental catches in many other fisheries.

Response: The 2002 LCS stock assessment took into account discards from target and non-target fisheries in determining maximum sustainable yield estimates upon which the quotas are based. However, setting aside an incidental quota to reduce or eliminate regulatory discards would further reduce the already low LCS commercial quota. This reduction of quota could impose additional economic hardships. NMFS may consider, consistent with the Magnuson-Stevens Act, an incidental quota as the stock rebuilds and the fishery stabilizes.

Comment 15: The current proposal for regional and trimester quotas eliminates what little remained of the shark fishery off North Carolina. How is this proposal consistent with National Standard 4?

Response: The final preferred alternatives of distributing quotas in proportion to historic landings, allocating trimester season quotas equally, and dividing over- or underharvests from the first semi-annual season of 2004 to the first and second trimester seasons of 2005 are consistent with National Standard 4 (NS4). As described in Amendment 1 to the HMS FMP, the establishment of regional quotas is not a direct allocation of fishing privileges nor does it discriminate between shark fishermen in different regions or states. The regional quota allocations are based on average historical landings and are intended to enhance equity. Even if the establishment of regional quotas might be considered an allocation, the regional quota system is consistent with NS4. It is fair and equitable because it is based on historical landings, and NMFS will be able to monitor how quotas are used and adjust them over time to promote achievement of optimum yield. With regard to North Carolina, NMFS believes that allocating 42 percent of the total LCS quota, and 88 percent of the total SCS quota to the South Atlantic region, and dividing the quota equally between the three trimester seasons will help minimize economic impacts to fishermen impacted by the time/area closure.

Comment 16: NMFS should maintain the semi-annual quotas that treat all states equally without changes to the quota allocation due to regulatory induced shifts in landings.

Response: The ecological and economic impacts of converting to trimester seasons were thoroughly analyzed in Amendment 1 to the HMS FMP. The proposed rule and this final rule do not propose reverting back to semi-annual seasons. NMFS believes that regional quotas, which are based on historic landings data, provide an equitable means of distributing quota.

Comment 17: NMFS should put pressure on states that are not in line with Federal shark laws.

Response: NMFS agrees and has been working with states to improve state-Federal consistency in how shark fisheries are managed.

Comment 18: Why is the Gulf of Mexico region opened longer than the South Atlantic, and will this not result in an overharvest again?

Response: The 2005 first trimester season in the South Atlantic region closes on February 15, 2005, and the Gulf of Mexico closes on March 15, 2005. To estimate closure dates, NMFS calculated the average reported catch rates for each region from the first semi-annual season from recent years (2001–2004) and used these average catch rates to estimate the amount of available quota that would likely be taken by the end of each dealer reporting period. Because state landings after a Federal closure are counted against the quota, NMFS also calculated the average amount of quota reported received after the Federal closure dates. Catch rates in the South Atlantic are higher than catch rates in the Gulf of Mexico, particularly during the months of January and February. Additionally, the South Atlantic quotas are lower than in the Gulf of Mexico. As a result, the South Atlantic season is shorter than the Gulf of Mexico season. NMFS has been using this type of method for calculating season length since 1999. Since that time, the number of overharvests has been reduced. However, if the quota is exceeded the overharvest will be deducted from the following year's quota for the same fishing season and region.

Comment 19: Were pelagic longline logbook data included in the analysis of regional quotas?

Response: Pelagic longline logbook data were not included in the analysis because landings in that logbook are reported in numbers of fish, rather than fish weights as in the coastal fisheries logbook and the other databases used in the analysis. Additionally, although LCS are occasionally caught in the pelagic longline fishery, a majority of the LCS and SCS landings are reported in the coastal fisheries logbook. Furthermore, dealer data from the canvass, QMS, and Northeast CFDBS would also capture landings attributable to the pelagic longline fishery.

Changes From the Proposed Rule

NMFS has made several changes to the September 17, 2004 proposed rule (69 FR 56024). These changes are outline below.

1. In the proposed rule, NMFS proposed to allocate 49, 38, and 13 percent of the overall LCS quota to the Gulf of Mexico, South Atlantic, and North Atlantic, respectively. Due to an error in calculating regional landings, NMFS corrects the regional quotas for LCS in the Gulf of Mexico, South Atlantic and North Atlantic to 52, 41, and 7 percent of the overall LCS landings quota for each of the regions respectively. The error was attributed to including North Carolina landings in the North Atlantic region rather than in the South Atlantic region.

2. In the proposed rule, NMFS considered several alternatives for trimester season quota allocations, including allocating quotas according to historical landings as the preferred alternative. During the public comment period, NMFS heard comments in favor of splitting quotas evenly between the three trimester seasons in the Gulf of Mexico and the South Atlantic and setting quotas according to historic landings for the North Atlantic region. This allocation was proposed because sharks are available throughout much of the year in the Gulf of Mexico and South Atlantic regions, whereas the shark harvesting period occurs primarily during the summer months in the North Atlantic region. Additionally, concerns were raised about allocating a large portion of the South Atlantic quota to the first trimester season when the time/area closure off North Carolina will be in effect. This could have had a negative economic impact on fishermen in North Carolina. By dividing the

quotas equally between the three trimester seasons a greater proportion of the quota will be available during August and September when the time/area closure is no longer in effect. As a result, the final rule will divide the quotas for the Gulf of Mexico and South Atlantic equally between the trimester seasons. The North Atlantic quota will be divided according to historical landings, with more of the quota being allocated to the summer months.

3. In the proposed rule, NMFS considered several alternatives to account for over- or underharvests in the transition from semiannual to trimester seasons. During the public comment period, NMFS heard comments in favor of dividing any over- or underharvests from the first semiannual season equally between the first and second trimester seasons, and any over- or underharvests from the second semiannual season equally between the second and third trimester seasons. As a result, in this final rule, NMFS will divide any over- or underharvests according to this method.

Annual Landings Quota

The base 2005 annual landings quotas for LCS and SCS will be 1,017 mt dw (2,242,078 lb dw) and 454 mt dw (1,000,888.4 lb dw), respectively. The 2005 quota levels for pelagic, blue, and porbeagle sharks are 488 mt dw (1,075,844.8 lb dw), 273 mt dw (601,855.8 lb dw), and 92 mt dw (202,823.2 lb dw), respectively.

As of October 2004, the overall first 2004 semi-annual quota for LCS, but not SCS, was exceeded. Reported landings of LCS were at 107 percent of the LCS semi-annual quota, and SCS landings were at 31 percent of the SCS semi-annual quota for the three regions combined. The Gulf of Mexico experienced an overharvest of 21 and 22 percent of its LCS and SCS regional quotas, respectively, during the first semi-annual season of 2004, and the South Atlantic experienced an overharvest of 5 percent of its LCS quota. As described below, the regional quotas will be adjusted based on these over- or underharvests.

Regional Landings Quotas

The first 2004 semiannual fishing season quota for LCS was established at 443.1 mt dw (December 24, 2003, 68 FR 74746). A June 15, 2004, final rule (69 FR 33321) adjusted the North Atlantic regional quota from a 50/50 to a 20/80 split between the first and second semi-annual seasons resulting in an adjusted quota of 8.0 mt dw for the first semiannual season in the North Atlantic. Applying the regional percentages established in Amendment 1 this equated to 244.7, 190.3, and 8.0 mt dw for the South Atlantic, Gulf of Mexico, and North Atlantic regions, respectively. As of October 2004, approximately 486.9 mt dw LCS had been reported landed from all regions.

Consistent with this final rule, the annual LCS quota (1,017 mt dw) is split among the regions as follows: 52 percent to the Gulf of Mexico, 41 percent to the South Atlantic, and 7 percent to the North Atlantic.

Also consistent with this final rule, the LCS quota for the Gulf of Mexico and the South Atlantic is further split equally (33.3 percent/season) between the three trimester seasons. The quota for the North Atlantic will be 4, 88, and 8 percent, for the first, second, and third trimester seasons, respectively.

In the 2004 first semi-annual season, preliminary data indicate that the Gulf of Mexico had an overharvest of 39.7 mt dw, the South Atlantic had an overharvest of 11.1 mt dw, and the North Atlantic had an underharvest of 7.0 mt dw. Consistent with this final rule, the over- or underharvests will be divided equally between the first and second trimester seasons. Thus, the LCS quotas for the 2005 first trimester season is established as follows: the Gulf of Mexico - 156.3 mt dw (1,017*.52*.333–39.7/2)(344,579 lb dw); South Atlantic - 133.3 mt dw (1,017*.41*.333–11.1/2)(293,873 lb dw); and North Atlantic - 6.3 mt dw (1,017*.07*.04+7/2)(13,889 lb dw).

In the 2004 first semiannual fishing season for SCS, the quota was established at 280.9 mt dw (December 24, 2003, 68 FR 74746). This equated to 233.2, 36.5, and 11.2 mt dw for the South Atlantic, North Atlantic, and the Gulf of Mexico regions, respectively. As of October 2004, approximately 86.3 mt dw had been reported landed from all regions. This constitutes an underharvest for the first 2004 semiannual fishing season of 194.6 mt dw from all regions.

Consistent with this final rule, the annual SCS quota (454 mt dw) is split among the regions as follows: 10 percent to the Gulf of Mexico, 87 percent to the South Atlantic, and 3 percent to the North Atlantic.

Also consistent with this final rule, the SCS quota for the Gulf of Mexico and the South Atlantic is further split equally (33.3 percent/season) between the three trimester seasons. The quota for the North Atlantic will be 1, 9, and 90 percent, for the first, second, and third trimester seasons, respectively, based on historical landings.

In the 2004 first semi-annual season, preliminary data indicate that the Gulf of Mexico had an overharvest of 2.4 mt dw, the South Atlantic had an underharvest of 161.0 mt dw, and the North Atlantic had an underharvest of 36.1 mt dw. Consistent with this final rule, the over- or underharvests will be divided equally between the first and second trimester seasons.

Thus, the SCS quotas for the 2005 first trimester season are as follows: the Gulf of Mexico - 13.9 mt dw (454*.10*.333–2.4/2) (30,644 lb dw); South Atlantic 213.5 mt dw (454*.88*.333+161/2)(470,682 lb dw); and North Atlantic - 18.6 mt dw (454*.02*.06+36.1/2)(41,056 lb dw).

The 2005 annual quota levels for pelagic, blue, and porbeagle sharks are established at 488 mt dw (1,075,844.8 lb dw), 273 mt dw (601,855.8 lb dw), and 92 mt dw (202,823.2 lb dw), respectively. These are the same quotas that were established in the HMS FMP. As of October 2004, approximately 44 mt dw had been reported landed in the first 2004 semiannual fishing season in total for pelagic, blue, and porbeagle sharks combined. Thus, the pelagic shark quota does not need to be reduced consistent with the current regulations under 50 CFR 635.27(b)(1)(iv). The 2005 first trimester quotas for pelagic, blue, and porbeagle sharks are established at 162.7 mt dw (358,688 lb dw), 91 mt dw (200,619 lb dw), and 30.7 mt dw (67,681 lb dw), respectively.

Fishing Season Notification

The first trimester fishing season of the 2005 fishing year for LCS, SCS, pelagic sharks, blue sharks, and porbeagle sharks in all regions in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, will open on January 1, 2005. To estimate the LCS fishery closure dates, NMFS calculated the average reported catch rates for each region from the first semi-annual seasons from recent years (2001–2004) and used these average catch rates to estimate the amount of available quota that would likely be taken by the end of each dealer reporting period. Because state landings after a Federal closure are counted against the quota, NMFS also calculated the average amount of quota reported received after the Federal closure date and the beginning of the second trimester season (May 1, 2005) of the years used to estimate catch rates.

Pursuant to 50 CFR 635.5(b)(1), shark dealers must report any sharks received twice a month. More specifically, sharks received between the first and 15th of every month must be reported to NMFS by the 25th of that same month and those received between the 16th and the end of the month must be reported to

NMFS by the 10th of the following month. Thus, in order to simplify dealer reporting and aid in managing the fishery, NMFS proposes to close the Federal LCS fishery on either the 15th or the end of any given month.

Based on average LCS catch rates in recent years in the Gulf of Mexico region, approximately 92 percent of the available LCS quota (156.3 mt dw) would likely be taken by the end of February and 109 percent of the available LCS quota would likely be taken by the second week of March. Dealer data also indicate that, on average, approximately 9.8 mt dw (21,605 lb dw) of LCS have been reported received by dealers after a Federal closure. This is approximately 6 percent of the available quota. Thus, if catch rates in 2005 are similar to the average catch rates from 2001 to 2004, 98 percent (92 + 6 percent) of the quota could be caught by the end of February. If the fishery remains open until the second week of March, the quota would likely be exceeded (109 + 6 percent = 115 percent). Accordingly, the Gulf of Mexico LCS fishery will close on February 28, 2005, at 11:30 p.m. local time.

Based on average LCS catch rates in recent years in the South Atlantic region, and accounting for the reduction in effort due to the time/area closure off North Carolina, approximately 69 percent of the available LCS quota (133.3 mt dw) would likely be taken by the second week of February and 86 percent of the available LCS quota would likely be taken by the end of February. Dealer data also indicate that, on average, approximately 35 mt dw (77,161 lb dw) of LCS have been reported received by dealers after a Federal closure. This is approximately 27 percent of the available quota. Thus, if catch rates in 2005 are similar to the average catch rates from 2001 to 2004, 96 percent (69 + 27 percent) of the quota could be caught by the second week of February. If the fishery remains open until the end of February, the quota would likely be exceeded (86 + 27 percent = 113 percent). Thus, the South Atlantic LCS fishery will close on February 15, 2005, at 11:30 p.m. local time.

Based on average LCS catch rates in recent years in the North Atlantic region, approximately 60 percent of the available LCS quota (6.3 mt dw) would likely be taken by the end of April. Dealer data also indicate that no LCS landings have been reported received by dealers after a Federal closure and before the start of the second trimester season on May 1, 2005. Accordingly, the North Atlantic LCS fishery will close on April 30, 2005, at 11:30 p.m. local time.

Classification

This final rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq*.

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

As required under the Regulatory Flexibility Act, NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) for the proposed rule (69 FR 56024, September 17, 2004) and prepared a Final Regulatory Flexibility Analysis (FRFA) for the final rule. The FRFA examines the anticipated economic impacts of the preferred actions and any significant alternatives to the final rule that could minimize economic impacts on small entities. A summary of the information presented in the FRFA is below. The full FRFA and analysis of economic and ecological impacts are available from NMFS (see **ADDRESSES**). NMFS does not believe that the proposed regulations would conflict with current relevant regulations, Federal or otherwise (5 U.S.C. 603(b)(5)).

This final rule is being implemented to update the LCS and SCS regional quotas based on updated landings information and to implement a framework mechanism for annual adjustment of quotas. This final rule also allocates trimester season quotas, addresses the one-time transfer of over- or underharvests from semi-annual (2004) to trimester (2005) seasons, and modifies the fishing season notification requirement.

The need for and objective of the final rule are fully described in the preamble of the proposed rule (69 FR 56024, September 17, 2004) and in the final EA/RIR/FRFA and are not repeated in this rule.

As set forth above, NMFS received several comments on the proposed rule and draft EA during the comment period. NMFS did not receive any comments specific to the IRFA, but did receive a limited number of comments on the potential impact of regional quotas, trimester season quota allocations, and transferring over- or underharvest from semiannual to trimester seasons. In summary, commenters noted that regional quotas would result in a reduction in quota for the South Atlantic that, coupled with allocating regional quotas to trimester seasons based on historical landings, could have negative economic impacts on fishermen affected by the time/area closure off North Carolina.

The IRFA for the proposed rule acknowledged that there could be negative economic impacts as a result of lowering quotas for the South Atlantic, but noted that the quotas were based upon updated landings that indicate a shift in fishing effort in recent years from the South Atlantic to the Gulf of Mexico. In order to mitigate some of the impacts described in the comments, NMFS will divide the regional quotas for the South Atlantic and the Gulf of Mexico equally between the three trimester seasons, rather than dividing them according to historic landings, which would have resulted in the largest quota during the first trimester season when the time/area closure off North Carolina is in effect. Dividing the quotas equally between the trimester seasons will result in a higher quota for the second and third trimester seasons for the South Atlantic region. Given that NMFS is considering a delay to the start date of the second trimester season, a larger portion of the South Atlantic quota may be available to fishermen off North Carolina during the second and third trimester seasons when the time/area closure will no longer be in effect. In addition, NMFS will transfer over- or underharvests from the 2004 first semi-annual season to the 2005 first and second trimester seasons, rather than to the first trimester season only, to further mitigate the impact of overharvests that occurred during the 2004 first semiannual season.

This rule could directly impact commercial shark fishermen and dealers in the Atlantic, Gulf of Mexico, and Caribbean. NMFS estimates that as of April 2004, there were approximately 253 directed and 358 incidental permit holders, of which 199 (32 percent) reported landings in 2003. As of September 2003, there were 267 commercial shark dealers. All permit holders are considered small entities according to the Small Business Administration's standard for defining a small entity (5 U.S.C. 603(b)(3)). Other small entities involved in HMS fisheries such as processors, bait houses, and gear manufacturers might be indirectly affected by the regulations.

Average annual gross revenues from sharks for commercial shark fishermen in 2003 was $31,085.60 and $1,946.18 for directed and incidental permit holders, respectively. Average ex-vessel prices were $0.79 and $0.53/lb dw for LCS and SCS flesh, respectively and shark fins averaged $19.86/lb dw. Preliminary cost-earning data obtained in 2003 indicated that fishermen, on average, spent approximately $1,765.49, $570.97, and $398.65 for fuel, bait, and ice, respectively, per trip.

An analysis of the economic impacts on the active directed and incidental shark permit holders was conducted as part of the FRFA. The preferred alternative to modify the regional LCS and SCS quotas based on updated landings information will increase the existing LCS regional quotas, and therefore potential landings, by 3 percent for the North Atlantic and 10 percent for the Gulf of Mexico, while reducing the South Atlantic quota by 13 percent. For SCS, the regional quotas will be increased by 6 percent for the Gulf of Mexico and 4 percent for the South Atlantic, and will be decreased by 10 percent for the North Atlantic. Based on landings and revenue information obtained from the 2003 logbooks, these potential increases or decreases in landings may result in similar increases or decreases to gross revenue, however, NMFS is unable to predict future ex-vessel prices for shark products.

The preferred measures outlined in this final rule were selected for the commercial Atlantic LCS and SCS fisheries because they minimize economic, ecological, and social impacts incurred on fishermen while, consistent with the Magnuson-Stevens Act and other domestic laws, enhancing equity among user groups, and allowing stocks to be managed on a sustainable basis. Other alternatives such as maintaining current regional quotas, establishing new regional quotas without an adjustment mechanism, establishing single quotas for LCS and SCS, or combining quotas in the Gulf of Mexico and South Atlantic regions were not preferred because they fail to base quotas on updated landings information or fail to provide a means of revising quotas on an annual basis, as necessary, to adjust for shifts in fishing effort and over- or underharvests. They also fail to minimize economic hardships that may result due to fishery closures or an inability to harvest the full quota for LCS and SCS. Furthermore, although several of the alternatives considered establishing a single quota that would have simplified management, this could have also resulted in regional inequality in shark landings. For example, fishermen in the North Atlantic would be at a disadvantage due to their geographic location and harvest periods that occur later in the year than in the Gulf of Mexico and South Atlantic regions. Maintaining the regional and trimester quotas promotes market stability by ensuring the availability of shark products year round and in all locales, and ensures a harvest in each region.

The alternative to remove the 30–day requirement to publish a fishing season's length and quotas will be replaced with a proposed and final rule process. This will provide greater opportunity for public comment, and is not expected to result in negative economic impacts.

The Regulatory Flexibility Act (5 U.S.C. 603(c)(1)-(4)) lists four categories for alternatives that should be discussed. These categories are: (1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and (4) exemptions from coverage of the rule for small entities.

As noted earlier, NMFS considers all permit holders to be small entities and in order to meet the objectives of this final rule and the Magnuson-Stevens Act, NMFS cannot change the requirements only for small entities. Additionally, all of the measures in this final rule would not be effective with exemptions for small entities. Thus, there are no alternatives available to satisfy the stipulations of the first and fourth categories listed above. NMFS is proposing these measures to modify regional and trimester quotas based on updated landings information and as such, the use of performance rather than design standards and the simplification of compliance and reporting requirements under this final rule are not practicable.

This final rule does not contain any new reporting or recordkeeping requirements. This final rule would not increase the administrative burden or professional skills required of permit holders to maintain compliance with commercial shark regulations.

Overall economic impacts of adjusting the regional quotas are expected to be minimal. Economic data from LCS revenues generated in 2003 indicate that the final adjustments to the regional quotas would result in an increase in gross revenues to the Gulf of Mexico (+3.5 percent; $62,503) and North Atlantic (+.01 percent; $3,083) regions, and a decrease in gross revenues to the South Atlantic (-2.6 percent; $60,006) region. Economic data for the SCS fishery indicate that gross revenues for the Gulf of Mexico would decrease (-57 percent; $14,885) while the gross revenues would increase for the South Atlantic (+54 percent; $27,443) and the North Atlantic (+3 percent; revenues unknown because of lack of landings in 2003). The percentage change in gross revenues for SCS is larger than for LCS in some of the regions, however, the total dollar value for the SCS fishery is minimal compared to the total gross revenues generated by the LCS fishery (approximately $93,734 for SCS vs. approximately $4,402,136 in 2003 for LCS).

The other alternatives considered may have negative economic impacts on fishery participants because they are not based on the best information available and do not provide the necessary flexibility to address changes in regional fishing effort and over- or underharvests. NMFS received comments in support of establishing a single quota for LCS or SCS and eliminating the existing regional quotas. While a single quota system would simplify management and monitoring of the fishery, regional quotas provide a more effective means of ensuring that historical catches and equitable distribution of quotas are maintained, accounting for regional differences in fishing effort, and providing flexibility to reduce mortality on juveniles and reproductive female sharks.

The final preferred alternatives for trimester season quota allocations and accounting for over- or underharvests in the transition from semi-annual to trimester seasons are not expected to have adverse economic impacts. The final preferred alternative for allocating trimester season quotas equally in the Gulf of Mexico and South Atlantic regions, and according to historical landing in the North Atlantic was selected because it provides equitable distribution of quotas based on the requirements of each of the regions. The final preferred alternative of dividing any over- or underharvests from the first semiannual season equally between the first and second trimester seasons will help minimize any economic impacts to the South Atlantic and should have little or no impact on the Gulf of Mexico or the North Atlantic.

Economically, the final alternatives provide the greatest benefit to those fishermen who will not have an opportunity to fish for sharks during the mid-Atlantic closure from January through July 2005. By dividing regional quotas equally among the trimester seasons, and dividing over- or underharvests from the 2004 first semi-annual season equally between the 2005 first and second trimester seasons, fishermen in the South Atlantic region will have an opportunity to harvest a potentially larger quota during the second and third trimester seasons compared to the other alternatives.

This final rule contains no new collection-of-information requirements subject to review and approval by the

Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). Notwithstanding any other provisions 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.

The Biological Opinion (BiOp) prepared in October 2003, pursuant to the Endangered Species Act, in response to the proposed measures in Amendment 1 to the HMS FMP, found that the continued existence of commercial shark fishery would not jeopardize marine mammals, sea turtles, or smalltooth sawfish. Regional quotas and trimester seasons were actions finalized in Amendment 1 to the HMS FMP and therefore, were included in the BiOp. This final rule will not increase overall quotas or landings for LCS or SCS, therefore interactions with, or incidental takes of, protected species should not increase. The preferred alternatives simply re-distribute quotas based on updated landings information, distribute them equally across trimester seasons, and transfer over- or under harvests from semi-annual to trimester seasons.

NMFS believes the preferred alternatives would have no adverse impact on targeted species for reasons described above, and minimal ecological impact on protected species because the number of interactions during the second and third trimester seasons has historically been low when compared to the first trimester season. For example, a majority (30 out of 55) of the observed sea turtle interactions from 1999–2004 occurred during January and February. Sea turtle interactions during the second and third trimester seasons are much lower (16 out of 55). Since the measures implemented in this final rule will reduce effort during the first trimester season, impacts on sea turtles should be minimal.

Currently, pursuant to 50 CFR 635.27(b)(1)(iii) and (vi), NMFS files a notification of a shark fishing season's length and annual adjustments at least 30 days prior to the start of the season. This requirement was originally intended to address the need to provide shark fishermen with advance notice to prepare for the upcoming season. Given Amendment 1 to the HMS FMP and recent changes to shark management, NMFS proposes to remove the 30–day notification provisions and, as necessary and appropriate, issue proposed and final rules for season lengths and quotas to facilitate more opportunity for public comment. Prior to the beginning of the season, NMFS will file with the Office of the **Federal Register** for publication the length of each season and any quota adjustments.

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 (CZM) programs of coastal states in the Atlantic, Gulf of Mexico, and Caribbean. NMFS asked for states' concurrence with this determination during the proposed rule stage. Seven states replied affirmatively regarding the consistency determination, and NMFS presumes that the states that have not yet responded concur with the determination. One state, North Carolina, replied that allocating quotas according to historic landings, was not consistent with the State's CZM program. North Carolina commented that since the time/area closure will be in effect from January through July, dividing the quota according to historical landings would result in ''frontloading'' or allocation of a large portion of the South Atlantic's quota to the first trimester season when fishermen off of North Carolina will be unable to fish. North Carolina felt that dividing the quota equally among the three trimester seasons would allocate a larger proportion of the quota to the second and third trimester seasons than would have been the case using historic landings, and that this would mitigate the economic impact on the South Atlantic region and North Carolina fishermen in particular. In the proposed rule, NMFS considered several alternatives for trimester season quota allocations, including allocating quotas according to historical landings as the preferred alternative. During the public comment period, NMFS heard comments in favor of splitting quotas evenly between the three trimester seasons in the Gulf of Mexico and the South Atlantic but according to historic landings for the North Atlantic region because of fishing opportunities that occur later in the year. As a result, the final rule will divide the Gulf of Mexico and South Atlantic trimester season quotas equally. The North Atlantic quota will be divided according to historical landings. Therefore, NMFS finds that these final regulations are consistent with all applicable approved coastal zone management programs to the maximum extent practicable.

List of Subjects in 50 CFR Part 635

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

Dated: November 23, 2004.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Services.

■ 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 50 CFR 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, paragraphs (b)(1)(i), (b)(1)(iii), (b)(1)(iv), and (b)(1)(vi)(A) and (B) are revised to read as follows:

§ 635.27 Quotas.

* * * * *

(b) * * *

(1) * * *

(i) *Fishing seasons.* The commercial quotas for large coastal sharks, small coastal sharks, and pelagic sharks will be split among three fishing seasons: January 1 through April 30, May 1 through August 31, and September 1 through December 31.

* * * * *

(iii) *Large coastal sharks.* The annual commercial quota for large coastal sharks is 1,017 mt dw, unless adjusted pursuant to paragraph (b)(1)(vi) of this section. This annual quota is split among the regions as follows: 52 percent to the Gulf of Mexico, 41 percent to the South Atlantic, and 7 percent to the North Atlantic. The length of each fishing season will be determined based on the projected catch rates, available quota, and other relevant factors. Consistent with the Administrative Procedure Act, NMFS will publish in the **Federal Register**, prior to the beginning of the season, any annual adjustments.

(iv) *Small coastal sharks.* The annual commercial quota for small coastal sharks is 454 mt dw, unless adjusted pursuant to paragraph (b)(1)(vi) of this section. This annual quota is split among the regions as follows: 10 percent to the Gulf of Mexico, 87 percent to the South Atlantic, and 3 percent to the North Atlantic.

* * * * *

(vi) *Annual adjustments.* (A) NMFS will adjust the next year's fishing season quotas for large coastal, small coastal, and pelagic sharks to reflect actual landings during any fishing season in any particular region. For example, a commercial quota underharvest or overharvest in the fishing season in one

region that begins January 1 will result in an equivalent increase or decrease in the following year's quota for that region for the fishing season that begins January 1.

(*1*) NMFS will adjust a region's annual quota based on the following criteria: if a region has an overharvest of 10 percent or greater of its regional annual quota, and any other region or regions has an underharvest of more than 10 percent of their respective quotas, then NMFS may transfer up to 10 percent of the quota from the region or regions with the underharvest to the region with the overharvest. Any overharvest above 10 percent would be counted against that region's quota for the same season of the following year. If the underharvest is less than 10 percent of the quota for any other region or regions, NMFS would not transfer any quota, even if another region or regions had an overharvest in excess of 10 percent.

(*2*) Other factors NMFS would consider before making a transfer include, but are not limited to, the likelihood of protected species interactions and bycatch rates within a region, historic landings for the region, total landings reported for all regions at the end of their respective seasons, the number of storms during the open season, the size of a region's quotas, the amount of available quota remaining, the projected ability of the vessels fishing in the region from which the quota is proposed to be removed to harvest the remaining quota, and the projected ability of vessels fishing in the region receiving the quota to harvest the additional quota.

(*3*) Quotas for each region would be further divided equally (33.3 percent/season) among the trimester seasons in the Gulf of Mexico and the South Atlantic regions, and based upon historic landings of 4, 88, and 8 percent for the first, second, and third trimester seasons, respectively, in the North Atlantic region. NMFS would make adjustments to trimester season quotas based on a number of factors including, but not limited to: the historic landings for each trimester season in a particular region, total landings reported for all seasons at the end of their respective seasons, the number of storms during each open season, the size of each seasonal quota, the amount of available quota remaining, and the projected ability of vessels fishing in the season receiving additional quota to harvest the additional quota.

(*4*) Consistent with the Administrative Procedure Act, NMFS will publish in the **Federal Register**, prior to the beginning of the season, any annual adjustments.

(B) NMFS will reduce the annual commercial quota for pelagic sharks by the amount that the blue shark quota is exceeded prior to the start of the next fishing season.

* * * * *

[FR Doc. 04–26414 Filed 11–24–04; 2:33 pm]

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Proposed Rules

Federal Register
Vol. 69, No. 229
Tuesday, November 30, 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 HOMELAND SECURITY

8 CFR Part 103

[CIS No. 2245–02; Docket No. DHS–2004–0021]

RIN 1615–AA88

Adjustment of the Appeal and Motion Fees to Recover Full Costs

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: On March 1, 2003, the Immigration and Naturalization Service (Service) transferred from the Department of Justice (DOJ) to the Department of Homeland Security (DHS) pursuant to the Homeland Security Act of 2002 (Pub. L. 107–296). The adjudications functions transferred to the U.S. Citizenship and Immigration Services (USCIS). This document proposes to raise the fee for filing appeals of, and motions to reopen or reconsider, any decision under the immigration laws in any type of proceeding other than those described at 8 CFR 1003.1(b), over which the Board of Immigration Appeals (BIA) has appellate jurisdiction.

This proposed rule applies to fees for appeals and motions relating to the types of cases under the jurisdiction of the Administrative Appeals Office (AAO). The AAO is an appellate office of USCIS. The BIA remains a component of DOJ, and has appellate jurisdiction over the orders of immigration judges, denials of relative immigrant visa petitions (Form I–130), and decisions involving administrative fines and penalties. Appeals from denials of all other types of applications and petitions, and any subsequently filed motions, are under the jurisdiction of the AAO.

In this proposed rule, the fees, which are deposited into the Immigration Examinations Fee Account (IEFA), are being raised from $110 to $385 to recover the full costs associated with the processing of an appeal or motion to reopen or motion to reconsider. Federal statutes and guidelines authorize USCIS to establish and collect fees to recover the full cost of processing immigration benefit applications, rather than supporting these services with tax revenue.

DATES: Written comments must be submitted on or before December 30, 2004.

ADDRESSES: You may submit comments, identified by Docket No. DHS–2004–0021, by *one* of the following methods:

- EPA Federal Partner EDOCKET Web Site: *http://www.epa.gov/feddocket*. Follow instructions for submitting comments on the Web site. The Department of Homeland Security has joined the Environmental Protection Agency (EPA) online public docket and comment system on its Partner Electronic Docket System (Partner EDOCKET). The Department of Homeland Security and its agencies (excluding the United States Coast Guard and Transportation Security Administration) will use the EPA Federal Partner EDOCKET system. The USCG and TSA [legacy Department of Transportation (DOT) agencies] will continue to use the DOT Docket Management System until full migration to the electronic rulemaking federal docket management system in 2005.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *rfs.regs@dhs.gov*. When submitting comments electronically, please include Docket No. DHS–2004–0021 in the subject line of the message.
- Mail: The Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529. To ensure proper handling, please reference Docket No. DHS–2004–0021 on your correspondence. This mailing address may also be used for paper, disk, or CD–ROM submissions.
- Hand Delivery/Courier: U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529. Contact Telephone Number (202) 514–3048.

Instructions: All submissions received must include the agency name and Docket No. DHS–2004–0021 for this rulemaking. All comments received will be posted without change to *http://www.epa.gov/feddocket*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.epa.gov/feddocket*. You may also access the Federal eRulemaking Portal at *http://www.regulations.gov*. Submitted comments may also be inspected at the Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529. To ensure proper handling, please reference CIS No. 2245–02 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Paul Schlesinger, Director, Office of Budget, U.S. Citizenship and Immigration Services, 20 Massachusetts Avenue, NW., 4th Floor, Washington, DC 20529, telephone (202) 272–1930.

SUPPLEMENTARY INFORMATION:

What Legal Authority Does DHS Have To Charge Fees?

A. Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Acts of 1989

Section 209 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, 1989, Public Law 100–459, section 209(a), 102 Stat. 2186, 2203 (October 1, 1988), 8 U.S.C. 1356(m), authorizes DHS to prescribe and collect fees to recover the cost of providing certain immigration and naturalization benefits. That law also authorized the establishment of the IEFA in the Treasury of the United States. All revenue from fees collected for immigration and naturalization benefits are deposited in the IEFA and remain available to provide immigration and naturalization benefits and to provide for the collection, safeguarding, and accounting for fees. 8 U.S.C. 1356(n).

B. The Independent Offices Appropriation Act, 1952

DHS also employs the authority granted by the Independent Offices Appropriation Act, 1952 (IOAA), 31 U.S.C. 9701, commonly referred to as the ''User Fee Statute,'' to develop its fees. The IOAA directs federal agencies

to identify services provided to unique segments of the population and to charge fees for those services, rather than supporting such services through general tax revenues. The IOAA states that ''[i]t is the sense of Congress that each service or thing of value provided by an agency * * * to a person * * * is to be self-sustaining to the extent possible.'' 31 U.S.C. 9701(a).

The IOAA further provides that charges for such services or things of value should be fair and based on ''(A) the costs to the Government; (B) the value of the service or thing to the recipient; (C) public policy or interest served; and (D) other relevant facts.'' 31 U.S.C. 9701(b).

C. The Chief Financial Officers Act of 1990

DHS must also conform to the requirements of the Chief Financial Officers Act of 1990 (CFO Act), Public Law 101–576, 104 Stat. 2838 (1990). Section 205(a) of the CFO Act, amending 31 U.S.C. 902, requires each agency's Chief Financial Officer to ''review, on a biennial basis, the fees, royalties, rents, and other charges imposed by the agency for services and things of value it provides, and make recommendations on revising those charges to reflect costs incurred by it in providing those services and things of value.'' Public Law 101–576, 104 Stat. 2838 (1990) at 2844, 31 U.S.C. 902(a)(8).

What Federal Cost Accounting and Fee Setting Standards and Guidelines Were Used in Developing the Proposed Fee Changes?

A. Office of Management and Budget (OMB) Circular No. A–25, User Charges

When developing fees for special benefits, DHS adheres to the principles contained in OMB Circular No. A–25, Revised, User Charges (1993). OMB Circular No. A–25 states at Section 6, that as a general policy a ''user charge * * * will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public.''

The guidance contained in OMB Circular No. A–25 is applicable to the extent that it is not inconsistent with any federal statute. For example, specific legislative authority to charge fees for special benefits takes precedence over OMB Circular No. A–25. Specifically, section 4(b) provides ''where a statute prohibits the assessment of a user charge on a service or addresses an aspect of the user charge (*e.g.*, who pays the charge; how much is the charge; where collections are deposited), the statute shall take precedence over the Circular.'' When a statute does not address issues of how to calculate fees or what costs to include in the fee calculation, federal agencies must follow the principles and guidance contained in OMB Circular No. A–25 to the fullest extent allowable. The guidance directs federal agencies to charge the ''full cost'' of providing benefits when calculating fees that provide a special benefit to recipients. Section 6(d) of OMB Circular No. A–25 defines ''full cost'' as including ''all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service.'' These costs include, but are not limited to, an appropriate share of:

(a) Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement;

(b) Physical overhead, consulting, and other indirect costs, including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, buildings, and equipment;

(c) Management and supervisory costs; and

(d) The costs of enforcement, collection, research, establishment of standards, and regulation.

Finally, section 6(d)(1)(e) states that ''[f]ull cost shall be determined or estimated from the best available records of the agency, and new cost accounting systems need not be established solely for this purpose.''

B. Federal Accounting Standards Advisory Board Statement of Federal Financial Accounting Standards No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government

When developing fees for services, DHS also adheres to the cost accounting concepts and standards recommended by the Federal Accounting Standards Advisory Board (FASAB). The FASAB was established in 1990, and its purpose is to recommend accounting standards for the Federal Government. The FASAB defines ''full cost'' to include ''direct and indirect costs that contribute to the output, regardless of funding sources.'' Federal Accounting Standards Advisory Board, Statement of Financial Accounting Standards No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government 36 (July 31, 1995). To obtain full cost, FASAB identifies various classifications of costs to be included, and recommends various methods of cost assignment, as will be discussed later. *Id.* at 36–42.

How Are the Adjudications of Immigration Benefit Applications Funded and Supported?

Fees collected from immigration benefit applications are used to fund the full costs of processing immigration benefit applications. Fees deposited into the IEFA have been the primary source of funding for the processing of immigration benefit applications, and generally have replaced the annual appropriation that was received for such services.

How Were the Unit Cost and Proposed Fees for Filing an Appeal or Motion Determined?

A. Insufficiency of the Current Fees

Since 1989, the fees for the vast majority of immigration benefit applications have increased more than threefold based on an improved cost accounting methodology as well as a general rise in resource requirements commensurate with the mission to provide immigration information and benefits for USCIS customers in a timely, accurate, consistent, courteous, and professional manner.

However, the current appeal and motion fees of $110 have neither been reviewed nor adjusted since 1989. In addition, recent performance data indicates that the processing time for an appeal or motion did not meet the President's 5-year goal of processing immigration benefit applications in 6 months or less due, in large part, to staffing shortfalls.

A review to adjust appeal and motion fees was not conducted in the past given the low workload volume. However, recent data indicates a significant and steady increase of 12% in appeal and motion filings from 1993 to 2002. Thus, USCIS deemed it was reasonable and necessary to perform a fee review of the appeal and motion process to ensure full compliance with applicable federal law and user fee guidance by recovering the full costs of appeal and motion filings.

B. The Appeal and Motion Process

When a petition or application is denied or revoked by USCIS, in most cases the applicant or petitioner may appeal that decision to a higher authority. The AAO has appellate jurisdiction over 66 types of petitions and applications. If an applicant or petitioner receives an appealable denial notice, the denial notice will advise the applicant or petitioner of his or her right to appeal to the AAO or BIA, whichever is appropriate; provide the applicant or petitioner with the appropriate appeal form; and include instructions on any

applicable time limit for filing an appeal.

There are strict deadlines that must be met to file an appeal properly. In addition, only the person that submitted the original application or petition may file the appeal. For example, if a U.S. employer petitions for an alien employee, only the U.S. employer may appeal the denial. If the AAO has jurisdiction over the decision, the notice of appeal must be filed on Form I–290B, Notice of Appeal to the Administrative Appeals Unit (AAU). The appeal, as well as the accompanying fee, must be filed with the office that made the original decision to deny the application or petition. The applicant or petitioner may file a brief written explanation in support of an appeal. After review, the AAO may agree with the applicant or petitioner and change the original decision, disagree with the applicant or petitioner and affirm the original decision, or send the matter back to the originating office for further action. Only one appeal may be filed for each denial or revocation; there is no further administrative appellate review of an AAO decision.

In addition to the right to appeal (in which the applicant or petitioner asks a higher authority to review a denial), the applicant or petitioner may file a motion to reopen the case or a motion to reconsider the denial with the office that made the unfavorable decision, such as the field office or AAO. By filing these motions, the applicant or petitioner may ask the office to reexamine or reconsider its decision. A motion to reopen must state the new facts that are to be provided in the reopened proceeding and must be accompanied by affidavits or other documentary evidence per 8 CFR 103.5(a)(2). Under 8 CFR 103.5(a), a motion to reconsider must establish that the decision was based on an incorrect application of law or USCIS policy, and further establish that the decision was incorrect based on the evidence of record at the time the initial decision was issued. Any motion to reopen or reconsider must be filed with the correct fee within 30 days of the decision.

Form I–290B is used to appeal decisions issued by adjudication officers located at DHS service centers and district offices. Appeals and motions require approximately the same amount of effort, on average, according to discussions with AAO management. The core work of writing and editing performed at the AAO is very labor intensive, given the three full days it requires to process an average appeal/motion case.

C. Methodology

In Fiscal Year 2003, KPMG Consulting was hired to provide an independent fee review as well as to ensure adherence to applicable federal law and fee guidance. The fee review identified the full costs of processing appeals and motions and the estimated completion volumes over the Fiscal Year 2003/2004 biennial time period. The full cost determination included the labor-intensive activities involved in application logistics, legal research, decision writing, and decision review. The full cost determination also included the staffing necessary to meet the President's 5-year goal of processing immigration benefit applications in 6 months or less.

D. Basis for the Proposed Fees

The unit cost of $382.98 was determined by dividing the full costs of processing appeal/motion cases associated with the FY 2003/2004 biennial time period ($13,021,582) by the FY 2003/2004 completion volumes (34,000). The time required to process an average appeal versus an average motion case is essentially the same. Therefore, their respective unit costs are equal.

The table below identifies the unit cost of $382.98 and the proposed fee of $385.

UNIT COST AND PROPOSED FEE CALCULATIONS

	FY 2003/2004
Appeal/Motion Processing Costs	$13,021,582
Appeal/Motion Completion Volume	34,000
Appeal/Motion Unit Cost	382.98
Rounding Adjustment	2.02
Proposed Appeal/Motion Fee	385.00

This rule also clarifies that the fee amount of $385 also applies when an appeal is filed by, or on behalf of, two or more aliens and the two aliens are covered by one decision. In so doing, it corrects a transcription error in the Code of Federal Regulations in 1989 that failed to amend the fee amount from $50 to $110 for two or more aliens when the aliens are covered by one decision when the base fee (for one alien) was raised from $50 to $110, as provided in the final rule dated April 4, 1989 (54 FR 13513). The failure resulted in an unintended discrepancy between the base fee, and the fee for two or more aliens when the aliens are covered by one decision. Notwithstanding this transcription error, affected aliens have been properly charged, and the Service as well as USCIS have collected the correct fee since the 1989 amendment. The form instructions also reflected the proper fee amount. This rule corrects the discrepancy in 8 CFR 103.7(b)(1) and brings this fee as properly amended ($50 to $110) from $110 to $385 so that both fees are now equal as intended.

Finally, this proposed rule also makes a conforming change to 8 CFR 103.5(a)(1)(iii) to replace an obsolete reference to a withdrawn form, Form I–290A, with a reference to Form I–290B.

Does USCIS Have the Authority To Waive Fees on a Case-By-Case Basis?

Yes, USCIS has the authority to waive fees on a case-by-case basis pursuant to 8 CFR 103.7(c).

Regulatory Flexibility Act

DHS has reviewed this regulation in accordance with 5 U.S.C. 605(b), and by approving it, DHS has determined that this rule will not have a significant economic impact on a substantial number of small entities since a majority of motions and appeals are submitted by individuals and not small entities as that term is defined in 5 U.S.C. 601(6).

DHS acknowledges, however, that some small entities, particularly those filing appeals of and/or motions to review denials of business-related applications and petitions, such as the Form I–140, Immigration Petition for Alien Worker, Form I–526, Immigrant Petition for Alien Entrepreneur, and Form I–829, Petition for Entrepreneur to Remove Conditions, may be affected by this rule. USCIS does not collect data on the size of the businesses filing appeals and/or motions related to employment based petitions, and therefore does not know the precise number of small businesses that may be affected by this rule (as the majority of petitions are filed by individuals). USCIS projects the following number of denials for business-related petitions for the Fiscal Year 2003/2004 biennial period:

Form I–140, Immigrant Petition for Alien Worker (35,866 denials);

Form I–526, Immigrant Petition by Alien Entrepreneur (217 denials);

Form I–829, Petition by Entrepreneur to Remove Conditions (174 denials).

Although this volume represents the total number of denials, it does not represent the total number of motions/appeals filed on these petitions which would be far less given that the number of motions/appeals filed by individuals and businesses totaled only 34,000 in the Fiscal Year 2003/2004 biennial period. However, even if all of the motions/appeals were filed by small businesses, the resulting degree of economic impact would not require a

Regulatory Flexibility Analysis to be performed.

Unfunded Mandates Reform Act of 1995

This 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 were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule 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 12866

This rule is considered by DHS to be ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget (OMB) for review. DHS has assessed both the costs and benefits of this rule as required by section 1(b)(6) of Executive Order 12866 and has made a determination that, although increasing the fee to $385 will increase the cost to the individual applicant and/or petitioner, USCIS must establish and collect fees to recover the full cost of processing immigration benefit applications, rather than supporting these services with tax revenue. There are no identifiable alternatives associated with this fee increase. The implementation of this rule also will provide USCIS with an additional $6.7 million in FY 2005 over the fee revenue that would be collected under the current fee structure. If USCIS does not adjust the current fees to recover the full costs of processing immigration benefit applications, the backlog will likely increase. The revenue increase is based on USCIS costs and projected volumes that were available at the time of this rule.

Executive Order 13132

This rule will 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. Therefore, in accordance with section 6 of Executive Order 13132, DHS has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988: Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (1995), all Departments are required to submit to OMB, for review and approval, any reporting or recordkeeping requirements inherent in a rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act. This rule proposes that the fees for motions and appeals be increased. Since an increase of these fees will increase the cost burden on the public, DHS will submit the required Paperwork Reduction Change Worksheet (OMB–83C) to the Office of Management and Budget (OMB) reflecting the new fees and cost burdens on the public. It should also be noted that changes to the fees require changes to the application form (Form I–290B) to reflect the new fees. USCIS will submit a notification to OMB with respect to any such changes.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Authority delegations (government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

Accordingly, part 103 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. In § 103.5(a)(1)(iii), the introductory text is revised to read as follows:

§ 103.5 Reopening or reconsideration.

(a) * * *

(1) * * *

(iii) *Filing Requirements*—A motion shall be submitted on Form I–290B and may be accompanied by a brief. It must be:

* * * * *

§ 103.7 [Amended]

3. In § 103.7(b)(1):

a. The entry for ''Form I–290B'' is amended by revising the fee ''$50'' to read: ''$385.00'', and by revising the fee ''$110.00'' to read: ''$385.00''; and

b. The entry for ''Motion'' is amended by revising the fee ''$110'' to read: ''$385'', wherever that fee appears in the entry.

Dated: November 18, 2004.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 04–26370 Filed 11–29–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103, 204, 214, 245, and 245a

[CIS No. 2287–03; Docket No. DHS 2004–0020]

RIN 1615–AB13

Removal of the Standardized Request for Evidence Processing Timeframe

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend Department of Homeland Security (Department) regulations by removing the absolute requirement for, and the fixed regulatory time limitations on responses to, a U.S. Citizenship and Immigration Services (USCIS) issued Request for Evidence (RFE) or Notice of Intent to Deny (NOID). These changes will enable USCIS to set an appropriate deadline for responding to an RFE or NOID, specific to the type of case, benefit category, or classification, and thus improve the process of adjudication of applications and petitions by reducing the time a case is held awaiting evidence, and by reducing average case processing time. This rule will result in improved efficiency in the USCIS adjudication process.

In addition, this rule also replaces references to the Immigration and Naturalization Service (Service) with references to USCIS in light of implementation of the Homeland

Security Act of 2002, Public Law 107–296. This rule also removes obsolete regulatory language related to the Replenishment Agricultural Worker (RAW) program under section 210A of the Immigration and Nationality Act (Act), which was repealed by section 219(ee)(1) of the Immigration and Technical Corrections Act of 1994, Public Law 103–416. The rule further removes references to the use of qualified designated entities for filing of applications for adjustment of status in the Seasonal Agricultural Workers (SAW) and legalization programs under section 210 and 245A of the Act.

DATES: Written comments must be submitted on or before January 31, 2005.

ADDRESSES: You may submit comments, identified by DHS Docket No. DHS–2004–0020, by *one* of the following methods:

- EPA Federal Partner EDOCKET Web Site: *http://www.epa.gov/feddocket.* Follow instructions for submitting comments on the Web site. The Department of Homeland Security has joined the Environmental Protection Agency (EPA) online public docket and comment system on its Partner Electronic Docket System (Partner EDOCKET). The Department of Homeland Security and its agencies (excluding the United States Coast Guard and Transportation Security Administration) will use the EPA Federal Partner EDOCKET system. The USCG and TSA (legacy Department of Transportation (DOT) agencies) will continue to use the DOT Docket Management System until full migration to the electronic rulemaking federal docket management system in 2005.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *rfs.regs@dhs.gov.* When submitting comments electronically, please include Docket No. DHS–2004–0020 in the subject line of the message.
- Mail: The Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529. To ensure proper handling, please reference Docket No. DHS–2004–0020 on your correspondence. This mailing address may also be used for paper, disk, or CD–ROM submissions.
- Hand Delivery/Courier: U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529. Contact Telephone Number (202) 514–3048.

Instructions: All submissions received must include the agency name and Docket No. DHS–2004–0020 for this rulemaking. All comments received will be posted without change to *http://www.epa.gov/feddocket,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.epa.gov/feddocket.* You may also access the Federal eRulemaking Portal at *http://www.regulations.gov.* Submitted comments may also be inspected at the Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529. To ensure proper handling, please reference Docket No. DHS–2004–0020 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Rodger Pitcairn, Program and Regulations Development, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529, telephone (202) 514–2685.

SUPPLEMENTARY INFORMATION:

Who Is Affected by This Rule?

This proposed rule would affect those petitioners and applicants who submit applications/petitions for immigration benefits and receive requests for evidence (RFEs) or notices of intent to deny (NOIDs) from the Department.

What Is an RFE?

An RFE, described in current regulations at 8 CFR 103.2(b)(8), is a request, issued by an adjudicating immigration officer, for the applicant or petitioner to provide initial or additional evidence in support of an application or petition. RFEs usually are in writing and request missing documentary evidence. The documentary evidence requested may consist of basic documents that were specified in the application/petition forms and/or instructions but which were not submitted by the applicant or petitioner. The RFE may also be a request for original documents or proper translations, or for other documents not specifically identified in the form's instructions but determined by the adjudicator to be relevant to the adjudication of the application/petition.

What Is a Notice of Intent To Deny?

A notice of intent to deny (NOID) is a written notice issued to an applicant or petitioner when USCIS has made a preliminary decision to deny the application or petition. NOIDs may be based on evidence of ineligibility and/or on derogatory information of which the applicant or petitioner is unaware.

What Is the Current Process for Issuing an RFE or NOID?

Under 8 CFR 103.2(b)(8), USCIS is required to issue an RFE when initial evidence is missing. Initial evidence is evidence specified in the regulations and on the application or petition and accompanying instructions. USCIS, in its discretion, may also issue an RFE for additional evidence. In either case, if USCIS issues an RFE, USCIS must provide a standard response period of 12 weeks.

There are various provisions throughout 8 CFR that authorize or require USCIS to issue a NOID to an applicant or petitioner before rendering a final decision on the case. NOIDs are designed to provide the applicant or petitioner with an opportunity to inspect and rebut the evidence in a certain period of time, usually 30 days from the date of notice.

Why Is USCIS Changing the Current Process and How Will RFE or NOID Issuance Occur Under the Proposed Rule?

USCIS recognizes that while RFEs are sometimes necessary, RFE issuance slows the adjudication process. Some RFEs are simple enough to require resubmission within a few weeks; others may require more time. USCIS proposes to replace the current 12-week response period reflected in 8 CFR 103.2(b)(8) with a more flexible approach, setting response periods based on various factors such as the type of benefit sought; the type of application or petition filed; the type of evidence needed for adjudication; the source and availability of documentation (both foreign and domestic); the effect of denial of an application or petition on the applicant, petitioner and/or beneficiary (*e.g.*, loss of long-held priority dates, loss of valid status or interim benefits); the delivery mechanisms to be used for an RFE or NOID; and other case-specific factors. USCIS also proposes to remove most provisions that require issuance of an RFE or NOID in order to allow USCIS greater flexibility in deciding cases based on the information received, including initial evidence and other relevant materials. Generally, USCIS anticipates that the response times for most RFEs or NOIDs that are set by USCIS under this proposed rule will not be less than 30 days. In addition, USCIS will issue RFEs or NOIDs as written notices, clearly stating what evidence or information is required, to give the

applicant or petitioner adequate notice and sufficient information to respond to any request.

The goal for redesigning the RFE and NOID issuance process is to allow USCIS flexibility in determining whether to issue RFEs and NOIDs and in setting RFE and NOID response periods, mainly through implementing field guidance that will address specific circumstances encountered by USCIS. Clearly approvable cases should be promptly approved, without the need for an RFE. Clearly ineligible cases should be denied without an RFE or NOID, even if required initial evidence has not been submitted. USCIS also retains its discretion to issue an RFE, NOID or deny a case when initial evidence is missing or there is insufficient evidence to establish eligibility. The current rule at 8 CFR 103.2(b)(16)(i) requiring opportunity to rebut derogatory information of which the applicant or petitioner is unaware will remain.

USCIS welcomes comments on all aspects of this rule, and specifically requests proposals on appropriate standards for RFE or NOID issuance as well as for determining appropriate periods for RFE and NOID responses. USCIS also welcomes suggestions on actual timeframes that should be adopted based on either the application or petition being filed or the documentary evidence generally required for a particular benefit category. Based on the comments received and USCIS' own experience in case adjudication, USCIS will develop timeframes and standards for RFE and NOID issuance.

What Other Changes Does This Rule Propose To Make?

This rule clarifies 8 CFR 103.2(b)(5) to reflect that official documents issued by the Department (or the former Immigration and Naturalization Service) need not be submitted in the original unless required by USCIS. Original documents submitted to USCIS (or the former Immigration and Naturalization Service) will be returned upon request, but USCIS is not precluded from making subsequent requests to reexamine original documents.

This rule expands and restructures current 8 CFR 103.2(b)(8) to reflect more accurately the process of responding to an RFE. This change is intended to facilitate a respondent's ability to understand and address a request for evidence.

This rule amends 8 CFR 103.2(b)(8) by removing the mandatory requirement that USCIS issue an RFE for initial evidence. Instead, USCIS, in its discretion, may deny a petition or application when required initial evidence is missing. If an applicant or petitioner fails to submit the required initial evidence, and USCIS decides to deny the application or petition rather than issue an RFE, the applicant or petitioner may file a motion to reopen, with fee, as provided under 8 CFR 103.5 or file a new application or petition. The applicant or petitioner may also file an appeal of the denial if other regulatory or statutory authority exists for such appeal.

This rule also preserves USCIS' discretion to issue an RFE or NOID if USCIS determines that the record raises questions of eligibility. If USCIS issues an RFE or NOID for additional evidence and a response is received, USCIS will adjudicate the application based on the required initial evidence and the requested information submitted in response to the RFE or NOID. If the applicant or petitioner does not respond to the RFE or NOID, USCIS will treat the failure to respond as a statement by the applicant or petitioner that he or she believes the record as it stands establishes eligibility. Upon passing of the deadline for submission of the requested evidence, USCIS will adjudicate the application and/or petition based on the record then existing before USCIS (*e.g.*, the application or petition and the required initial evidence).

Finally, this rule divides current 8 CFR 103.2(b)(17) into two separate paragraphs for improved ease of use and to clarify which official records will be accepted to establish lawful admission for permanent residence.

In addition to the proposed changes regarding RFE requests, USCIS is making numerous technical changes to 8 CFR 103.2 necessary to reflect the recent organizational changes resulting from implementation of the Homeland Security Act of 2002, Public Law 107–296.

Are Fee Waivers Available if a Petitioner or Applicant Is Required To File a New Application or Petition or, if Eligible, a Motion To Reopen?

Fee waiver requests may be granted when it has been established that the individual is unable to pay the required filing fees, including filing fees for motions to reopen. *See* 8 CFR 103.7(c). To apply for a fee waiver, an individual must comply with the provisions of 8 CFR 103.7(c). The individual may submit an affidavit, or unsworn declaration made pursuant to 28 U.S.C. 1746, that is signed, dated, and certified under penalty of perjury, and which states the reasons why the individual is unable to pay the filing fee. USCIS will take note of any evidence or documentation that is submitted in support of the individual's claim that he or she is unable to pay the filing fee. For more detailed information on the fee waiver request process please visit the USCIS Web site at *http://www.uscis.gov*.

Regulatory Flexibility Act

DHS has reviewed this rule in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), and, by approving it, DHS certifies that this rule will not have a significant economic impact on a substantial number of small entities. Although some petitions may be submitted by small entities, namely U.S. employers seeking nonimmigrant or immigrant labor, this rule is intended to be more flexible in setting time limits for RFEs or NOIDs, thereby reducing the timeframe for adjudicating these petitions without imposing costs. USCIS recognizes that this change may have a small impact on small business practices or productivity due to the change in timeframes for responses to RFEs or NOIDS. However, USCIS believes these changes ultimately will benefit affected small businesses, namely because the reduction in adjudication timeframes will allow U.S. employers to receive the benefit sought at an earlier date (*i.e.*, the ability to hire temporary or permanent foreign employees). USCIS intends to set response times for RFEs or NOIDs generally at not less than 30 days. USCIS welcomes suggestions on actual timeframes that should be adopted based on either the application or petition being filed or the documentary evidence generally required for a particular benefit category. Based on the comments received and USCIS' own experience in case adjudication, USCIS will develop timeframes and standards for RFE and NOID issuance.

Unfunded Mandates Reform Act of 1995

This 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 will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule 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 12866

This rule is considered by the Department of Homeland Security to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget for review.

The Department has assessed both the costs and the benefits associated with this proposed rule. There are no identifiable alternatives associated with RFE or NOID issuance. In addition, there are minimal costs to the Department associated with instructing adjudicators about the options for dealing with inadequate information. There are benefits to both USCIS and the public. USCIS will reduce the number of RFEs and NOIDs and the cycle time for responses to such notices, potentially reducing the pending backlog of cases. The public will receive fewer and more specific RFE or NOID notices and benefit from faster approval of applications and petitions. USCIS welcomes comments specifically on the impact on U.S. employers who file employment-related applications or petitions and on any potential costs that may be associated with implementation of this rule.

Executive Order 13132

This rule will 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. Therefore, in accordance with section 6 of Executive Order 13132, DHS has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting or recordkeeping requirements inherent in a rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 204

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

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Reporting and recordkeeping requirements.

8 CFR Part 245

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 245a

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. Section 103.2 is amended by:

a. Revising the term ''INS office or Service Center'' to read ''USCIS office'' in paragraph (a)(6);

b. Revising the term ''Service Center'' to read ''service center'' wherever that term appears in the last sentence of paragraph (a)(7)(i);

c. Revising paragraph (b)(1);

d. Revising paragraph (b)(4);

e. Revising paragraph (b)(5);

f. Revising paragraph (b)(8);

g. Revising paragraph (b)(11);

h. Removing the term ''initial'' in paragraph (b)(12), first sentence of text;

i. Revising paragraph (b)(13);

j. Revising term ''regional commissioner'' to read ''USCIS Director or his or her designee'' in paragraph (b)(16)(iii);

k. Revising the term ''regional commissioner'' to read ''USCIS Director or his or her designee'' in the second sentence, and the term ''regional commissioner's'' to read ''USCIS Director's or his or her designee's'' in the third sentence in paragraph (b)(16)(iv);

l. Revising paragraph (b)(17); and by

m. Removing and reserving paragraphs (c) and (d); The revisions read as follows:

§ 103.2 Applications, petitions, and other documents.

* * * * *

(b) * * * (1) *Demonstrating eligibility at time of filing.* An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. All required application or petition forms must be properly completed and filed with any initial evidence required by applicable regulations and/or the form's instructions. Failure to submit with the petition or application all of the initial evidence that is required by the applicable regulations or form instructions may result in denial of the petition or application without further notice to the petitioner or applicant. Any evidence submitted in connection with the application or petition is incorporated into and considered part of the relating application or petition.

* * * * *

(4) *Submitting copies of documents.* Application and petition forms, and documents issued to support an application or petition, such as labor certifications, Form IAP–66, medical examinations, affidavits, formal consultations, letters of current employment and other statements, must be submitted in the original unless previously filed with USCIS. Official documents issued by the Department need not be submitted in the original unless required by USCIS. Unless otherwise required by the applicable regulation or form's instructions, a legible photocopy of any other supporting document may be submitted.

(5) *Request for an original document.* USCIS may, at any time, request submission of an original document for review. The request will state a deadline for submission of the original document. Failure to submit the requested original by the deadline may result in denial or revocation of the underlying application or benefit. An original document submitted in response to such a request, when no longer required by USCIS, will be returned to the petitioner or

applicant upon completion of the adjudication.

* * * * *

(8) *Request for evidence*. (i) *Evidence of eligibility or ineligibility*. If the preponderance of the evidence submitted with the application or petition establishes eligibility, USCIS will approve the application or petition, except that in any case in which the applicable statute or regulation makes the approval of a petition or application a matter entrusted to USCIS discretion, USCIS will approve the petition or application only if the preponderance of the evidence of record establishes not only that the petitioner or applicant is eligible for the benefit sought but also that the petitioner or applicant warrants a favorable exercise of discretion. If there is evidence in the record that establishes ineligibility, the application or petition will be denied on that basis.

(ii) *Action on insufficient initial evidence*. If the evidence submitted does not fully establish eligibility, USCIS may, according to the agency's implementing guidance: Deny the application or petition for lack of initial evidence or for ineligibility; request more information or evidence from the applicant or petitioner within a specified period of time as determined by USCIS; or notify the applicant or petitioner of its intent to deny the application or petition and of the basis for the proposed denial and require a response within a specified period of time as determined by USCIS. If USCIS issues a RFE or NOID, the RFE or NOID will be in writing and specify the type of evidence required or the bases for denial to give the applicant or petitioner adequate notice and sufficient information to respond to such notice. The time allowed for response to a request for evidence or notice of intent to deny generally will not be less than thirty (30) days.

* * * * *

(11) *Responding to a request for evidence or notice of intent to deny*. If USCIS issues a request for evidence or a notice of intent to deny, the applicant or petitioner may respond at any time prior to the deadline set by USCIS. An applicant or petitioner may also withdraw the application or petition at any time during the period provided for response. All requested materials should be submitted together at one time, along with the original USCIS request for evidence or notice of intent to deny. Submission of only some of the requested evidence will be considered a request for a decision on the record. After the deadline for response, or after USCIS' receipt of a response, the application or petition will be adjudicated based on the record then existing (*e.g.* the application or petition, required initial evidence and any relevant information submitted in response to the request for evidence or notice of intent to deny).

* * * * *

(13) *Effect of failure to respond to a request for evidence or a notice of intent to deny or to appear for interview or fingerprinting*. (i) *Failure to submit evidence or respond to a notice of intent to deny*. If any requested evidence or a response to a notice of intent to deny is not submitted by the required date, the failure to submit such evidence or response shall be treated as a request for a decision based on the record then existing (*e.g.* the application or petition and required initial evidence) and the application or petition shall be adjudicated accordingly.

(ii) *Failure to appear for fingerprinting or interview*. Except as provided in 8 CFR 335.6, if an individual requested to appear for fingerprinting or for an interview does not appear and USCIS has not received either a request for rescheduling by the date of the fingerprinting appointment or interview, or a withdrawal of the application or petition, the application or petition shall be considered abandoned and denied accordingly.

* * * * *

(17) *Verifying claimed citizenship or permanent resident status*. (i) *Department records*. The status of an applicant or petitioner who claims that he or she is a permanent resident of the United States or was formerly a permanent resident of the United States will be verified from official Department records. These records include alien and other files, arrival manifests, arrival records, Department index cards, Immigrant Identification Cards, Certificates of Registry, Declarations of Intention issued after July 1, 1929, Permanent Resident Cards (Form I–551), Alien Registration Receipt Cards (Form I–151), other registration receipt forms (Form AR–3, AR–3a, and AR–103, provided that such forms were issued or endorsed to show admission for permanent residence), passports, and reentry permits. An official record of a Department index card must bear a designated immigrant visa symbol and must have been prepared by an authorized official of the Department in the course of processing immigrant admissions or adjustments to permanent resident status. Other cards, certificates, declarations, permits, and passports must have been issued or endorsed to show admission for permanent residence. Except as otherwise provided in 8 CFR part 101, and in the absence of countervailing evidence, such official records will be regarded as establishing lawful admission for permanent residence.

(ii) *Assisting self-petitioners who are spousal abuse victims*. If a self-petitioner filing a petition under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), or 204(a)(1)(B)(iii) of the Act is unable to present primary or secondary evidence of the abuser's status, USCIS will attempt to verify electronically the abuser's citizenship or immigration status from information contained in the Department's automated or computerized records. Other Department records may also be reviewed at the discretion of the adjudicating officer. If USCIS is unable to identify a record as relating to the abuser, or the record does not establish the abuser's immigration or citizenship status, the self-petition will be adjudicated based on the information submitted by the self-petitioner.

* * * * *

§ 103.2 [Amended]

3. Section 103.2 is further amended by:

a. Revising the terms ''the Service'' or ''Service'' to read ''USCIS'' wherever those terms appear in the following paragraphs:

—Paragraph (a)(7)(i) first sentence and first time it appears in the last sentence;
—Paragraph (b)(2)(ii) in the last sentence;
—Paragraph (b)(2)(iii);
—Paragraph (b)(3);
—Paragraph (b)(6);
—Paragraph (b)(7);
—Paragraph (b)(9) introductory text;
—Paragraph (b)(10);
—Paragraph (e)(1);
—Paragraph (e)(2);
—Paragraph (e)(3) introductory text;
—Paragraph (e)(3)(iii);
—Paragraph (e)(4)(i);
—Paragraph (e)(4)(iii) introductory text;
—Paragraph (e)(4)(iii)(C);
—Paragraph (e)(4)(iv) second sentence;
—Paragraph (f)(1) in the third sentence;
—Paragraph (f)(1), the first time the term appears in the fourth sentence;
—Paragraph (f)(2), the first time the term appears in the first sentence;
—Paragraph (f)(3), the first and last time the term appears in the last sentence;
—Paragraph (f)(4), the first time the term appears in the first sentence;
—Paragraph (f)(4), the first time the term appears in the second sentence; and
—Paragraph (f)(4), in the third sentence.

b. Revising the term ''Service's'' to read ''USCIS''' in the following paragraphs:

—Paragraph (b)(15);
—Paragraph (e)(3)(iii); and
—Paragraph (e)(4)(iii)(C).

* * * * *

PART 204—IMMIGRANT PETITIONS

4. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255, 1641; 8 CFR part 2.

§ 204.1 [Amended]

5. Section 204.1 is amended by removing paragraph (h).

§ 204.2 [Amended]

6. Section 204.2 is amended by:

a. Removing paragraph (c)(3)(ii) and by redesignating (c)(3)(iii) as (c)(3)(ii);

b. Removing paragraph (e)(3)(ii) and by redesignating (e)(3)(iii) as (e)(3)(ii).

PART 214—NONIMMIGRANT CLASSES

7. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1185 (pursuant to Executive Order 13323, published January 2, 2004), 1186a, 1187, 1221, 1281, 1282, 1301–1305; 1372; 1379; 1731–32; sec. 643, Pub. L. 104–208; 110 Stat. 3009–708; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901, note, and 1931, note, respectively.

§ 214.2 [Amended]

8. Section 214.2 is amended by:

a. Removing paragraph (h)(10)(ii) and by redesignating (h)(10)(iii) as (h)(10)(ii);

b. Removing paragraph (k)(10)(iii);

c. Removing paragraph (l)(8)(i) and by redesignating (l)(8)(ii) and (l)(8)(iii) as (l)(8)(i) and (l)(8)(ii) respectively;

d. Revising paragraph (o)(7); and by

e. Revising paragraph (p)(9).

The revisions read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(o) * * *

(7) The petitioner shall be notified of the decision, the reasons for the denial, and the right to appeal the denial under 8 CFR part 103.

* * * * *

(p) * * *

(9) The petitioner shall be notified of the decision, the reasons for the denial, and the right to appeal the denial under 8 CFR part 103. There is no appeal from a decision to deny an extension of stay to the alien or a change of nonimmigrant status.

* * * * *

8. Section 214.11 is amended by revising paragraph (k)(2) to read as follows:

§ 214.11 Alien victims of severe forms of trafficking in persons.

* * * * *

(k) * * *

(2) *Determination by USCIS.* An application for T–1 status under this section will not be treated as a bona fide application until USCIS has provided the notice described in paragraph (k)(3) of this section. In the event that an application is incomplete or if the application is complete but does not present sufficient evidence to establish prima facie eligibility for each required element of T nonimmigrant status, USCIS will follow the procedures provided in 8 CFR 103.2(b)(8) for requesting additional evidence, issuing a notice of intent to deny, or adjudicating the case on the merits.

9. Section 214.15 is amended by revising the second sentence of paragraph (d) to read as follows:

§ 214.15 Certain spouses and children of lawful permanent residents.

* * * * *

(d) *The definition of ''pending''.* * * * In addition, the petition must have been properly filed according to 8 CFR 103.2(a), and if, subsequent to filing, USCIS returns the petition to the applicant for any reason or makes a request for evidence or issues a notice of intent to deny under 8 CFR 103.2(b)(8), the petitioner must comply with the request within the time period set by USCIS. * * *

* * * * *

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

10. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; sec. 202, Pub. L. 105–100, 111 Stat. 2160, 2193; sec. 902, Pub. L. 105–277, 112 Stat. 2681; 8 CFR part 2.

§ 245.18 [Amended]

11. Section 245.18 is amended by removing and reserving paragraph (i).

PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR LAWFUL TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT

12. The authority citation for part 245a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1255a and 1255a note.

13. Section 245a.20 is amended by revising paragraph (a)(2) to read as follows:

§ 245a.20 Decisions, appeals, motions, and certifications.

(a) * * *

(2) *Denials.* The alien shall be notified in writing of the decision of denial and of the reason(s) therefor. An applicant affected under this part by an adverse decision is entitled to file an appeal on Form I–290B, Notice of Appeal to the Administrative Appeals Office (AAO), with required fee specified in 8 CFR 103.7(b)(1). Renewal of employment authorization issued pursuant to § 245a.13 will be granted until a final decision has been rendered on appeal or until the end of the appeal period if no appeal is filed. After exhaustion of an appeal, an alien who believes that the grounds for denial have been overcome may submit another application with fee, provided that the application is submitted on or before June 4, 2003.

* * * * *

§ 245a.33 [Amended]

14. Section 245a.33 is amended by removing the second sentence of paragraph (b).

Dated: November 18, 2004.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 04–26371 Filed 11–29–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19577; Airspace Docket No. 04–ACE–67]

Proposed Establishment of Class E2 Airspace; and Modification of Class E5 Airspace; Independence, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

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

DATES: Comments for inclusion in the Rules Docket must be received on or before January 10, 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–2004–19577/ Airspace Docket No. 04–ACE–67, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–19577/Airspace Docket No. 04–ACE–67.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published 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.gop.gov/nara*.

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

The Proposal

This notice proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace designated as a surface area for an airport at Independence, KS. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing instrument approach procedures to Independence Municipal Airport. Weather observations would be provided by an Automatic Weather Observing/ Reporting system (AWOS) and communications would be direct with Kansas City Air Route Traffic Control Center.

This notice also proposes to revise the Class E airspace area extending upward from 700 feet above the surface at Independence, KS. An examination of this Class E airspace area revealed it does not comply with airspace requirements for diverse departments from Independence Municipal Airport as set forth in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The examination also revealed discrepancies in the Independence Municipal Airport airport reference point. This proposal would correct these anomalies. The areas would be depicted on appropriate aeronautical charts.

Class E airspace areas designated as surface areas are published in Paragraph 6002 of FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of the same Order. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority since it would contain aircraft executing instrument approach procedures to Independence Municipal Airport and correct discrepancies in the airport reference point.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE KS E2 Independence, KS

Independence Municipal Airport, KS (lat. 37°09′30″ N., long. 95°46′42″ W.).

Within a 4.6-mile radius of Independence Municipal Airport.

* * * * *

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

* * * * *

ACE KS E5 Independence, KS

Independence Municipal Airport, KS (lat. 37°09′30″ N., long. 95°46′42″ W.).

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of the Independence Municipal Airport.

* * * * *

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

Anthony D. Roetzel,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 04–26344 Filed 11–29–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19578; Airspace Docket No. 04–ACE–68]

Proposed Establishment of Class E2 Airspace; Lawrence, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to create a Class E surface area at Lawrence, KS.

DATES: Comments for inclusion in the Rules Docket must be received on or before January 10, 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–2004–19578/Airspace Docket No. 04–ACE–68, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–19578/Airspace Docket No. 04–ACE–68.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM's

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

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

The Proposal

This notice proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace designated as a surface area for an airport at Lawrence, KS. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing instrument approach procedures to Lawrence Municipal Airport. Weather observations would be provided by an Automated Surface Observing System (ASOS) and communications would be direct with Kansas City Air Route Traffic Control Center. The area would be depicted on appropriate aeronautical charts.

Class E airspace areas designated as surface areas are published in Paragraph 6002 of FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority since it would contain aircraft executing instrument approach procedures to Lawrence Municipal Airport.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE KS E2 Lawrence, KS

Lawrence Municipal Airport, KS (Lat. 39°00′40″ N., long. 95°13′00″ W.).

Within a 4-mile radius of Lawrence Municipal Airport and within 1.2 miles each side of the 333° bearing from the airport extending from the 4-mile radius to 4.2 mile northwest of the airport.

* * * * *

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

Anthony D. Roetzel,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 04–26345 Filed 11–29–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–128767–04]

RIN 1545–BD48

Treatment of Disregarded Entities under Section 752; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing for proposed rulemaking.

SUMMARY: This document provides notice of a public hearing for proposed regulations provide rules under section 752 for taking into account certain obligations of a business entity that is disregarded as separate from its owner under section 856(*i*), 1361(b)(3), or §§ 301.7701–1 through 301.7701–3 (disregarded entity) for purposes of charactering and allocating partnership liabilities.

DATES: The public hearing is scheduled for Friday, January 14, 2005, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the public hearing by Friday, December 24, 2004.

ADDRESSES: The public hearing is being held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building.

Mail outlines to: Publications and Regulations Branch CC:PA:LPD:PR (REG–128767–04), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Hand deliver outlines Monday through Friday between the hours of 8 a.m. and 4 p.m. to: Publications and Regulations Branch CC:PA:LPD:PR (REG–128767–04), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Submit outlines electronically directly to the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at: *http://www.regulations.gov* (IRS–REG–128767–04).

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing Robin Jones (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed regulations (REG–128767–04) that was published in the **Federal Register** on August, 12, 2004 (69 FR 49832).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who have submitted written or electronic comments and wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight (8) copies) by December 24, 2004.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing. Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts.

For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Cynthia E. Grigsby,

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

[FR Doc. 04–26416 Filed 11–29–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Notice No. 25]

RIN 1513–AA77

Proposed Establishment of the Texoma Viticultural Area (2003R–110P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau proposes to establish the ''Texoma'' viticultural area in north-central Texas in Montague, Cooke, Grayson, and Fannin Counties. The proposed area consists of approximately 3,650 square miles on the southern side of Lake Texoma and the Red River, along the Texas-Oklahoma State line. We designate viticultural areas to allow bottlers to better describe the origin of wines and allow consumers to better identify the wines they may purchase. We invite comments on this proposed addition to our regulations.

DATES: We must receive written comments on or before January 31, 2005.

ADDRESSES: You may send comments to any of the following addresses:

- Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, Attn: Notice No. 25, P.O. Box 14412, Washington, DC 20044–4412.
- 202–927–8525 (facsimile).
- *nprm@ttb.gov* (e-mail).
- *http://www.ttb.gov/alcohol/rules/index.htm*. An online comment form is posted with this notice on our Web site.
- *http://www.regulations.gov* (Federal e-rulemaking portal; follow instructions for submitting comments).

You may view copies of this notice, the petition, the appropriate maps, and any comments we receive about this notice by appointment at the TTB Library, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call 202–927–2400. You may also access copies of the notice and comments online at *http://www.ttb.gov/alcohol/rules/index.htm*.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Alcohol and Tobacco Tax and Trade Bureau, Regulations and

Procedures Division, P.O. Box 18152, Roanoke, VA 24014; telephone 540–344–9333.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (the FAA Act, 27 U.S.C. 201 *et seq.*) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity and prohibits the use of misleading information on such labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out its provisions. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers these regulations.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographical features, such as climate, soils, elevation, and physical features, that distinguish the proposed viticultural area from surrounding areas;
- A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and
- A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

Texoma Petition

The Texoma Appellation Committee, Denison, Texas, has petitioned TTB to establish the ''Texoma'' viticultural area in north-central Texas. Located along the Texas-Oklahoma State line on the southern side of Lake Texoma and the Red River, the proposed area covers 3,650 square miles, or about 2.3 million acres, in Montague, Cooke, Grayson, and Fannin Counties. According to the petitioners, the area contains four wineries and a number of small vineyards with approximately 55 acres planted to vines. The petitioners state that both *Vitis vinifera* and native Texas grape varieties thrive in Texoma.

Name Evidence

The name ''Texoma'' originates with Lake Texoma, a large Army Corps of Engineers lake on the Texas-Oklahoma State line. According to the petitioners, people have referred to the proposed area as ''Texoma'' for over 60 years, roughly since the completion of Lake Texoma in 1938.

The petition included numerous examples of the use of the name ''Texoma'' by businesses and governments serving the four-county (Montague, Cooke, Grayson, and Fannin) area. Examples include: the Texoma Regional Health Care system, the Texoma Association of Realtors, the Texoma Council of Governments, the Texoma Women's and Children's Center, Texoma Workforce Commission, Texoma Center for Family Medicine, Texoma Christian Middle School, and the Texoma Council for the Deaf.

The petitioners state that an Internet search for the word ''Texoma'' returned 6,407 pages of references. None refers to a location outside the four-county area.

The petitioners note that several counties in southern Oklahoma are usually included in the Texoma region. However, the petitioners state that Oklahoma State winery fees have prevented the establishment of a successful wine district on the northern side of the State line.

Boundary Evidence

The petitioners state that the proposed Texoma viticultural area's boundaries encompass the sloping pastureland in this portion of the Red River drainage basin. While the Red River and Lake Texoma form the proposed area's northern boundary, the ridge between the Red River drainage basin and the Trinity River drainage basin form its southern boundary. The Montague County line forms most of the western boundary, while the Fannin County line forms most of the eastern boundary.

The petitioners assert that the proposed area's boundaries correspond to those of the Texoma region of Texas. The petitioners further state that Texoma has unique growing conditions—soils, topography, and climate—that are advantageous for grape growing.

As historical evidence for the proposed boundaries, the petitioners cite Texoma's contributions to world viticultural history. Renowned 19th-century viticulturalist Thomas Volney (T.V.) Munson chose Texoma as the site for his experimental vineyards. An expert on native American grape varieties, he was particularly excited by Texoma's varieties of native grapes, calling the area his ''grape paradise.'' He developed over 300 new grape varieties from the wild grapes growing along the bluffs of the Red River and its tributaries. When phylloxera threatened to destroy French vineyards, Munson shipped thousands of phylloxera-resistant Texas rootstocks to France and had them grafted with European vinifera varieties. In 1888, the French government awarded Munson the French Legion of Honor for his role in saving their wine industry.

Today, the T.V. Munson Memorial Vineyard at Grayson County College in Denison, Texas, carries on Munson's legacy. The vineyard grows 65 of the 300 grape varieties developed by Munson, and the college, unlike most junior colleges in the nation, bestows associate degrees in viticulture.

Because of the importance of native grape species to the viticultural history and identity of the Texoma region, the petitioners based their southern boundary in part on the distribution of wild grapevines through the area. Because wild grapevines generally do not grow on the south-facing slopes beyond the ridge dividing the Red River and Trinity River drainage basins, the petitioners excluded certain southern portions of the four counties from the proposed Texoma area.

Growing Conditions

Soils

The petitioners state that Texoma soils differ from the soils in surrounding areas. Texoma contains sandy, loamy soils that provide good drainage for vineyards. Surrounding areas contain black-land soils, which do not provide good drainage for vineyards. The petitioners note that some areas south and southwest of the proposed viticultural area also have sandy, loamy soils, but that these soils lie outside the boundaries of the Texoma area. The petitioners state that, unlike the soils of surrounding areas, Texoma's soils, because of their sandiness, contain practically no phylloxera.

The petitioners submitted a detailed soil report on the Texoma area prepared by a committee of soil scientists: Maurice Jurena and Jerry Rives of the U.S. Department of Agriculture's Natural Resources Conservation Service, Dr. George McEachern of Texas A&M University, and Dr. Charles E. Pehl, a private consultant. The report lists 36 soil series suitable for viticulture in the proposed area. Maps show these soil series throughout the Texoma area. According to the authors, these soils have the characteristics needed for productive vineyards—good internal drainage, adequate soil depth, and good water-holding capacity. Based on available soil surveys of the area, the authors state that approximately one-third of the proposed area, an estimated 690,000 acres (1,078 sq. miles), should be suitable for productive viticulture. The report describes three soils of particular interest:

The Hicota series consists of fine sandy loams that are deep, moderately well drained, slowly permeable, and have good water holding capacity. These soils are found on the high terraces mainly along the Red River. Formed in loamy alluvium, their slopes range from 0 to 3 percent * * *.

The Freestone series consists of fine sandy loams that are very deep, moderately well drained, slowly permeable, and have good water holding capacity. These soils are found on Pleistocene terraces of remnant terraces on upland positions. Formed in loamy and clayey sediments, their slopes vary from 0 to 5 percent. The soils have aquic soil moisture conditions due to an extremely thin area of episaturation above the clay layer in the spring at a depth of 20 to 40 inches during most years.

The Frioton series consists of silty clay loams that are very deep, well drained, moderately slowly permeable, with good water holding capacity. Formed in loamy and clayey Pleistocene sediments on nearly level flood plains, their slopes range from 0 to 1 percent. They may be flooded for very brief periods during the months of February to July.

As additional soil evidence, the petitioners submitted soil survey maps published by the Natural Resources Conservation Service, U.S. Department of Agriculture, for each of the four counties in the proposed area. These maps consistently describe the various soils of Texoma, including those detailed in the petitioner's soil report, as either ''loamy and sandy'' or ''loamy and clayey.''

Topography

The petitioners state that much of Texoma's land slopes downward and northward toward the Red River. The elevation ranges from a low of 597 feet above sea level in northeast Fannin County to a high of 1,271 feet on ridges in southeast Montague County. Evening breezes drain the intense heat of the day off Texoma's bluffs and rolling hillsides, cooling the vineyards. Numerous small creeks flow northward to Lake Texoma and the Red River throughout Texoma. Several varieties of wild grapes grow in these creek beds, just as they did in the days of T.V. Munson.

According to the petitioners, Texoma's north-facing slopes (3 percent to 12 percent slope) diminish the power of the summer sun and thus provide excellent vineyard sites. The petitioners state that recent research indicates that, in June, 15-degree north-facing slopes can reduce the sunlight index from 107 to 86. (The sunlight index is a scale measuring the amount of solar radiation received by plants.) This results in significantly less heat stress on the vines. In September, the effect is even greater, with the sunlight index reduced from 122 to 70. The petitioners contrast this with land south of Texoma in the Dallas-Fort Worth area. There the land slopes south, resulting in a much higher sunlight index and greater heat stress on grape vines.

The petitioners note that, in addition to Lake Texoma, the Texoma area has numerous lakes and ponds. These bodies of water provide a large reserve for irrigating the area's vineyards. The petitioners also believe that sunlight reflecting off these bodies of water helps to ripen grapes. They note that a similar effect occurs in New York's Finger Lakes region and in Germany's Mosel and Rhine River valleys. Gentle breezes off Lake Texoma provide advection warming to the surrounding hillsides during cool autumn nights.

Climate

According to the petitioners, Texoma's climate is favorable for grape growing, while the climate of surrounding areas is not. Texoma's temperatures for November through February generally are 5.3 to 6.7 degrees cooler than those in areas to the south and southeast, such as the Dallas-Fort Worth area (which averages 33.6° F) and Greenville, Texas (which averages 34.9° F). Texoma's winter temperatures in the mid- and upper-20s are cold enough to kill the insect that causes Pierce's disease, while causing no damage to vineyards. The petitioners state that vineyards in the Dallas-Fort Worth area have, in contrast, suffered extensive damage from Pierce's disease.

Areas north and west of Texoma, such as Oklahoma and northwestern Texas, have winter temperatures that are 4 to 6 degrees colder than Texoma's. These temperatures increase the risk of damage to vines. Freeze and thaw cycles in these areas can split vine trunks, while the milder winter temperatures of Texoma prevent such damage.

The petitioners assert that Texoma's precipitation is also favorable for grape growing. While its vineyards rely to some extent on irrigation, Texoma receives an annual rainfall of 30 to 40 inches, which is close to sufficient. As one heads west from Texoma, the climate is increasingly drier. Wichita Falls, Texas, for example, receives only 28 inches of rain a year, an amount that cannot sustain vineyards. Few sources of water for irrigation, such as Lake Texoma, exist west of Texoma. Areas east of Texoma receive much heavier rainfall, as much as 51 inches annually in Texarkana. Such heavy rainfall often results in standing water, which can cause root rot and kill vines.

Boundary Description

See the narrative boundary description of the petitioned-for viticultural area in the proposed regulatory text published at the end of this notice.

Maps

The petitioner provided the required maps, and we list them below in the proposed regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. If we establish this proposed viticultural area, its name, ''Texoma,'' will be recognized as a name of viticultural significance. Consequently, wine bottlers using ''Texoma'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the viticultural area's name as an appellation of origin. The proposed part 9 regulatory text set forth in this

document specifies the ''Texoma'' name as a term of viticultural significance for purposes of part 4 of the TTB regulations.

For a wine to be eligible to use as an appellation of origin the name of a viticultural area specified in part 9 of the TTB regulations, at least 85 percent of the grapes used to make the wine must have been grown within the area represented by that name. If the wine is not eligible to use the viticultural area name as an appellation of origin and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Accordingly, if a new label or a previously approved label uses the name ''Texoma'' for a wine that does not meet the 85 percent standard, the new label will not be approved, and the previously approved label will be subject to revocation, upon the effective date of the approval of the Texoma viticultural area.

Different rules apply if a wine has a brand name containing a viticultural area name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Public Participation

Comments Invited

We invite comments from interested members of the public on whether we should establish the proposed viticultural area. We are also interested in receiving comments on the sufficiency and accuracy of the name, climactic, boundary, and other required information submitted in support of the petition. Please provide any available specific information in support of your comments. In addition, TTB is interested in comments concerning the exclusion of those counties in Oklahoma that are considered to be within the Texoma region from the petitioned viticultural area. This includes information on any wine grape growing in those Oklahoma counties.

Because of the potential impact of the establishment of the proposed Texoma viticultural area on brand labels that include the words ''Texoma'' as discussed above under Impact on Current Wine Labels, we are particularly interested in comments regarding whether there will be a conflict between the proposed area name and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any negative economic impact that approval of the proposed viticultural area will have on an existing viticultural enterprise. We are also interested in receiving suggestions for ways to avoid any conflicts, for example by adopting a modified or different name for the viticultural area.

Confidentiality

All comments and submitted materials are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider confidential or inappropriate for public disclosure.

Submitting Comments

Please submit your comments by the closing date shown above in this notice. All comments must include this notice number and your name and mailing address. Your comments must be legible and written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we regard all comments as originals.

You may submit comments in any of five ways:

- *Mail:* You may send written comments to TTB at the address listed in the **ADDRESSES** section.
- *Facsimile:* You may submit comments by facsimile transmission to 202–927–8525. Faxed comments must—

(1) Be on 8.5- by 11-inch paper;

(2) Contain a legible, written signature; and

(3) Be no more than five pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.

- *E-mail:* You may e-mail comments to *nprm@ttb.gov*. Comments transmitted by electronic mail must—

(1) Contain your e-mail address;

(2) Reference this notice number on the subject line; and

(3) Be legible when printed on 8.5- by 11-inch paper.

- *Online form:* We provide a comment form with the online copy of this notice on our Web site at *http://www.ttb.gov/alcohol/rules/index.htm*. Select the ''Send comments via e-mail'' link under this notice number.
- *Federal e-Rulemaking Portal:* To submit comments to us via the Federal e-rulemaking portal, visit *http://www.regulations.gov* and follow the instructions for submitting comments.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine, in light of all circumstances, whether to hold a public hearing.

Public Disclosure

You may view copies of this notice, the petition, the appropriate maps, and any comments we receive by appointment at the TTB Library at 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5 x 11-inch page. Contact our librarian at the above address or telephone 202–927–2400 to schedule an appointment or to request copies of comments.

For your convenience, we will post this notice and any comments we receive on the TTB Web site. We may omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in the TTB Library. To access the online copy of this notice, visit *http://www.ttb.gov/alcohol/rules/index.htm*. Select the ''View Comments'' link under this notice number to view the posted comments.

Regulatory Flexibility Act

We certify that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866, 58 FR 51735. Therefore, it requires no regulatory assessment.

Drafting Information

Jennifer Berry of the Regulations and Procedures Division drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, we propose to amend 27 CFR, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

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

Authority: 27 U.S.C. 205.

2. Amend subpart C by adding § 9.___ to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.___ Texoma.

(a) *Name.* The name of the viticultural area described in this section is ''Texoma''. For purposes of part 4 of this chapter, ''Texoma'' is a term of viticultural significance.

(b) *Approved maps.* The two USGS, 1:250,000 scale, topographic maps used to determine the boundaries of the Texoma viticultural area are titled—

(1) Sherman, Texas; Oklahoma, 1954, revised 1977; and

(2) Texarkana, Tex.; Ark.; Okla.; La., 1953, revised 1972.

(c) *Boundary.* The Texoma viticultural area is located in Montague, Cooke, Grayson, and Fannin counties, Texas. The area's boundaries are defined as follows—

(1) The point of beginning is the northwest corner of Montague County on the Sherman map. From this point, the boundary line—

(2) Follows the Red River eastward along the Texas-Oklahoma State line to the northeast corner of Fannin County on the Texarkana map;

(3) Continues southward along the eastern Fannin County line to a point, approximately three miles west of Petty, Texas, where a power line crosses the county line;

(4) Continues southwest in a straight line for approximately 13 miles to the intersection of State Routes 34 and 50 in Ladonia, Texas;

(5) Follows State Route 34 west to its intersection with State Route 68 on the Sherman map;

(6) From that intersection, continues west-southwesterly in a straight line to the intersection of U.S. Highway 69 and State Route 78 at Leonard, Texas;

(7) Continues northwest on U.S. Highway 69 for approximately 6 miles to its intersection with State Route 121 at Trenton, Texas;

(8) From that intersection, continues westerly in a straight line to the intersection of State Routes 160 and 121, and continues west on State Route 121 to its intersection with U.S. Highway 75 at Van Alstyne, Texas;

(9) Continues south along U.S. Highway 75 to the Grayson County line;

(10) Continues west along the southern Grayson County line and then the southern Cooke County line to the line's intersection with Interstate 35;

(11) Continues north along Interstate 35 to its intersection with State Route 922 at Valley View, Texas;

(12) Follows State Route 922 west for approximately 17 miles to Rosston, Texas;

(13) Continues west-southwest from Rosston in a straight line for approximately 19 miles to the intersection of U.S. Highway 287 and State Route 101 at Sunset, Texas;

(14) Follows U.S. 287 northwest approximately 17 miles to the western Montague County line; and

(15) Continues north along the western Montague County line to the starting point at the northwest corner of Montague County.

Signed: November 10, 2004.

Arthur J. Libertucci,

Administrator.

[FR Doc. 04–26329 Filed 11–29–04; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–04–108]

RIN 1625–AA09

Drawbridge Operation Regulations; Biscayne Bay, Atlantic Intracoastal Waterway, Miami River, and Miami Beach Channel, Miami-Dade County, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily change the regulations governing the operation of the east and west spans of the Venetian Causeway bridges across the Miami Beach Channel on the Atlantic Intracoastal Waterway, the Miami Avenue bridge and the Brickell Avenue bridge across the Miami River, Miami-Dade County. This proposed rule would allow these bridges to remain in the closed position during the running of the Miami Tropical Marathon on January 30, 2005.

DATES: Comments and related material must reach the Coast Guard on or before December 30, 2004.

ADDRESSES: You may mail comments and related material to Commander (obr), Seventh Coast Guard District, 909 SE. 1st Ave, Suite 432, Miami, FL 33131–3050. Commander (obr) 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 this docket and will be available for inspection or copying at the Bridge Branch, Seventh Coast Guard District, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Gwin Tate, Project Manager, Seventh Coast Guard District, Bridge Branch, 305–415–6747.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07–04–108], 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 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 proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Bridge Branch, Seventh Coast Guard District, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Miami Marathon Director requested that the Coast Guard temporarily change the existing regulations governing the operation of the east and west spans of the Venetian Causeway bridges, the Brickell Avenue bridge and the Miami Avenue bridge to allow them to remain in the closed position during the running of the Miami Tropical Marathon on Sunday, January 30, 2005. The closure times range from 6:05 a.m. through 12:05 p.m. The marathon route will pass over these four bridges and any bridge opening would disrupt the race. Based on the limited amount of time the bridges would be closed, the proposed rule would still provide for the reasonable needs of navigation on the day of the event.

The east and west spans of the Venetian Causeway bridges are located between Miami and Miami Beach. The current regulation governing the operation of the east span of the Venetian Causeway bridge is published in 33 CFR 117.269 and requires the bridge to open on signal; except that, from November 1 through April 30 from

7:15 a.m. to 8:45 a.m. and from 4:45 p.m. to 6:15 p.m. Monday through Friday, the draw need not open. However, the draw opens at 7:45 a.m., 8:15 a.m., 5:15 p.m., and 5:45 p.m., if any vessels are waiting to pass. The draw opens on signal on Thanksgiving Day, Christmas Day, New Year's Day and Washington's Birthday. The draw opens at anytime for public vessels of the United States, tugs with tows, regularly scheduled cruise vessels, and vessels in distress. The regulation governing the west span of the Venetian Causeway bridge is published in 33 CFR 117.261 and requires the bridge to open on signal; except that, from November 1 through April 30, Monday through Friday except Federal holidays, from 7 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m., the draw need open only on the hour and the half-hour.

The regulation governing the Miami Avenue bridge, mile 0.3, at Miami, is published at 33 CFR 117.305(c) and requires that the bridge open on signal; except that, from 7:35 a.m. to 8:59 a.m., 12:05 p.m. to 12:59 p.m. and 4:35 p.m. to 5:59 p.m., Monday through Friday, except Federal holidays, the draw need not open for the passage of vessels.

The regulation governing the draw of the Brickell Avenue bridge, mile 0.1, at Miami, is published in 33 CFR 117.305(d) and requires that the bridge open on signal; except that, from 7 a.m. to 7 p.m., Monday through Friday, except Federal holidays, the draw need open only on the hour and half-hour. From 7:35 a.m. to 8:59 a.m., 12:05 p.m. to 12:59 p.m. and 4:35 p.m. to 5:59 p.m., Monday through Friday except Federal holidays, the draw need not open for the passage of vessels.

This proposed rule would not adversely affect the reasonable needs of navigation due to the limited time, six hours, that the bridges would remain in the closed position.

Discussion of Proposed Rule

The Coast Guard proposes to temporarily change the operating regulations of the east and west spans of the Venetian Causeway bridges, the Miami Avenue bridge and the Brickell Avenue bridge on January 30, 2005. This proposed rule would allow the east span of the Venetian Causeway bridge to remain closed from 6:05 a.m. to 8:40 a.m. on January 30, 2005. The proposed rule would allow the west span of the Venetian Causeway to remain closed from 6:15 a.m. to 9:20 a.m. on January 30, 2005. The Miami Avenue bridge would remain closed from 6:25 a.m. to 10 a.m. on January 30, 2005. The Brickell Avenue bridge would remain closed from 7:10 a.m. to 11:59 a.m. on January 30, 2005. Public vessels of the United States and vessels in distress would be passed at anytime.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the policies and procedures of DHS is unnecessary. The short duration of time during the morning of January 30, 2005, that the bridges would remain in the closed position to facilitate the running of the marathon would have little, if any, economic impact.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels that would require passage through these bridges during the morning hours of January 5, 2005. These vessels would not be able to pass through these bridges during the effective times of this proposed rule. However, due to the limited effective times of this proposed rule and the nominal amount of marine traffic expected during the early and late morning hours on a Sunday at this time of year, this proposed rule would not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in **FOR FURTHER INFORMATION CONTACT.** The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this proposed rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

2. From 6:15 a.m. until 9:20 a.m. on January 30, 2005, in § 117.261, paragraph (nn) is suspended and a new paragraph (tt) is added to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(tt) *West Span of the Venetian Causeway, mile 1088.6 at Miami.* The draw need not open from 6:15 a.m. until 9:20 a.m. on January 30, 2005. Public vessels of the United States and vessels in distress shall be passed at any time.

3. From 6:05 a.m. until 8:40 a.m. on January 30, 2005, in § 117.269, temporarily designate the existing regulatory text as paragraph (a); suspend paragraph (a); and add a new paragraph (b) to read as follows:

§ 117.269 Biscayne Bay.

* * * * *

(b) The draw of the east span of the Venetian Causeway bridge across Miami Beach Channel need not open from 6:05 a.m. to 8:40 a.m. on January 30, 2005. Public vessels of the United States and vessels in distress shall be passed at any time.

4. From 6:25 a.m. until 10 a.m. on Sunday, January 30, 2005, in § 117.305, paragraphs (c) and (d) are suspended and new paragraphs (e) and (f) are added to read as follows:

§ 117.305 Miami River.

* * * * *

(e) The draw of each bridge from the mouth of the Miami River, to and including the NW. 27th Avenue bridge, mile 3.7 at Miami, except the Miami Avenue and Brickell Avenue bridges, shall open on signal.

(f) The Miami Avenue bridge, across the Miami River, need not open from 6:25 a.m. to 10 a.m. on Sunday, January 30, 2005, and the Brickell Avenue bridge, across the Miami River, need not open from 7:10 a.m. to 12:05 p.m. on Sunday, January 30, 2005. Public vessels of the United States and vessels in an emergency involving danger to life or property shall be passed at any time.

Dated: November 17, 2004.

D. Brian Peterman,

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

[FR Doc. 04–26339 Filed 11–29–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 330

RIN 0710–AA60

Nationwide Permit Program

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Proposed rule.

SUMMARY: The U.S. Army Corps of Engineers is proposing to amend its nationwide permit regulations. We are proposing to modify the nationwide permit regulations so that district engineers can issue nationwide permit verification letters that expire on the same date the nationwide permit expires. This amendment will allow district engineers to issue that nationwide permit verifications are valid throughout the period of time the nationwide permit is in effect, to provide regulatory flexibility and efficiency. We are also proposing to increase the 30-day pre-construction notification review period to 45 days, to conform with nationwide permit general condition 13. Since the nationwide permit regulations were last amended in 1991, there have been changes to related

regulations and policies that have generally increased the complexity of reviews of nationwide permit pre-construction notifications. The 45-day pre-construction notification review period will provide district engineers with time to effectively review proposed nationwide permit activities that require notification, as well as compensatory mitigation proposals, to determine whether those activities meet the terms and conditions of the nationwide permits and result in minimal adverse environmental effects.

DATES: Submit comments on or before January 31, 2005.

ADDRESSES: Written comments should be sent to the U.S. Army Corps of Engineers, Attn: CECW–MVD (David B. Olson), 441 G Street NW., Washington, DC 20314–1000, or by e-mail to *david.b.olson@hq02.usace.army.mil.* Electronic comments should be submitted in ASCII format or portable document format to ensure that those comments can be read. Electronic files should avoid the use of special characters and any form of encryption, and be free of any defects or viruses. Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson at 202–761–4922 or access the U.S. Army Corps of Engineers Regulatory Home Page at *http://www.usace.army.mil/inet/functions/cw/cecwo/reg/.*

SUPPLEMENTARY INFORMATION:

Background

On November 22, 1991, (56 FR 59110) the U.S. Army Corps of Engineers Corps) revised 33 CFR part 330, the regulations for implementing its nationwide permit (NWP) program. Section 330.6(a)(3)(ii) of this regulation states that NWP verification letters can be valid for no more than two years. Section 330.1(e) provides district engineers with 30 days to review notifications to determine whether proposed NWP activities are in the public interest and result in minimal individual and cumulative adverse environmental effects. Since 1991, there have been substantial changes to the NWP program that warrant amendments to these provisions.

We are proposing to amend § 330.6(a)(3)(ii) to allow district engineers to issue NWP verification letters that expire on the same date the NWP expires. An NWP verification letter provides confirmation that a particular activity is authorized by NWP. This amendment will help promote administrative efficiency by eliminating the two year limit for NWP verification letters, so that it will not be necessary for district engineers to reverify an NWP authorization when the permittee has not completed the authorized work within two years. In many cases, a project proponent must obtain state and local authorizations before proceeding with a project. That process can take more than two years. We believe the flexibility and efficiency of the NWP Program would be improved if this regulation is modified to allow district engineers to issue NWP verification letters that expire at the same time the NWP expires. This will allow the NWP program to accommodate state and local planning and regulatory processes, without diminishing protection of the aquatic environment.

The two year limit for verification letters was intended to allow for adjustments or clarifications of jurisdiction, policy, and procedure. It has been our experience that we seldom need to change NWP verification letters between the date the verification letter is issued and the expiration date of the NWP. If such changes are necessary, district engineers may use the procedures at § 330.5(d) to modify, suspend, or revoke a case-specific NWP authorization. In most cases, the five year time limit for NWPs is adequate for accounting for changes in jurisdiction, policy, and procedure. District engineers will have the option of issuing NWP verification letters for shorter time periods, to address concerns for the aquatic environment or other public interest review factors.

We are also proposing to amend the NWP regulations to increase the pre-construction notification (PCN) review period from 30 days to 45 days. The purpose of the PCN review period, and the *de facto* authorization that results if the district engineer does not respond to a PCN during that review period, is to provide some regulatory certainty to the public by requiring district engineers to respond to NWP PCNs in a timely manner.

When we reissued NWP 26 on December 13, 1996, (61 FR 65874) we increased the PCN review period for proposed NWP 26 activities resulting in the loss of greater than one-third acre of waters of the United States from 30 days to 45 days. When we issued five new and six modified NWPs to replace NWP 26 on March 9, 2000, (65 FR 12818) we increased the review period for all proposed NWP activities that require PCNs to 45 days. The 45-day PCN review period was retained in the January 15, 2002, reissuance of the NWPs (67 FR 2020).

Since 1991, there have been new and modified Federal regulations that have affected the implementation of the NWP program, and increased the amount of time required to review PCNs. For example, the National Marine Fisheries Service (NMFS) issued regulations for implementing the Essential Fish Habitat (EFH) provisions of the Magnuson-Stevens Fishery Conservation and Management Act that require consultation for activities that may adversely affect EFH. Current regulations for implementing the EFH provisions require Federal agencies to provide NMFS 30 days to respond to EFH Assessments (*see* 50 CFR 600.920).

There have also been changes to the Regulatory Program's compensatory mitigation policies, such as the issuance of Regulatory Guidance Letter 02–02 on December 24, 2002, and the issuance of Mitigation Action Plan items. Compensatory mitigation proposals can be complex documents that require technical review to determine whether the proposed compensatory mitigation projects are feasible and will effectively offset authorized losses of aquatic resources.

Prior to issuing NWP verification letters, district engineers review compensatory mitigation proposals to determine whether the proposed compensatory mitigation is sufficient to ensure that the authorized work will result in minimal individual and cumulative adverse effects on the aquatic environment and other public interest factors. The 45-day review period would provide district engineers with time to effectively review compensatory mitigation proposals submitted with PCNs.

Amending the NWP regulations by increasing the 30-day PCN review period to 45 days will not adversely affect processing times for NWP verification requests. As discussed above, the 45-day PCN review period was adopted in 1996 for NWP 26, and was applied to all NWPs requiring PCNs in 2000. In FY 2003, the average processing time for an NWP verification request was 27 days. We believe that the average processing times for NWP verification requests will continue to be less than 30 days if the proposed rule change is adopted since the proposed modification reflects current NWP PCN processing practices.

We are also proposing to amend §§ 330.4(c)(6) and 330.4(d)(6) by replacing the 30-day review period with the proposed 45-day review period and replacing the term ''pre-discharge notification'' with ''pre-construction notification'' to be consistent with current terminology used in the NWP

program. The term ''pre-construction notification'' is more appropriate, since nationwide permits may authorize, in addition to discharges of dredged or fill material into waters of the United States, construction activities in navigable waters of the United States.

Administrative Requirements

Plain Language

In compliance with the principles in the President's Memorandum of June 1, 1998, (63 FR 31855) regarding plain language, this preamble is written using plain language. The use of ''we'' in this notice refers to the Corps. We have also used the active voice, short sentences, and common everyday terms except for necessary technical terms.

Paperwork Reduction Act

This proposed action will not impose any new information collection burden under the provisions of the Paperwork Production Act (44 U.S.C. 3501 *et seq.*). For NWPs that require PCNs, the proposed modification changes the 30-day review period to a 45-day review period. In addition, the proposed rule changes the length of time an NWP verification letter could be valid.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to, or for, a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. For the Corps Regulatory Program under Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act, and Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, the current OMB approval number for information collection requirements is maintained by the Corps of Engineers (OMB approval number 0710–0003, which expires December 31, 2004). Since the proposed rule does not involve any additional collection of information from the public, this action is not subject to the Paperwork Reduction Act.

Executive Order 12866

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, we have determined that the proposed rule is not a ''significant regulatory action'' because it does not meet any of these four criteria. The proposed rule is a modification of existing procedures. For NWPs that require PCNs, the proposed rule increases the 30-day review period to 45 days. In addition, the proposed rule changes the length of time an NWP verification letter could be valid.

Executive Order 13132

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

The proposed rule does not have Federalism implications. We do not believe that amending the regulation to increase the NWP PCN review period or increase the length of time an NWP verification letter may be valid will have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed rule does not impose new substantive requirements. In addition, the proposed changes will not impose any additional substantive obligations on State or local governments. Therefore, Executive Order 13132 does not apply to this proposed rule.

Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 et seq.

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

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

After considering the economic impacts of the proposed rule on small entities, we believe that this action will not have a significant economic impact on a substantial number of small entities. The proposed rule is consistent with current agency practice, does not impose new substantive requirements, and therefore would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under Section 202 of the UMRA, the agencies generally must prepare a written statement, including a cost-benefit analysis, for proposed and final

rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating a rule for which a written statement is needed, Section 205 of the UMRA generally requires the agencies to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows an agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted. Before an agency establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed, under Section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. The proposed rule is consistent with current agency practice, does not impose new substantive requirements and therefore does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Therefore, the proposed rule is not subject to the requirements of Sections 202 and 205 of the UMRA. For the same reasons, we have determined that the proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, the proposed rule is not subject to the requirements of Section 203 of UMRA.

Executive Order 13045

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

The proposed rule is not subject to this Executive Order because it is not economically significant as defined in Executive Order 12866. In addition, it does not concern an environmental or safety risk that we have reason to believe may have a disproportionate effect on children.

Executive Order 13175

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

The proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. It is generally consistent with current agency practice and does not impose new substantive requirements. Therefore, Executive Order 13175 does not apply to this proposed rule.

Environmental Documentation

The Corps prepares appropriate environmental documentation, including Environmental Impact Statements when required, for all permit decisions. Therefore, environmental documentation under the National Environmental Policy Act is not required for this proposed rule. Appropriate environmental documentation has been prepared for each NWP.

Congressional Review Act

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. We 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. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The proposed rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Executive Order 12898

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 12898 provides that each Federal agency conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin.

The proposed rule is not expected to negatively impact any community, and therefore is not expected to cause any disproportionately high and adverse impacts to minority or low-income communities.

Executive Order 13211

The proposed rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The proposed rule updates regulations for implementing the Nationwide Permit Program. The proposed rule is consistent with current agency practice, does not impose new substantive requirements and therefore will not have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 33 CFR Part 330

Administrative practice and procedure, Intergovernmental relations, Navigation (water), Water pollution control, Waterways.

Dated: November 23, 2004.

Don T. Riley,

Major General, U.S. Army, Director of Civil Works.

For the reasons stated in the preamble, the Corps proposes to amend 33 CFR part 330 as follows:

PART 330—NATIONWIDE PERMIT PROGRAM

1. The authority citation for part 330 continues to read as follows:

Authority: 33 U.S.C. 401 *et seq.*; 33 U.S.C. 1344; 33 U.S.C. 1413.

2. Amend § 330.1 by revising paragraph (e)(1) to read as follows:

§ 330.1 Purpose and policy.

* * * * *

(e) * * * (1) In most cases, permittees may proceed with activities authorized by NWPs without notifying the DE. However, the prospective permittee should carefully review the language of the NWP to ascertain whether he must notify the DE prior to commencing the authorized activity. For NWPs requiring advance notification, such notification must be made in writing as early as possible prior to commencing the proposed activity. The permittee may presume that his project qualifies for the NWP unless he is otherwise notified by the DE within a 45-day period. The 45-day period starts on the date of receipt of the notification in the Corps district office and ends 45 calendar days later regardless of weekends or holidays. If the DE notifies the prospective permittee that the notification is incomplete, a new 45-day period will commence upon receipt of the revised notification. The prospective permittee may not proceed with the proposed activity before expiration of the 45-day period unless otherwise notified by the DE. If the DE fails to act within the 45-day period, he must use the procedures of 33 CFR 330.5 in order to modify, suspend, or revoke the NWP authorization.

* * * * *

3. Amend § 330.4 by revising paragraphs (c)(6) and (d)(6) to read as follows:

§ 330.4 Conditions, limitations, and restrictions.

* * * * *

(c) * * *

(6) In instances where a state has denied the 401 water quality certification for discharges under a particular NWP, permittees must furnish the DE with an individual 401 water quality certification or a copy of the application to the state for such certification. For NWPs for which a state has denied the 401 water quality certification, the DE will determine a reasonable period of time after receipt of the request for an activity-specific 401 water quality certification (generally 60 days), upon the expiration of which the DE will presume state waiver of the certification for the individual activity covered by the NWPs. However, the DE and the state may negotiate for additional time for the 401 water quality certification, but in no event shall the period exceed one (1) year (*see* 33 CFR 325.2(b)(1)(ii)). Upon receipt of an individual 401 water quality certification, or if the prospective permittee demonstrates to the DE state waiver of such certification, the proposed work can be authorized under the NWP. For NWPs requiring a 45-day pre-construction notification the district engineer will immediately begin, and complete, his review prior to the state action on the individual section 401 water quality certification. If a state issues a conditioned individual 401 water quality certification for an individual activity, the DE will include those conditions as activity-specific conditions of the NWP.

* * * * *

(d) * * *

(6) In instances where a state has disagreed with the Corps consistency determination for activities under a particular NWP, permittees must furnish the DE with an individual consistency concurrence or a copy of the consistency certification provided to the state for concurrence. If a state fails to act on a permittee's consistency certification within six months after receipt by the state, concurrence will be presumed. Upon receipt of an individual consistency concurrence or upon presumed consistency, the proposed work is authorized if it complies with all terms and conditions of the NWP. For NWPs requiring a 45-day pre-construction notification the DE will immediately begin, and may complete, his review prior to the state action on the individual consistency certification. If a state indicates that individual conditions are necessary for consistency with the state's Federally-approved coastal management program for that individual activity, the DE will include those conditions as activity-specific conditions of the NWP unless he determines that such conditions do not comply with the provisions of 33 CFR 325.4. In the latter case the DE will consider the conditioned concurrence as a non-concurrence unless the permittee chooses to comply voluntarily with all the conditions in the conditioned concurrence.

* * * * *

4. Amend § 330.6 by revising paragraph (a)(3)(ii) to read as follows:

§ 330.6 Authorization by nationwide permit.

(a) * * *

(3) * * *

(ii) The DE's response will state that the verification is valid for a specific period of time (generally until the expiration date of the NWP) unless the NWP authorization is modified, suspended, or revoked. The response should also include a statement that the verification will remain valid for the specified period of time, if during that time period, the NWP authorization is reissued without modification or the activity complies with any subsequent modification of the NWP authorization. Furthermore, the response should include a statement that the provisions of § 330.6(b) will apply, if during that period of time, the NWP authorization expires, or is suspended or revoked, or is modified, such that the activity would no longer comply with the terms and conditions of an NWP.

Finally, the response should include any known expiration date that would occur during the specified period of time. A period of time less than the amount of time remaining until the expiration date of the NWP may be used if deemed appropriate.

* * * * *

[FR Doc. 04–26263 Filed 11–29–04; 8:45 am]

BILLING CODE 3710–92–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R05–OAR–2004–IN–0005; FRL–7838–2]

Approval and Promulgation of Air Implementation Plans; Indiana; Rules To Control Particulate Matter and Carbon Monoxide Emissions From Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve, through direct final procedure, a revision to a plan submitted by Indiana concerning emissions of carbon monoxide (CO) and particulate matter

(PM) from existing incinerators. The revision was submitted on October 30, 2002, and on January 10, 2003, following required public process. The rules being amended and re-adopted apply to incinerators in the State for which there are no presently applicable Federal rules or guidelines.

In the final rules section of this **Federal Register**, EPA is approving the changes to the State Implementation Plan (SIP) for CO and PM as a direct final rule without prior proposal because we view this action as noncontroversial and anticipate no adverse comments. If no written adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives meaningful written adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document and no further activity will be taken on this proposed rule. Any party interested in commenting on this action should do so within the timeframe noted below.

DATES: Comments on this action must be received by December 30, 2004.

ADDRESSES: Submit comments, identified by Regional Material in e-Docket (RME) ID No. R05–OAR–2004–IN–0005 by one of the following methods: Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments. Agency Web site: *http://docket.epa.gov/rmepub/index.jsp* is EPA's electronic public docket and comment system. It is EPA's preferred method for receiving comments. Once in the system, select ''quick search'' then key in the instructions for submitting comments.

E-mail: *bortzer.jay@epa.gov.*

Fax: (312) 886–5824.

Mail: You may send written comments to: J. Elmer Bortzer, Chief, Air Programs Branch, (AR–18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: J. Elmer Bortzer, Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to RME ID No. R05–OAR–2004-IN–0005. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME *http://www.regulations.gov,* or e-mail. The EPA RME Web site and the Federal *http://www.regulations.gov* Web site are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.epa.gov/rmepub/index.jsp.* Although listed in the index, some information is not publicly available, *i.e.,* any documents submitted for which the submittal claims be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in RME or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone John Paskevicz, Engineer, at (312) 886–6084 before visiting the Region 5 office.) This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8656. *paskevicz.john@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' are used we mean the EPA. The supplementary information is organized in the following order:

I. General Information
A. Does this action apply to me?
B. How can I get copies of this document and other related Information?
C. How and to whom do I submit comments?

I. General Information

A. Does This Action Apply To Me?

This action applies to particulate matter and carbon monoxide emission limitations for incinerators.

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

1. The Regional Office has established an electronic public rulemaking file available for inspection at Regional Material in EDocket (RME) under RME ID No. R05–OAR–2004–IN–0005, and a hard copy file which is available for inspection at the Regional Office. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include any document claimed by the submittal to be CBI or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact John Paskevicz in the **FOR FURTHER INFORMATION CONTACT** section, to schedule your inspection of the file. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the regulations.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register,** the

Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material you claimed to be CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text ''Public comment on proposed rulemaking Region 5 Air Docket ''R05–OAR–2004–IN–0005'' in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

II. What Actions Are EPA Taking Today?

The EPA is proposing to approve a revision to the Indiana SIP submitted by the State which continues to serve as a tool to reduce emissions of CO and PM from incinerators in the State in order for the State to continue to protect the health of the people of Indiana.

1. *Submitting CBI.* Do not submit this information to EPA through RME, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of vulgarity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

III. Additional Information

For additional information, see the direct final rule which is located in the rules section of this **Federal Register.** Copies of the request and the EPA's analysis are available electronically at RME or in hard copy at the above address. (Please telephone John Paskevicz at (312) 886–6084 before visiting the Region 5 Office.)

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

Dated: November 3, 2004.

Norman Niedergang,

Acting Regional Administrator, Region 5.

[FR Doc. 04–26400 Filed 11–29–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL–7844–4]

Waste Characterization Program Documents Applicable to Transuranic Radioactive Waste From the Hanford Site for Disposal at the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA, we or Agency) is announcing the availability of and soliciting public comment for 30 days on, Department of Energy (DOE) documents applicable to the characterization of transuranic (TRU) radioactive solid waste from the Plutonium Finishing Plant (PFP) at the Hanford site. The documents are available for review in the public dockets listed in **SUPPLEMENTARY INFORMATION.** EPA is issuing this notice because the Agency must conduct an expedited review of one of the elements of Hanford's waste characterization (WC) processes, known as acceptable knowledge (AK). In June 2003, EPA conducted an inspection at Hanford, pursuant to 40 CFR 194.8, to evaluate the WC processes used for characterizing PFP solid waste. However, at that time, EPA did not examine the AK process for the same waste. In August 2003, EPA approved all WC components except AK for characterizing the PFP solid waste and noted in the approval letter that the PFP solid waste may not be disposed of at the WIPP because EPA had not examined and approved the AK process. In the absence of the EPA approval of this waste, however, in July 2004, the Department of Energy (DOE) mistakenly certified this waste stream as eligible for disposal at WIPP. As a result, 600 drums of PFP solids were emplaced in the WIPP repository between July and September 2004. Early in September 2004, the DOE discovered this error and immediately suspended the shipment of the PFP solids from Hanford. To meet the Agency's regulatory obligations EPA must conduct an ''after-the-fact'' review of the AK process to determine adequacy of the AK documentation. Therefore, EPA will conduct an evaluation of AK documents and, as needed, telephone interviews with site personnel specific to the PFP solids to determine Hanford's compliance with EPA's WIPP compliance criteria and ensure that the emplacement of this waste has no adverse effect on WIPP's performance. EPA's evaluation may lead to an approval at which time the site could resume shipment of the PFP solid waste to WIPP for disposal. EPA does not believe that the PFP solid wastes improperly emplaced at WIPP constitute a threat to human health, to the environment or to the long-term performance of the WIPP repository. Based on this determination, the Hanford PFP solid waste may remain in WIPP while EPA undertakes a desk-top review of the AK information.

DATES: EPA is requesting public comment on the documents. Comments must be received by EPA's official Air Docket on or before December 30, 2004.

ADDRESSES: Comments may be submitted by mail to: EPA Docket Center (EPA/DC), Air and Radiation Docket, Environmental Protection Agency, EPA West, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Attention Docket ID No. OAR–2004–0477. Comments may also be submitted electronically, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.B of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Ms. Rajani D. Joglekar, Office of Radiation and Indoor Air, (202) 343–9462. You can also call EPA's toll-free WIPP Information Line, 1–800–331–WIPP or visit our Web site at *http://www.epa/gov/radiation/wipp*.

SUPPLEMENTARY INFORMATION:

I. General Information

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

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OAR–2004–0477. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation 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 Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. These documents are also available for review in paper form at the official EPA Air Docket in Washington, DC, Docket No. A–98–49, Category II–A2, and at the following three EPA WIPP informational docket locations in New Mexico: In Carlsbad at the Municipal Library, hours: Monday–Thursday, 10 a.m.–9 p.m., Friday–Saturday, 10 a.m.–6 p.m., and Sunday, 1 p.m.–5 p.m.; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, hours: vary by semester; and in Santa Fe at the New Mexico State Library, hours: Monday–Friday, 9 a.m.–5 p.m. As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or *see* 67 FR 38102, May 31, 2002.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. However, late comments may be considered if time permits.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification,

EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. OAR–2004–0477. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov,* Attention Docket ID No. OAR–2004–0477. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

2. *By Mail.* Send your comments to: EPA Docket Center (EPA/DC), Air and Radiation Docket, Environmental Protection Agency, EPA West, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Attention Docket ID No. OAR–2004–0477.

3. *By Hand Delivery or Courier.* Deliver your comments to: Air and Radiation Docket, EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OAR–2004–0477. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.A.1.

4. *By Facsimile.* Fax your comments to: (202) 566–1741, Attention Docket ID. No. OAR–2004–0477.

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

DOE operates the WIPP near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of TRU radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Pub. L. 102–579), as amended (Pub. L. 104–201), TRU waste consists of materials containing elements having atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Much of the existing TRU waste consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and sludges.

On May 13, 1998, EPA announced its final compliance certification decision to the Secretary of Energy (published May 18, 1998, 63 FR 27354). This decision stated that the WIPP will comply with EPA's radioactive waste disposal regulations at 40 CFR part 191, subparts B and C.

The final WIPP certification decision includes conditions that (1) prohibit shipment of TRU waste for disposal at WIPP from any site other than the Los Alamos National Laboratory (LANL) until EPA determines that the site has established and executed a quality assurance program, in accordance with §§ 194.22(a)(2)(i), 194.24(c)(3), and 194.24(c)(5) for WC activities and assumptions (Condition 2 of Appendix A to 40 CFR part 194); and (2) prohibit shipment of TRU waste for disposal at WIPP from any site other than LANL until EPA has approved the procedures developed to comply with the waste characterization requirements of § 194.22(c)(4) (Condition 3 of Appendix A to 40 CFR part 194). EPA's approval process for waste generator sites is described in § 194.8. As part of EPA's decision-making process, the DOE is required to submit to EPA appropriate documentation of quality assurance and WC programs at each DOE waste generator site seeking approval for shipment of TRU radioactive waste to WIPP. In accordance with § 194.8, EPA will place such documentation in the official Air Docket in Washington, DC, and informational dockets in the State of New Mexico for public review and comment.

In June 2003, EPA inspected Hanford's WC processes used when characterizing PFP solid waste. During this inspection, however, EPA did not examine the acceptable knowledge (AK) process. EPA inspected the other components of the system of controls (radioassay, radiography, visual examination, and WIPP Waste Information System) implemented by Hanford to demonstrate to EPA and DOE the adequacy of its TRU waste characterization program. In an August 7, 2003, letter to the Carlsbad Field Office (CBFO), EPA approved Hanford's TRU debris waste from the Waste Receiving and Processing Plant and PFP characterized using the approved systems and processes covered in the June 2003 Inspection Report. In the letter, EPA specifically stated that ''EPA has not approved acceptable knowledge for TRU solids, specifically ash and mixed oxides, characterized at the PFP facility. As a result, DOE may not dispose at the WIPP any ash and mixed oxides from the PFP facility.''

EPA recently discovered that between July 25 and September 4, 2004, DOE had shipped and emplaced in the WIPP approximately 1,500 drums of PFP solid waste (ash) and mixed oxides from Hanford. The emplacement of the PFP solid waste drums at the WIPP repository was based on a DOE certification letter to Hanford, dated July 14, 2004. The DOE certification letter did not reflect EPA's restriction on disposal of Hanford's PFP solid waste stream. This restriction was based on the fact that EPA had not fully evaluated, nor approved, AK documentation as part of the waste characterization for these solid wastes. Under our regulations, without EPA approval, DOE cannot certify any waste from TRU waste sites for disposal at the WIPP. Thus, CBFO's certification of Hanford PFP solids for disposal at WIPP conflicts with EPA's site approval and violates EPA regulations at 40 CFR 194.8 and 24. DOE has voluntarily suspended further PFP solid waste shipments from Hanford to WIPP and has agreed to take steps to identify the cause of the error and prevent recurrence. Nevertheless, significant quantities of this waste have already been emplaced at WIPP. EPA must

assess the AK process to comply with the requirements of 40 CFR part 194, section 24. EPA does not believe that the PFP solid wastes improperly emplaced at WIPP constitute a threat to human health, to the environment or to the long-term performance of the WIPP repository. Based on this determination, the Hanford PFP solid waste will remain in WIPP while EPA undertakes a desk-top review of the AK information for the PFP solid wastes.

With regard to mixed oxides, DOE has clarified that these materials are properly categorized as debris waste rather than as part of the PFP solid waste stream. Based on documentation provided by the DOE, we concur in this determination. The 900 drums of mixed oxides were fully characterized using the procedures approved by EPA for debris waste (S5000) in our August 7, 2003, letter. Therefore, we find their characterization is adequate and no further action is needed to confirm that their placement in the WIPP is allowed. For the remaining 600 drums of ash belonging to the solid waste stream, further evaluation is needed to assess the adequacy of waste characterization processes. Until EPA completes its review of the AK process for Hanford PFP solids and, if warranted, approves the subject waste stream (S3000) for disposal at the WIPP, the Agency has directed DOE not to resume shipment of the remaining TRU solid waste containers from the Hanford PFP.

In most cases, EPA's inspections are conducted through on-site inspections in which the operation of WC equipment and processes can be demonstrated. However, the evaluation of AK relies almost exclusively on a review of documentation. Thus, while such review is often conducted on-site (for convenience, in conjunction with other on-site evaluations), it can be conducted at a remote location with equal ease and rigor. This is especially true for AK related to Hanford PFP solids. Hanford has not relied on the AK information for physical and radiological characterization of the PFP solids; the site relied exclusively on spectroscopic systems to establish isotopic ratios. (Isotopic ratios are sometime used to estimate individual radionuclides when the equipment is not able to quantify them.) Because AK information for the waste was not used to derive or extrapolate WC data tracked for the waste, we expect little linkage with other WC procedures, so there is no need to conduct an on-site inspection. By thorough inspection of the AK documents we can determine adequacy, completeness, sufficiency, and appropriateness of the AK used for waste characterization.

For this inspection, EPA will conduct a desk-top review of the most recent versions of the AK documents applicable to the Hanford PFP solid waste that were used by the DOE auditors in June 2003. As necessary, EPA will interview by phone the relevant experts at Hanford PFP. Evaluation of the AK documentation pertaining to the PFP solids will be limited to verification of the waste pedigree—defense determination, S3000 waste category determination, absence of liquids confirmation, and classification as TRU waste. This evaluation will allow sufficient evaluation of the adequacy, completeness, and effectiveness of the applicable AK process.

Through this **Federal Register** notice, EPA is notifying the public that EPA will evaluate Hanford's AK process and procedure specific to the PFP solid waste. EPA will perform an inspection of Hanford's AK process for the PFP solid waste in accordance with Condition 3 of the WIPP Certification. If EPA determines as a result of the evaluation that the AK documentation is adequate and is well supported by the radioassay, radiography, and visual examination results, we will notify DOE by letter and place the letter in the official Air Docket in Washington, DC, as well as in the informational docket locations in New Mexico. A letter of approval will allow DOE to leave waste in WIPP underground panels and to resume disposal of the remaining PFP solid waste characterized by the approved processes from Hanford to WIPP. EPA will not make a determination of compliance prior to completing its AK documentation audit or before the 30-day comment period has closed. We have separately directed DOE by letter what measures or restrictions are necessary to prevent recurrence of such violations of EPA's site-specific waste characterization requirements. This letter is available in Docket A–98–49 (Washington, DC, and our three locations in New Mexico), as well as online at the EDOCKET Web site (*http://www.epa.gov/edocket*) in Docket ID No. OAR–2004–0477.

Information on the certification decision is filed in the official EPA Air Docket, Docket No. A–93–02 and is available for review in Washington, DC, and at three EPA WIPP informational docket locations in New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, DC, plus those documents added to the official Air Docket since the October 1992 enactment of the WIPP LWA.

Dated: November 23, 2004.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 04–26480 Filed 11–29–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[WT Docket No. 04–356; WT Docket No. 02–353; FCC 04–218]

Service Rules for Advanced Wireless Services in the 1915–1920 MHz, 1995–2000 MHz, 2175–2180 MHz and 1.7 GHz and 2.1 GHz Bands

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: In this document, the Wireless Telecommunications Bureau extends the period for comment and reply comment on the Notice of Proposed Rulemaking in this proceeding. The deadline to file comments is extended from November 23, 2004, to December 8, 2004, and the deadline to file reply comments is extended from January 7, 2005, to January 24, 2005. The action is taken to respond to two Motions for Extension of Time.

DATES: Comments due December 8, 2004; reply comments due January 24, 2005. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before December 8, 2004.

ADDRESSES: In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov*, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503 via the Internet to *Kristy_L.LaLonde@omb.eop.gov*, or via fax at 202–395–5167.

FOR FURTHER INFORMATION CONTACT: Peter Corea at 202–418–2487. For additional information concerning the

Paperwork Reduction Act information collection requirements contained in this document, contact Judith B. Herman at 202–418–0214, or via Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION: This proposed rulemaking, 69 FR 63489, November 2, 2004, concerns a decision to provide additional twenty megahertz of spectrum that can be used to offer a variety of broadband and advanced wireless services (AWS), potentially including ''third generation'' (3G) wireless services, the Commission ask for public comment on licensing, technical, and operational rules to govern the use of the 1915–1920 MHz, 1995–2000 MHz, and 2020–2025 MHz and 2175–2180 MHz bands designated for AWS. The Commission announced its desire to provide licensees of this spectrum with flexibility to provide any fixed or mobile service consistent with the technical parameters of allocation.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–26384 Filed 11–29–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[WC Docket No. 02–78; FCC 04–252]

Petition of Mid-Rivers Telephone Cooperative, Inc. for Order Declaring It To Be an Incumbent Local Exchange Carrier in Terry, MT Pursuant to Section 251(h)(2)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) solicits comment on the application of section 251(h)(2) of the Communications Act of 1934, as amended, regarding the reclassification of competitive local exchange carriers (LECs) to incumbent LECs. Mid-Rivers Telephone Cooperative, Inc. (Mid-Rivers) filed a petition to be classified as an incumbent LEC. The Commission makes tentative conclusions addressing Mid-Rivers petition in part and poses questions concerning the application of section 251(h)(2) in Mid-Rivers case, as well as other similar cases.

DATES: Comments are due on or before December 30, 2004, and reply comments are due on or before January 14, 2005.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** *for further filing instructions.*

FOR FURTHER INFORMATION CONTACT: Ian Dillner, Attorney, Competition Policy Division, Wireline Competition Bureau, at (202) 418–1191, or at *Ian.Dillner@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking* in WC Docket No. 02–78, adopted October 21, 2004, and released November 15, 2004 (NPRM). The complete text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160. It is also available on the Commission's Web site at *http://www.fcc.gov*.

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. All filings should refer to WC Docket No. 02–78. Comments filed through ECFS can be sent as an electronic file via the Internet at *http://www.fcc.gov/e-file/ecfs.html*. Only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, postal service mailing address, and the applicable docket number, which in this instance is WC Docket No. 02–78. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfshelp@fcc.gov*, and should include the following words in the regarding line of the message: ''get form<your e-mail address>.'' A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. Parties filing by paper must also send three (3) courtesy copies to the attention of Janice M. Myles, Wireline Competition Bureau, Competition Policy Division, 445 12th Street, SW., Suite 5–C327, Washington, DC 20554, or via e-mail *janice.myles@fcc.gov*. Paper filings and courtesy copies must be delivered in the following manner. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail).

The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. This facility is the only location where hand-delivered or messenger-delivered paper filings or courtesy copies for the Commission's Secretary and Commission staff will be accepted. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Each comment and reply comment must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.48 and all other applicable sections of the Commission's rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission.

Synopsis of the Notice of Proposed Rulemaking

1. *Background.* Mid-Rivers Telephone Cooperative, Inc. (Mid-Rivers), a competitive LEC in the Terry, Montana exchange, filed a petition with the Commission requesting classification as an incumbent LEC in the Terry exchange pursuant to section 251(h)(2) of the Communications Act of 1934, as amended (the Act or Communication Act). This provision allows the Commission to determine ''by rule'' to treat a competitive LEC as an incumbent LEC if it satisfies a three-prong test: (1) The carrier occupies a market position comparable to an incumbent LEC; (2) the carrier has ''substantially replaced'' an incumbent LEC, and; (3) the reclassification serves the public interest, convenience, and necessity. 47 U.S.C. 251(h)(2).

2. Mid-Rivers, also an incumbent LEC in a nearby exchange, filed this petition as a result of its success in acquiring approximately 93 percent of the access

lines in the Terry exchange, almost exclusively on its own facilities. Mid-Rivers asserts that it should be classified as an incumbent LEC. Mid-Rivers' petition is supported by several parties, but also is opposed by two parties.

3. *Notice of Proposed Rulemaking.* For Mid-Rivers to be treated as an incumbent LEC, the Commission must first find that it ''occupies a position in the market for telephone exchange service with an area that is comparable to the position occupied by [an incumbent LEC]''. 47 U.S.C. 251(h)(2)(A). The Commission seeks comment on how to define the relevant ''area'' under section 251(h)(2)(A). Assuming that the Terry exchange is the relevant ''area,'' the Commission tentatively concludes that Mid-Rivers satisfies the first prong of the statutory standard, based on their provisioning of facilities based service to 93 percent of the exchange.

4. The second prong of section 251(h)(2)(B) requires a showing that Mid-Rivers has ''substantially replaced'' an incumbent LEC. 47 U.S.C. 251(h)(2)(B). The Commission set out a standard for fulfilling this requirement in the *Guam Declaratory Ruling and NPRM,* where the applicant LEC provides services ''to all or virtually all'' of the subscribers in the area. 62 FR 29320–01, *adopted,* 63 FR 42275–01. Again, assuming the relevant ''area'' is the Terry exchange, the Commission tentatively concludes that Mid-Rivers has ''substantially replaced'' Qwest, based on its 93 percent share of the exchange, satisfying section 251(h)(2)(B). 47 U.S.C. 251(h)(2)(B).

5. Additionally, the Commission seeks comment on whether the requested classification will fulfill the ''public interest, convenience, and necessity'' requirements under 251(h)(2)(C). As part of this inquiry, we also seek comment on the benefits of advanced services provided by Mid-Rivers and on whether the public interest is satisfied, possibly including consideration of broader market conditions. We also seek comment on the significance of universal service concerns, including possible effects on high-cost universal service support. Further, we seek comment on the relevance of access charge issues to the public interest analysis.

6. Another consideration, which the Mid-Rivers petition does not discuss, is the subsequent regulatory treatment of Qwest, as Qwest still fits the literal definition of an incumbent LEC. Because this is a novel issue for the Commission, and section 251(h) is silent on the matter, we seek comment on what regulatory treatment is appropriate for legacy incumbent LECs. Furthermore, the Commission seeks comment on whether automatic reclassification of the legacy incumbent LEC is an appropriate result of reclassifying the competitive LEC. The Commission also requests comment on whether two incumbent LECs can co-exist in an exchange, and the implications this would have on the current implementation of the Act including, universal service, and other rules predicated on a single incumbent LEC per area. The Commission has authority under section 10 of the Act to forbear from certain requirements and seeks comments on whether this is the required mechanism to address the situation.

7. Finally, the Commission seeks to develop a record on other considerations regarding this petition. We seek comment on whether revised Commission rules might resolve this situation. We also seek comment on current market trends that are related to this issue, and what underlying market and regulatory motivations are driving such a trend. We seek further comment on the process the Commission should use to address any further applications of this type. If the record indicates that a number of similar carriers are interested in filing similar applications, we seek comment on whether and how to administer an efficient process.

Paperwork Reduction Act

8. This NPRM does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any proposed ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Initial Regulatory Flexibility Analysis

9. As required by the RFA, the Commission has prepared this IRFA of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this NPRM. Written public comments are sought on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for SBA Advocacy.

1. Need for, and Objectives of, the Proposed Rules

10. The Commission initiates this rulemaking proceeding because the Mid-Rivers' petition raises novel and difficult questions implicating several of the Commission's major policies affecting LECs of all sizes, including local competition, universal service, and access charges. In this proceeding, we seek comment on whether Mid-Rivers satisfies the requirements of section 251(h)(2) to be classified as an incumbent LEC in Terry, Montana. To this end, the Commission makes tentative conclusions that Mid-Rivers satisfies the first two statutory prongs of section 251(h)(2). However, the Commission will weigh these tentative conclusions against the alternative possibility that Mid-Rivers does not satisfy the standards set forth in the Act. The Commission also plans to consider whether the petition satisfies the third prong of section 251(h)(2)—the public interest standard—and will weigh the benefits of granting the application against other considerations, such as the impact on other major Commission policies. Furthermore, the Commission plans to review: (1) The subsequent regulatory treatment of Qwest, including whether two incumbent LECs can serve the same exchange, and whether the Commission is authorized to reclassify Qwest as a competitive LEC; (2) whether the Act permits expected future applications of this type to be decided by final order rather than by rulemaking; and (3) the appropriate regulatory requirements for classification changes such as these. Thus, we ask interested parties to address how the Commission can best balance its objective to advance local competition and other policy goals within the existing statutory and regulatory framework. The Commission also plans to consider the various alternative approaches, as described in the Notice of Proposed Rulemaking.

2. Legal Basis

11. The legal basis for any action that may be taken pursuant to this Notice is contained in sections 4, 10, 201–202, 214, 303 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 160, 201–204, 214, 303, and 403, section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157nt, and §§ 1.1, 1.48, 1.411, 1.412, 1.415, 1.419, and 1.1200–1.1216, of the Commission's rules, 47 CFR 1.1, 1.48, 1.411, 1.412, 1.415, 1.419, and 1.1200–1.1216.

3. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Would Apply

12. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of

small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

13. In this section, we further describe and estimate the number of small entity licensees and regulatees that may be affected by rules adopted in this Order. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its *Trends in Telephone Service* report. The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers, Paging, and Cellular and Other Wireless Telecommunications. Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

14. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

15. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year. Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small.

16. *Incumbent Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,310 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,310 carriers, an estimated 1,025 have 1,500 or fewer employees and 285 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our proposed action.

17. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 563 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 563 carriers, an estimated 472 have 1,500 or fewer employees and 91 have more than 1,500 employees. In addition, 14 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 14 are estimated to have 1,500 or fewer employees. In addition, 37 carriers have reported that they are ''Other Local Service Providers.'' Of the 37, an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by our proposed action.

18. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 281 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 254 have 1,500 or fewer employees and 27 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our proposed action.

19. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed action.

20. *Prepaid Calling Card Providers.* The SBA has developed a size standard for a small business within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 32 companies reported that they were engaged in the provision of prepaid calling cards. Of these 32 companies, an estimated 31 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the great majority of prepaid calling card providers are small entities that may be affected by the rules and policies adopted herein.

21. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to ''Other Toll Carriers.'' This category includes toll carriers that do not fall within the categories of interexchange carriers, OSPs, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is

small if it has 1,500 or fewer employees. According to Commission's data, 65 companies reported that their primary telecommunications service activity was the provision of other toll services. Of these 65 companies, an estimated 62 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that most ''Other Toll Carriers'' are small entities that may be affected by the rules and policies adopted herein.

22. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the great majority of firms can, again, be considered small. Broadband PCS. The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.'' These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 305, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In addition, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

23. *Narrowband Personal Communications Services.* The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second auction commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order.* 65 FR 35875, June 6, 2000. A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

24. *Specialized Mobile Radio.* The Commission awards ''small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards ''very small entity'' bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 900 MHz Service. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

25. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for ''very small business'' is: An entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and polices proposed herein.

26. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and Instructional Television Fixed Service.* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of the Multipoint

Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In connection with the 1996 MDS auction, the Commission defined ''small business'' as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. The SBA has approved of this standard. The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 claimed status as a small business. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities.

27. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating $12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million, and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the proposed rules and policies.

28. Finally, while SBA approval for a Commission-defined small business size standard applicable to ITFS is pending, educational institutions are included in this analysis as small entities. There are currently 2,032 ITFS licensees, and all but 100 of these licenses are held by educational institutions. Thus, we tentatively conclude that at least 1,932 ITFS licensees are small businesses.

29. *Incumbent 24 GHz Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of ''Cellular and Other Wireless Telecommunications'' companies. This category provides that such a company is small if it employs no more than 1,500 persons. According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

30. *Future 24 GHz Licensees.* With respect to new applicants in the 24 GHz band, we have defined ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding $15 million. ''Very small business'' in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these definitions. The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held.

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

31. The Commission in this Notice of Proposed Rulemaking makes tentative conclusions as to some, but not all of the necessary requirements of section 251(h)(2) for a competitive LEC, Mid-Rivers, to be declared an incumbent LEC. Should the Commission decide to find, after reviewing the record, that Mid-Rivers satisfies the requirements of section 251(h)(2) to be declared an incumbent LEC, and should the Commission make a finding as to the appropriate regulatory classification of the legacy incumbent LEC Qwest, the filing and compliance requirements of both Mid-Rivers and Qwest could potentially change. This is because incumbent LEC status often entails additional regulatory obligation and our decision on how to treat the legacy incumbent LEC could reduce Qwest's regulatory obligation. The Commission seeks comment in this Notice of Proposed Rulemaking regarding what, if any, broadly applicable rules would be necessary to properly implement this provision of the Act. Without more certainty about what rules, if any, the Commission will choose to adopt, we cannot accurately estimate the cost of compliance by small carriers. We therefore seek comment on the types of burdens carriers could face if the proposed recommendations are adopted. Entities, especially small businesses, are encouraged to quantify, if possible, the costs and benefits of potential reporting, recordkeeping, and other compliance requirements.

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

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

33. While the Commission's primary concern is to implement the provisions of the Act, the Commission also plans to evaluate any adverse effect that its review of issues in this proceeding will have on small business entities. Our tentative conclusions that Mid-Rivers satisfies two of the three prongs of the statutory standard apply irrespective of the petitioner's size. However, some of the regulations and obligations that pertain to the incumbent LEC status that Mid-Rivers seeks are, by statute, limited in many circumstances because the Act exempts certain small incumbent local exchange telephone companies from the significant obligations of section 251(c). Thus, because Mid-Rivers qualifies for the exemption because of its small size, if our tentative conclusions are adopted as a part of an order granting the relief requested by Mid-Rivers, it is most likely that Mid-Rivers will not be subject to many of the costly regulations that generally pertain to incumbent LECs. Finally, we also consider procedural mechanisms that, if warranted, could potentially reduce the burdens on small entities that wish to seek similar treatment from the Commission. While it remains unclear what effect the alternative choices we face in this proceeding will have on small business entities, establishing this rulemaking will create a full record upon which we can more capably weigh these matters.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

34. None.

Ordering Clause

Accordingly, it is ordered that the Notice of Proposed Rulemaking is adopted.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–26385 Filed 11–29–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT66

Endangered and Threatened Wildlife and Plants; Proposed Critical Habitat Designation for the Buena Vista Lake Shrew

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of availability of draft economic analysis and reopening of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft economic analysis for the proposed designation of critical habitat for Buena Vista Lake shrew in California under the Endangered Species Act of 1973, as amended (Act). We are also reopening the public comment period for the proposal to designate critical habitat for this species to allow all interested parties to comment on the proposed rule and the associated draft economic analysis. Comments previously submitted on the proposed rule need not be resubmitted as they have been incorporated into the public record as part of this reopening of the comment period, and will be fully considered in preparation of the final rule.

DATES: We will accept all comments and information received on or before December 15, 2004. Any comments that we receive after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposed rule by any one of several methods:

(1) You may submit written comments and information to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, CA 95825, or by facsimile 916/414–6710.

(2) You may hand-deliver written comments to our office, at the address given above.

(3) You may send comments by electronic mail (e-mail) to: *BVLS_pCH@fws.gov*. Please see the ''Public Comments Solicited'' section below for file format and other information about electronic filing. In the event that our Internet connection is not functional, please submit your comments by the alternate methods mentioned above.

Comments and materials received, as well as supporting documentation used in preparation of the proposed critical habitat rule, will be available for public inspection, by appointment, during normal business hours at the above address. You may obtain copies of the draft economic analysis for the proposed designation of critical habitat for Buena Vista Lake shrew by contacting the Sacramento Fish and Wildlife Office at the above address. The draft economic analysis and the proposed rule for critical habitat designation are also available on the Internet at *http://sacramento.fws.gov/*. In the event that our Internet connection is not functional, please obtain copies of documents directly from the Sacramento Fish and Wildlife Office.

FOR FURTHER INFORMATION CONTACT: Arnold Roessler, Sacramento Fish and Wildlife Office, at the address above (telephone 916/414–6600; facsimile 916/414–6710).

SUPPLEMENTARY INFORMATION:

Public Comment Solicited

We solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning our draft economic analysis and the proposed rule to designate critical habitat for the Buena Vista Lake shrew. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of exclusion outweigh the benefits of specifying such area as part of the critical habitat;

(2) Specific information on the amount and distribution of shrew habitat, and what habitat is essential to the conservation of this species and why;

(3) Land use designations and current or planned activities in the subject area and their possible impacts on proposed habitat, specifically impacts of the designation on the operation and maintenance of irrigation canals, and on existing and any planned future oil and gas activities within or near the proposed designation;

(4) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation of critical habitat; in particular, any impacts on small entities or families;

(5) Whether the economic analysis identifies all State and local costs attributable to the proposed critical habitat designation. If not, what costs are overlooked;

(6) Whether the economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat;

(7) Whether the economic analysis correctly assesses the effect on regional costs associated with land use controls that derive from the designation;

(8) Assumptions reflected in the economic analysis regarding land use practices and current, planned, or reasonably foreseeable activities in the subject areas, including comments or information relating to the potential effects that the designation could have on private landowners as a result of actual or foreseeable State and local government responses due to the California Environmental Quality Act;

(9) Whether the designation will result in disproportionate economic impacts to specific areas that should be evaluated for possible exclusion from the final designation;

(10) Whether the economic analysis appropriately identifies all costs that could result from the designation; and

(11) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

All comments and information submitted during the initial comment period on the proposed rule need not be resubmitted. If you wish to comment, you may submit your comments and materials concerning the draft economic analysis and proposed rule by any one of several methods (see **ADDRESSES** section).

Please submit Internet comments to *BVLS_pCH@fws.gov* in an ASCII file format and avoid the use of special characters and encryption. Please also include ''Attn: Buena Vista Lake shrew Critical Habitat'' in your e-mail subject header, and your name and return

address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Sacramento Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT** section).

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 addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours, in our Sacramento Fish and Wildlife Office at the above address.

In our August 19, 2004, proposed rule to designate critical habitat for the Buena Vista Lake shrew (69 FR 51417) we indicated that we would reopen the public comment period for an additional 60 days upon publication of this notice of availability of the draft economic analysis of the proposed designation. However, due to delays in completing the draft economic analysis and a court-ordered deadline for the completion of the final rule, we are unable to reopen the public comment period for that length of time. In order to ensure compliance with the United States District Court for the Eastern District of California's order (*Kern County Farm Bureau* et al. v. *Anne Badgley, Regional Director of the United States Fish and Wildlife Service, Region 1* et al., CV F 02–5376 AWIDLB) requiring us to publish a final determination no later than January 12, 2005, we are only able to reopen the public comment period for 15 days.

Background

On August 19, 2004, we published a proposed rule to designate critical habitat, pursuant to the Endangered Species Act of 1973, as amended (Act) for the Buena Vista Lake shrew (69 FR 51417). We proposed a total of 4,649 acres in 5 units of critical habitat within the Central Valley of California. The Buena Vista Lake shrew formerly occurred in wetlands around Buena Vista Lake, and presumably throughout the Tulare Basin. The animals were likely distributed throughout the swampy margins of Kern, Buena Vista, Goose, and Tulare Lakes. By the time the first shrews were collected and described, these lakes had already been drained and mostly cultivated with only sparse remnants of the original flora and fauna remaining. Essential habitat features of the shrew include riparian or wetland communities supporting a complex vegetative structure with a thick cover of leaf litter or dense mats of low-lying vegetation; suitable moisture supplied by a shallow water table, irrigation, or proximity to permanent or semipermanent water; and a consistent and diverse supply of prey. The shrew is now known from five isolated riparian or wetland remnants within the Tulare Basin of the Central Valley of California. Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regards to actions carried out, funded, or authorized by a Federal agency. Section 4(b)(2) of the Act requires that the Secretary of the Interior shall designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact of specifying any particular area as critical habitat. The public comment period for the August 19, 2004, proposal originally closed on October 18, 2004.

We have prepared a draft economic analysis of the effects of the proposed critical habitat designation, and are now announcing its availability for review. The economic analysis addresses the impacts of the Buena Vista Lake shrew conservation efforts on activities occurring on lands proposed for designation. The analysis includes cost effects on agricultural producers adjacent or proximate to three Critical Habitat Units (CHU), biological monitoring, Habitat Conservation Plan (HCP) development, and supplemental water purchases, as well as potential uncertainty to landowners and project delay.

The economic analysis includes both retrospective, or pre-designation, and prospective, or post-designation, economic costs to various entities as a result of Buena Vista Lake shrew conservation activities. Retrospective costs are those costs estimated to have occurred from the time the species was listed in April 2002 until the proposal of critical habitat in August 2004. The estimated retrospective cost is $122,237. These costs are primarily certain administrative costs associated with the ongoing preparation of a Comprehensive Conservation Plan at the Kern National Wildlife Refuge CHU and the ongoing section 7 consultation related to the preparation of a biological opinion regarding the Goose Lake proposed CHU.

Present values shown are calculated at three and seven percent discount rates. Total prospective costs range from $6.7 to $14.2 million under a three percent discount rate, and $4.8 to $10.1 million under a seven percent rate. Thus, prospective average annual costs range from $452,266 to $955,833. These costs include effects on agricultural producers adjacent or proximate to three CHUs, biological monitoring, HCP development, and supplemental water purchases. The ranges reflect totals with and without supplemental water for Kern Lake, Coles Levee, and Kern Fan Water Recharge CHUs. Both the Kern National Wildlife Refuge and Goose Lake CHUs are assumed to require supplemental water, and thus do not contribute to a range of costs.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, the proposed designation of critical habitat is a significant rule only in that it may raise novel legal and policy issues. However, the Economic Analysis indicates that the proposed designation will not have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule.

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

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact

on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. The SBREFA also amended the RFA to require a certification statement. Based on the information that is available to us at this time from the economic analysis, we are certifying that this proposed designation of critical habitat will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

The Regulatory Flexibility Act does not explicitly define either ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in the area. Similarly, this analysis considers the relative cost of compliance on the revenues/profit margins of small entities in determining whether or not entities incur a ''significant economic impact.'' Only small entities that are expected to be directly affected by the designation are considered in this portion of the analysis. This approach is consistent with several judicial opinions related to the scope of the Regulatory Flexibility Act. (*Mid-Tex Electric Co-Op, Inc.* v. *F.E.R.C. and American Trucking Associations, Inc.* v. *EPA*).

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation if they lack a Federal nexus. In areas where the species is present, Federal agencies funding, permitting, or implementing activities are already required to avoid jeopardizing the continued existence of the Buena Vista Lake shrew through consultation with us under section 7 of the Act. If this critical habitat designation is finalized, Federal agencies must also consult with us to ensure that their activities do not destroy or adversely modify designated critical habitat through consultation with us.

Should a federally funded, permitted, or implemented project be proposed that may affect designated critical habitat, we will work with the Federal action agency and any applicant, through section 7 consultation, to identify ways to implement the proposed project while minimizing or avoiding any adverse effect to the species or critical habitat. In our experience, the vast majority of such projects can be successfully implemented with at most minor changes that avoid significant economic impacts to project proponents.

Based on our experience with section 7 consultations for all listed species, virtually all projects-including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. The kinds of actions that may be included in future reasonable and prudent alternatives include avoidance, conservation set-asides, management of competing non-native species, restoration of degraded habitat, construction of protective fencing, and regular monitoring. These measures are not likely to result in a significant economic impact to project proponents.

In the case of the Buena Vista Lake shrew, we anticipate that that the proposed designation of critical habitat is not likely to have a significant impact on any small entities or classes of small entities. However, no section 7 consultations have been completed since the listing in 2002; in addition, no identifiable changes in economic activities resulting from shrew conservation efforts have taken place since the listing. The costs presented in the economic analysis reflect, where data permit, ranges representing the reasonably foreseeable future. These costs are likely to be incurred because of shrew conservation activities related to agriculture, operation and maintenance of groundwater recharge projects and resultant effects on water supplies, and water requirements for habitat.

We considered the potential relative cost of compliance to these small entities and evaluated only small entities that are expected to be directly affected by the proposed designation of critical habitat. Based on the economic analysis, we do not anticipate that the proposed designation of critical habitat for the Buena Vista Lake shrew will result in increased compliance costs for small entities. The proposed designation of critical habitat does not, therefore, create a new cost for the small entities to comply with the proposed designation. Instead, proposed designation only impacts Federal agencies that conduct, fund, or permit activities that may affect critical habitat for the shrew. Thus, we conclude that the proposed designation of critical habitat is not likely to result in a significant impact to this group of small entities. Therefore, we are certifying that the proposed designation of critical habitat for the shrew will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

In summary, we have considered whether this proposed designation would result in a significant economic impact on a substantial number of small entities, and we have concluded that it would not. Future consultations are not likely to affect a substantial number of small entities. We anticipate that the types of activities we review under section 7 of the Act will not change significantly in the future.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 et seq.)

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. The Economic Analysis indicates that the proposed designation will not have an annual effect on the economy of $100

million or more. Therefore, we believe that this critical habitat designation will not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for the Buena Vista Lake shrew. Our assessment concludes that this proposed rule does not pose significant takings implications.

Author

The primary author of this notice is Shannon Holbrook, Sacramento Fish and Wildlife Services Office (*see* **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: November 23, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–26472 Filed 11–29–04; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 69, No. 229

Tuesday, November 30, 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

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), re-certified the trade adjustment assistance (TAA) petition that was filed by the North Carolina Fisheries Association on behalf of North Carolina shrimpers and initially certified on April 5, 2004. Shrimpers who land their catch in North Carolina will be eligible to apply for fiscal year 2005 benefits during a 90-day period beginning on November 29, 2004. The application period closes on February 28, 2005.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that continued increases in imports of like or directly competitive products contributed importantly to a decline in the average landed price of shrimp in North Carolina by 26.6 percent during the 2003 marketing period (January-December 2003), compared to the 1997–2001 base period. Eligible producers may request technical assistance from the Extension Service at no cost and receive an adjustment assistance payment, if certain program criteria are satisfied. Producers in fiscal year 2005 who did not receive technical assistance under the fiscal year 2004 TAA program must obtain the technical assistance from the Extension Service by May 31, 2005, in order to be eligible for financial payments.

Producers of raw agricultural commodities wishing to learn more about TAA and how they may apply should contact the Department of Agriculture at the addresses provided below for General Information.

Producers Certified as Eligible for TAA, Contact: Farm Service Agency service centers.

For General Information About TAA, Contact: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, email: *trade.adjustment@fas.usda.gov.*

Dated: November 16, 2004.

Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 04–26395 Filed 11–29–04; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), re-certified the trade adjustment assistance (TAA) petition that was filed by the Texas Shrimp Association on behalf of Texas shrimpers and initially certified on November 19, 2003. Shrimpers who land their catch in Texas will be eligible to apply for fiscal year 2005 benefits during a 90-day period beginning on November 29, 2004. The application period closes on February 28, 2005.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that continued increases in imports of like or directly competitive products contributed importantly to a decline in the average landed price of shrimp in Texas by 33.7 percent during the 2003 marketing period (January–December 2003), compared to the 1997–2001 base period. Eligible producers may request technical assistance from the Extension Service at no cost and receive an adjustment assistance payment, if certain program criteria are satisfied. Producers in fiscal year 2005 who did not receive technical assistance under the fiscal year 2004 TAA program must obtain the technical assistance from the Extension Service by May 31, 2005, in order to be eligible for financial payments.

Producers of raw agricultural commodities wishing to learn more about TAA and how they may apply should contact the Department of Agriculture at the addresses provided below for General Information.

Producers Certified as Eligible for TAA, Contact: Farm Service Agency service centers.

For General Information About TAA, Contact: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, email: *trade.adjustment@fas.usda.gov.*

Dated: November 16, 2004.

Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 04–26394 Filed 11–29–04; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Bridger-Teton National Forest—WY—Kemmerer and Greys River Ranger Districts; Lincoln County, WY; Salt Pass Grazing Allotments Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement; correction.

SUMMARY: The Forest Service published a document in the **Federal Register** on November 15, 2004, requesting comments concerning the scope of the analysis be received by December 17, 2005. That document contained an incorrect date for submission of comments.

FOR FURTHER INFORMATION CONTACT: Russ Bacon, Kemmerer District Ranger, Kemmerer Ranger District, P.O. Box 31, Kemmerer, Wyoming 83101 or phone (307) 877–4415.

Correction

In the **Federal Register** of November 15, 2004, in FR Doc. 04–25249, on page 65578, the date for submission of comments is incorrect. The submission of comments concerning the scope of the analysis must be received by December 31, 2004 is the correct date.

Dated: November 16, 2004.

Fred Fouse,

Acting District Ranger.

[FR Doc. 04–26374 Filed 11–29–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Integrated Resource Contracts FS–2400–13 and FS–2400–13T

AGENCY: Forest Service, USDA.

ACTION: Notice; comment period reopened.

SUMMARY: The Forest Service published, on October 5, 2004 (69 FR 59577), a notice of interim contracts and request for comments on the Integrated Resource Contracts, FS 2400–13, for use when timber products are measured after harvest, and FS–2400–13T, for use when timber products are measured before harvest. The deadline for submitting written comments was November 4, 2004. The Forest Service published, on October 12, 2004 (69 FR 60608), a correction clarifying that the interim contracts became effective immediately upon publication of the original notice in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Richard Fitzgerald, Forest Management Staff, (202) 205–1753, Lathrop Smith, Forest Management Staff, (202) 205–0858, or Don Benner, Forest Management Staff, (202–205–0855).

DATES: Comments must be received in writing on or before February 28, 2005.

ADDRESSES: Send written comments by mail to USDA Forest Service, Director Forest Management, 1400 Independence Avenue, SW., Mail Stop 1103, Washington, DC 20250–0003; via e-mail to: *integratedresourcecontracts@fs.fed.us;* or via facsimile to (202) 205–1045. Comments may also be submitted via the World Wide Web Internet Web site at: *http://www.regulations.gov.* All comments including names and addresses when provided are placed in the record and are available for public inspection and copying. The Integrated Resource Contracts are available for public review on the Forest Service World Wide Web/Internet site at: *http://www.fs.fed.us/forestmanagement/projects/stewardship/contracts.* Alternatively, these can be viewed in the office of the Director of Forest Management, Third Floor, Northwest Wing, Yates Building, 201 14th Street, SW., Washington, DC. Visitors are encouraged to call ahead to (202) 205–0893 to facilitate entry into the building.

Dated: November 3, 2004.

Gloria Manning,

Acting Deputy Chief, National Forest System.

[FR Doc. 04–26393 Filed 11–29–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, and Rural Utilities Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces Rural Development's intention to request an extension for a currently approved information collection in support of loan programs administered by the Rural Housing Service, the Rural Business-Cooperative Service, and the Rural Utilities Service.

DATES: Comments on this notice must be received by January 31, 2005, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Margo Dean, Accountant, Office of the Deputy Chief Financial Officer, Policy and Internal Review Division, U.S. Department of Agriculture, STOP 33, P.O. Box 200011, St. Louis, MO 63120, telephone: (314) 457–4301.

SUPPLEMENTARY INFORMATION:

Title: Form RD 1951–65, Customer Initiated Payments (CIP) Enrollment Form; Form RD 1951–66, FedWire Worksheet; and Form RD 3550–28, Authorization Agreement for Preauthorized Payments.

OMB Number: 0575–0184.

Expiration Date of Approval: April 30, 2005.

Type of Request: Extension of a currently approved information collection.

Abstract: Rural Development uses electronic methods (Customer Initiated Payments [CIP], FedWire, and Preauthorized Debits [PAD]) for receiving and processing loan payments and collections. These electronic collection methods provide a means for Rural Development borrowers to transmit loan payments from their financial institution (FI) accounts to Rural Development's Treasury Account and receive credit for their payments.

To administer these electronic loan collection methods, Rural Development collects the borrower's FI routing information (routing information includes the FI routing number and the borrower's account number). Rural Development uses Agency approved forms for collecting bank routing information for CIP, FedWire, and PAD.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .5 hours per response. Each Rural Development borrower who elects to participate in electronic loan payments will only prepare one response for the life of their loan unless they change financial institutions or accounts.

Respondents: Business or other for-profit; not-for-profit institutions; and State, local, or tribal government.

Estimated Number of Respondents: 22,263.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 11,132 hours.

Copies of this information collection can be obtained from Renita Bolden, Regulations and Paperwork Management Branch, at (202) 692–0035.

Comments are invited on: (1) The need for the information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents.

Comments should be submitted to Renita Bolden, Regulations and Paperwork Management Branch, Support Services Division, Rural Development, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0742. All responses to this notice will be summarized, included in the request for Office of Management and Budget (OMB) approval, and will become a matter of public record.

Dated: November 23, 2004.

Gilbert Gonzalez,

Acting Under Secretary for Rural Development.

[FR Doc. 04–26368 Filed 11–29–04; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–847]

Notice of Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review: Persulfates From the People's Republic of China

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

EFFECTIVE DATE: November 30, 2004.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results of the administrative review of the antidumping duty order on persulfates from the People's Republic of China (the PRC) to February 2, 2005. This review covers the period July 1, 2002, through June 30, 2003.

FOR FURTHER INFORMATION CONTACT: Tisha Loeper–Viti at (202) 482–7425 or David Layton at (202) 481–0371, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On August 6, 2004, the Department published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on persulfates from the PRC. *See Persulfates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 47887 (August 6, 2004). The final results of this administrative review are currently due not later than December 6, 2004.

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), states that if it is not practicable to complete the review within the time specified, the administering authority may extend the final results to not later than 180 days following the publication of the preliminary results. The Department recalculated its preliminary results on October 29, 2004, and issued them to interested parties on November 1, 2004. In order to allow interested parties sufficient time to comment on the Department's recalculation, it is not practicable to complete this review within the time limit mandated by the Act. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is fully extending the time period for issuing the final results of review until not later than February 2, 2005.

Dated: November 23, 2004.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E4–3386 Filed 11–29–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–838; C–122–839]

Antidumping and Countervailing Duty Investigations of Certain Softwood Lumber Products From Canada: NAFTA Panel Decision

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

ACTION: Notice of NAFTA Panel decision.

SUMMARY: On August 31, 2004, a North American Free Trade Agreement (''NAFTA'') Panel reviewing the International Trade Commission's (''ITC's'') findings that an industry in the United States was threatened with material injury by reason of imports of softwood lumber from Canada, remanded the case to the ITC with explicit instructions directing the ITC to reverse its affirmative determinations. *Certain Softwood Lumber Products from Canada*, USA–CDA–2002–1904–07, Second [sic] Remand Decision of the Panel (August 31, 2004) (''*Panel Decision III*''). On September 10, 2004, while the ITC contested the Panel's authority to reverse the ITC's decision in these circumstances, a majority of the ITC Commissioners issued a determination consistent with the Panel's decision. *Softwood Lumber from Canada*, Inv. Nos. 701–TA–414 and 731–TA–928 (Remand) (Third) (September 10, 2004) (''*Third Remand*''). The Panel affirmed the Third Remand on October 12, 2004, and subsequently directed the NAFTA Secretariat to issue a Notice of Final Panel Action on October 25, 2004. Consistent with the decision of the United States Court of Appeals for the Federal Circuit (''Federal Circuit'') in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (''*Timken*''), the Department of Commerce (''Department'') is notifying the public that the *Third Remand* for antidumping and countervailing duty investigations in *Certain Softwood Lumber Products from Canada* and the Notice of Final Panel action issued by the NAFTA Panel reviewing the ITC's determinations, discussed below, are not ''in harmony'' with the ITC's original results.

EFFECTIVE DATE: November 30, 2004.

FOR FURTHER INFORMATION CONTACT: Constance Handley for Antidumping Duty Investigation and James Terpstra for Countervailing Duty Investigation at (202) 482–0631 and (202) 482–3965, respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 16, 2002, The ITC determined that an industry in the United States is threatened with material injury by reason of imports of softwood lumber from Canada found to be subsidized and sold in the United States at less than fair value. *Softwood Lumber from Canada*, Inv. Nos. 701–TA–414 and 731–TA–928 (Final), USITC Pub. 3509 (May 2002) (''**FINAL INJURY DETERMINATIONS**''); 67 Fed. Reg. 36068–36077 (May 22, 2002). Respondent parties subsequently challenged the ITC's **FINAL INJURY DETERMINATIONS** before the United States–Canada Binational Panel, pursuant to Article 1904 of NAFTA. The parties briefed and argued the case before the Panel, and on September 5, 2003, the Panel issued its decision, affirming in part and remanding in part the ITC's determinations. **CERTAIN SOFTWOOD LUMBER PRODUCTS FROM CANADA**, USA–CDA–2002–1904–07, Decision of the Panel (Sept. 5, 2003). On December 15, 2003, the ITC determined on remand that an industry was threatened with material injury by reason of dumped and subsidized subject imports. **SOFTWOOD LUMBER FROM CANADA**, Inv. Nos. 701–TA–414 and 731–TA–928 (Remand), USITC Pub. 3658 (Dec. 2003). By decision circulated on April 29, 2004, the Panel affirmed in part and remanded in part the ITC's determinations on remand. **CERTAIN SOFTWOOD LUMBER PRODUCTS FROM CANADA**, USA–CDA–2002–1904–07, Remand Decision of the Panel (circulated April 29, 2004). On June 10, 2004, the ITC again determined on remand that the U.S. softwood lumber industry was threatened with material injury by reason of dumped and subsidized subject imports. **SOFTWOOD LUMBER FROM CANADA**, Inv. Nos. 701–TA–414 and 731–TA–928 (Remand) (Second) (June 10, 2004). By decision issued on August 31, 2004, the Panel remanded with explicit instructions directing the ITC to reverse its affirmative determinations. **PANEL DECISION III**. On September 10, 2004, while the ITC contested the Panel's authority to reverse the ITC's decision in these circumstances, a majority of the ITC Commissioners issued a determination consistent with the Panel's decision. **THIRD REMAND**. By decision issued on October 12, 2004, the Panel affirmed the **THIRD REMAND** and

subsequently directed the NAFTA Secretariat to issue a Notice of Final Panel Action on October 25, 2004.

Timken Notice

In its decision in *Timken*, the Federal Circuit held that, pursuant to 19 U.S.C. § 1516a(c)(1) and 1516a(e), the Department must publish notice of decision of the Court of International Trade (''CIT'') which is ''not in harmony'' with the Department's results. *Timken*, 893 F.2d at 340. This is true for CIT decisions which are ''not in harmony'' with the results of ITC injury, or threat of injury, determinations as well. Because NAFTA panels step into the shoes of the courts they are replacing, they must apply the law of the national court that would otherwise review the administrative determination. Therefore, we are publishing notice that the NAFTA Panel's October 25, 2004, Notice of Final Panel Action and its October 12, 2004, decision are ''not in harmony'' with the ITC's *Final Injury Determinations*. Publication of this notice fulfills the obligation imposed upon the Department by the decision in Timken. In addition, this notice will serve to suspend liquidation of entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after November 4, 2004, *i.e.*, 10 days from the issuance of the Notice of Final Action, at the current cash deposit rate.

Dated: November 23, 2004.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E4–3385 Filed 11–29–04; 8:45 am]

BILLING CODE: 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112304D]

Endangered Species; File No. 1514

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Pacific Islands Regional Office, National Marine Fisheries Service, 1601 Kapiolani Blvd., Ste. 1110, Honolulu, HI 96814, has applied in due form for a permit to take green (*Chelonia mydas*), hawksbill (*Eretmochelys imbricata*), leatherback (*Dermochelys coriacea*), olive ridley (*Lepidochelys olivacea*), and loggerhead (*Caretta caretta*) sea turtles for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before December 30, 2004.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Assistant Regional Administrator for Protected Resources, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4020; fax (562)980–4027.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1514.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The proposed research would occur in the Pacific Ocean and provide data on the at sea distribution and movement patterns of green, hawksbill, leatherback, olive ridley, and loggerhead sea turtles. Researchers would also use pop-up satellite tags (PSATs) to investigate post-release mortality of hard-shelled turtles that have been hooked or entangled by longline gear. Data from the PSATs would be used to compare the behavior of longline caught turtles to the known behavior of turtles that have not been caught in fishing gear (controls) to investigate potential effects of the fishery interactions on turtle behavior patterns after release. Seven green, 34 leatherback, 21 loggerhead, and 42 olive ridley sea turtles that have been captured in the Hawaii longline fishery would be measured, photographed, tissue sampled, flipper tagged, and released, or salvaged (if dead). The hard-shelled species would also have a PSAT attached to their shell.

An additional six (combined total of all species) hawksbill, olive ridley, loggerhead, and green sea turtles captured in the American Samoa longline fishery would be measured, photographed, tissue sampled, flipper tagged, PSAT tagged and released, or salvaged (if dead). One leatherback captured in this fishery would also be measured, photographed, tissue sampled, flipper tagged, and released, or salvaged (if dead). All turtles would have been captured in the longline fishery and coverage for the incidental capture of these turtles would be provided under the incidental take statement of the 2004 Biological Opinion for the Western Pelagics Fishery Management Plan. The applicant requests a five year permit.

Dated: November 24, 2004.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–26406 Filed 11–29–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111204C]

Marine Mammals; File Nos. 1034–1685 and 1065–1749

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

ACTION: Issuance of permit amendment and new permit.

SUMMARY: Notice is hereby given that Dr. Markus Horning, Texas A&M University, Laboratory for Applied Biotelemetry and Biotechnology, Department of Marine Biology, 5007 Avenue U, Galveston, TX 77551 has been issued an amendment to scientific research Permit No. 1034–1685 and Dr. Patrick Butler, University of Birmingham, School of Biosciences, Edgbaston, Birmingham, United

Kingdom has been issued Permit No. 1069–1749.

ADDRESSES: The permit, permit amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Tammy Adams, (301)713–2289.

SUPPLEMENTARY INFORMATION: On June 18, 2004, notice was published in the **Federal Register** (69 FR 34138) that the above-named individuals had applied for an amendment of Permit No. 1034–1685, issued on March 17, 2003 (68 FR 20117), and a new permit (File No. 1065–1749), respectively. The requested permit amendment and new permit have been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The permit amendment, Permit No. 1034–1685–01, authorizes the study of the adrenal response of California sea lions (*Zalophus californianus*). A total of up to six sea lions undergoing rehabilitation at The Marine Mammal Center (TMMC), Sausalito, CA, may be injected intramuscularly with adrenocorticotropic hormone and have pre-injection and post-injection blood samples taken while under anesthesia for analysis of glucocorticoids. Feces may also be collected for analysis.

Permit No. 1065–1749 authorizes development and monitoring trials of a surgically implantable heart rate logger in California sea lions, northern elephant seals (*Mirounga angustirostris*), and northern fur seals (*Callorhinus ursinus*) undergoing rehabilitation at TMMC. The permit authorizes surgical implantation and removal of the device in up to six animals of each species per year. The permit also authorizes mortality incidental to the study of up to two animals total, of any species, over the five-year course of the permit.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: November 22, 2004.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–26412 Filed 11–29–04; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Designations Under the Textile and Apparel Commercial Availability Provisions of the United States-Caribbean Basin Trade Partnership Act (CBTPA)

November 23, 2004.

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

ACTION: Designation.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that certain woven, 100 percent cotton, flannel fabrics, of the specifications detailed below, classified in the indicated subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), for use in products covered by textile categories 340, 341, 347, 348, 350, 351, and 352, cannot be supplied by the domestic industry in commercial quantities in a timely manner. CITA hereby designates such apparel articles, that are both cut and sewn or otherwise assembled in an eligible CBTPA beneficiary country, from these fabrics as eligible for quota-free and duty-free treatment under the textile and apparel commercial availability provisions of the CBTPA and eligible under HTSUS subheadings 9820.11.27, to enter free of quota and duties, provided that all other fabrics are wholly formed in the United States from yarns wholly formed in the United States.

EFFECTIVE DATE: November 30, 2004.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 211 of the CBTPA, amending Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act (CBERA); Presidential Proclamation 7351 of October 2, 2000; Executive Order No. 13191 of January 17, 2001.

Background

The commercial availability provision of the CBTPA provides for duty-free and quota-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary CBTPA country from fabric or yarn that is not formed in the United States if it has been determined that such yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner and certain procedural requirements have been met. In Presidential Proclamation 7351, the President proclaimed that this treatment would apply to apparel articles from fabrics or yarn designated by the appropriate U.S. government authority in the **Federal Register**. In Executive Order 13191, the President authorized CITA to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner.

On July 14, 2004, the Chairman of CITA received twelve petitions from Sandler, Travis, and Rosenberg, P.A., on behalf of Picacho, S.A., alleging that certain woven, 100 percent cotton, flannel fabrics, of detailed specifications, classified in indicated HTSUS subheadings, for use in shirts, trousers, nightwear, robes, dressing gowns, and woven underwear, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for such apparel articles that are both cut and sewn in one or more CBTPA beneficiary countries from such fabrics. On July 22, 2004, CITA requested public comment on the petition. See Request for Public Comment on Commercial Availability Petition under the United States-Caribbean Basin Trade Partnership Act (CBTPA) (69 FR 43805). Subsequently, three of the petitions were withdrawn because the petitioner informed CITA that they contained minor but significant errors with regard to the detailed specifications. See Withdrawal of Three Commercial Availability Petitions under the United States-Caribbean Basin Trade Partnership Act (CBTPA)(69 FR 46137). On August 9, 2004, CITA and the U.S. Trade Representative (USTR) sought the advice of the Industry Trade Advisory Committee for Textiles and Clothing and the Industry Trade Advisory Committee for Distribution Services. On August 9, 2004, CITA and USTR offered to hold consultations with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (collectively, the Congressional Committees). On August 25, 2004, the

U.S. International Trade Commission provided advice on the petitions.

Based on the information and advice received and its understanding of the industry, CITA determined that the fabrics set forth in the petitions cannot be supplied by the domestic industry in commercial quantities in a timely manner. On September 10, 2004, CITA and USTR submitted a report to the Congressional Committees that set forth the action proposed, the reasons for such action, and advice obtained. A period of 60 calendar days since this report was submitted has expired. During this 60 calendar day period, the petitioner notified CITA that it was withdrawing one of the remaining nine petitions as this fabric is no longer available from its source.

CITA hereby designates as eligible for preferential treatment under HTSUS subheading 9820.11.27, products covered by textile categories 340, 341, 347, 348, 350, 351, and 352, that are both cut and sewn or otherwise assembled in one or more eligible CBTPA beneficiary countries, from certain woven, 100 percent cotton, flannel fabrics, of the specifications detailed below, classified in the indicated HSTUS subheadings, not formed in the United States, provided that all other fabrics are wholly formed in the United States from yarns wholly formed in the United States, subject to the special rules for findings and trimmings, certain interlinings and de minimis fibers and yarns under section 112(d) of the CBTPA, and that such articles are imported directly into the customs territory of the United States from an eligible CBTPA beneficiary country.

Specifications

1 Fabric:	Style 4807
HTS Subheading:	5208.32.30.40
Fiber Content:	100% Cotton
Weight:	152.6 g/m2
Width:	150 centimeters cuttable
Thread Count:	24.4 warp ends per centimeter; 15.7 filling picks per centimeter; total: 40.1 threads per square centimeter
Yarn Number:	Warp: 40.6 metric, ring spun; filling: 20.3 metric, open end spun; overall average yarn number: 39.4 metric
Finish:	(Piece) dyed; napped on both sides, sanforized
2 Fabric:	Style 0443
HTS Subheading:	5209.31.60.50
Fiber Content:	100% Cotton
Weight:	251 g/m2
Width:	160 centimeters cuttable
Thread Count:	22.8 warp ends per centimeter; 15 filling picks per centimeter; total: 37.8 threads per square centimeter
Yarn Number:	Warp: 40.6 metric, ring spun; filling: 8.46 metric, open end spun; overall average yarn number: 24.1 metric
Finish:	(Piece) dyed; napped on both sides, sanforized
3 Fabric:	Style 62BV1500240
HTS Subheading:	5209.31.60.50
Fiber Content:	100% Cotton
Weight:	203 g/m2
Width:	150 centimeters cuttable
Thread Count:	20.5 warp ends per centimeter; 17.3 filling picks per centimeter; total: 37.8 threads per square centimeter
Yarn Number:	Warp: 40.6 metric, ring spun; filling: 13.5 metric, open end spun; overall average yarn number: 27.9 metric
Finish:	(Piece) dyed; napped on both sides, sanforized
4 Fabric:	Style 4697
HTS Subheading:	5209.31.60.50
Fiber Content:	100% Cotton
Weight:	291.5 g/m2
Width:	160 centimeters cuttable
Thread Count:	23.2 warp ends per centimeter; 15 filling picks per centimeter; total: 38.2 threads per square centimeter
Yarn Number:	Warp: 27.07 metric, ring spun; filling: 8.46 metric, open end spun; overall average yarn number: 20.1 metric
Finish:	(Piece) dyed; napped on both sides, sanforized
5 Fabric:	Style 62BU1600240
HTS Subheading:	5209.31.60.50
Fiber Content:	100% Cotton
Weight:	291.5 g/m2
Width:	160 centimeters cuttable
Thread Count:	26.8 warp ends per centimeter; 16.5 filling picks per centimeter; total: 43.3 threads per square centimeter
Yarn Number:	Warp: 25.46 metric, ring spun; filling: 10.16 metric, open end spun; overall average yarn number: 23.8 metric
Finish:	(Piece) dyed; napped on both sides, sanforized
6 Fabric:	Style 4237
HTS Subheading:	5209.31.60.50
Fiber Content:	100% Cotton
Weight:	254 g/m2
Width:	160 centimeters cuttable
Thread Count:	20 warp ends per centimeter; 14.5 filling picks per centimeter; total: 34.5 threads per square centimeter
Yarn Number:	Warp: 28.8 metric, ring spun; filling: 8.46 metric, open end spun; overall average yarn number: 20.1 metric
Finish:	(Piece) dyed; napped on both sides, sanforized
7 Fabric:	Style 0443A
HTS Subheading:	5209.41.60.40
Fiber Content:	100% Cotton
Weight:	251 g/m2
Width:	160 centimeters cuttable
Thread Count:	22.8 warp ends per centimeter; 15 filling picks per centimeter; total: 37.8 threads per square centimeter
Yarn Number:	Warp: 40.6 metric, ring spun; filling: 8.46 metric, open end spun; overall average yarn number: 24.1 metric
Finish:	gingham check or plaid of yarns of different colors; napped on both sides, sanforized
8 Fabric:	Style 4245
HTS Subheading:	5209.41.60.40
Fiber Content:	100% Cotton
Weight:	251 g/m2
Width:	160 centimeters cuttable
Thread Count:	19.7 warp ends per centimeter; 11.8 filling picks per centimeter; total: 31.5 threads per square centimeter
Yarn Number:	Warp: 20.3 metric, ring spun; filling: 8.46 metric, open end spun; overall average yarn number: 20.1 metric
Finish:	Plaid of yarns of different colors; napped on both sides, sanforized

An ''eligible CBTPA beneficiary country'' means a country which the President has designated as a CBTPA beneficiary country under section 213(b)(5)(B) of the CBERA (19 U.S.C. 2703(b)(5)(B)) and which has been the subject of a finding, published in the **Federal Register**, that the country has satisfied the requirements of section 213(b)(4)(A)(ii) of the CBERA (19 U.S.C. 2703(b)(4)(A)(ii)) and resulting in the enumeration of such country in U.S. note 1 to subchapter XX of Chapter 98 of the HTSUS.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E4–3387 Filed 11–29–04; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Commercial Availability Request Under the United States-Caribbean Basin Trade Partnership Act (CBTPA)

November 24, 2004.

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

ACTION: Denial of the request alleging that certain circular knit jersey fabric for use in apparel articles cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

SUMMARY: On September 20, 2004, the Chairman of CITA received a petition from Sandler, Travis & Rosenberg, P.A., on behalf of Jaclyn, Inc. of New York (Jaclyn), alleging that certain circular single knit jersey fabric of the specifications detailed below, classified in subheading 6006.34.00.80 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be

supplied by the domestic industry in commercial quantities in a timely manner. The petition requests that women's and girl's nightwear of such fabric assembled in one or more CBTPA beneficiary countries be eligible for preferential treatment under the CBTPA.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act, as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

Background

The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns and fabrics formed in the United States or a beneficiary country. The CBTPA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests (66 FR 13502).

On September 20, 2004, the Chairman of CITA received a petition from Sandler, Travis & Rosenberg, P.A., on behalf of Jaclyn, Inc. of New York, alleging that certain circular single knit jersey fabric of the specifications detailed below, classified in subheading 6006.34.00.80 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. The petition requests that women's and girl's nightwear of such fabric assembled in one or more CBTPA beneficiary countries be eligible for preferential treatment under the CBTPA.

Specifications

Fabric Description	single knit jersey, jacquard geometric rib stitch
Petitioner Style No	4944
HTS Subheading	6006.34.00.80
Fiber Content	64% polyester staple/35.5%–35.8% cotton/0.2%–0.5% spandex
Weight	6.06 sq. meters/kg
Yarn Size	54.14 metric (32/1 English), spun, filament core
Gauge	28
Finish	(Piece) dyed and printed
Stretch Characteristics	25% from relaxed state; 90% recovery to relaxed state

On September 23, 2004, CITA published a **Federal Register** notice requesting public comments on the request, particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. On October 14, 2004, CITA and the Office of the U.S. Trade Representative offered to hold consultations with the relevant Congressional committees. We also requested the advice of the U.S. International Trade Commission and the relevant Industry Trade Advisory Committees.

Through the ITC report and our contacts with domestic industry, we learned that there is domestic capacity and ability to supply 28-gauge circular knit fabric, which is a standard size for the U.S. industry. The ITC report and follow-up calls made by a CITA representative confirmed that there are two U.S. companies who have 28-gauge knitting machines and state they have the ability to make the subject 28-gauge fabric.

CITA has determined that the domestic industry can supply the subject fabric described above in commercial quantities in a timely manner. On the basis of currently available information and our review of this request, CITA has determined that there is domestic capacity to supply a substitutable product in commercial quantities in a timely manner. Jaclyn's request is denied.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E4–3389 Filed 11–29–04; 8:45 am]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Designations Under the Textile and Apparel Commercial Availability Provisions of the United States-Caribbean Basin Trade Partnership Act (CBTPA)

November 23, 2004.

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

ACTION: Designation.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that certain woven, 100 percent cotton, flannel fabrics, of the specifications detailed below, classified in the indicated subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), for use in products covered by textile categories 340, 341, 347, 348, 350, 351, and 352, cannot be supplied by the domestic industry in commercial quantities in a timely manner. CITA hereby designates such apparel articles, that are both cut and sewn or otherwise assembled in an eligible CBTPA beneficiary country, from these fabrics as eligible for quota-free and duty-free treatment under the textile and apparel commercial availability provisions of the CBTPA and eligible under HTSUS subheadings 9820.11.27, to enter free of quota and duties, provided that all other fabrics are wholly formed in the United States from yarns wholly formed in the United States.

EFFECTIVE DATE: November 30, 2004.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 211 of the CBTPA, amending Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act (CBERA); Presidential Proclamation 7351 of October 2, 2000; Executive Order No. 13191 of January 17, 2001.

Background

The commercial availability provision of the CBTPA provides for duty-free and quota-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary CBTPA country from fabric or yarn that is not formed in the United States if it has been determined that such yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner and certain procedural requirements have been met. In

Presidential Proclamation 7351, the President proclaimed that this treatment would apply to apparel articles from fabrics or yarn designated by the appropriate U.S. government authority in the **Federal Register**. In Executive Order 13191, the President authorized CITA to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner.

On July 30, 2004, the Chairman of CITA received three petitions from Sandler, Travis, and Rosenberg, P.A., on behalf of Picacho, S.A., alleging that certain woven, 100 percent cotton, flannel fabrics, of detailed specifications, classified in indicated HTSUS subheadings, for use in shirts, trousers, nightwear, robes, dressing gowns, and woven underwear, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for such apparel articles that are both cut and sewn in one or more CBTPA beneficiary countries from such fabrics. On August 6, 2004, CITA requested public comment on the petition. See Request for Public Comment on Commercial Availability Petition under the United States-Caribbean Basin Trade Partnership Act (CBTPA) (69 FR 47915). On August 24, 2004, CITA and the U.S. Trade Representative (USTR) sought the advice of the Industry Trade Advisory Committee for Textiles and Clothing and the Industry Trade Advisory Committee for Distribution Services. On August 24, 2004, CITA and USTR offered to hold consultations with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (collectively, the Congressional Committees). On August 25, 2004, the U.S. International Trade Commission provided advice on the petitions.

Based on the information and advice received and its understanding of the industry, CITA determined that the fabrics set forth in the petitions cannot be supplied by the domestic industry in commercial quantities in a timely manner. On September 10, 2004, CITA and USTR submitted a report to the Congressional Committees that set forth the action proposed, the reasons for such action, and advice obtained. A period of 60 calendar days since this report was submitted has expired.

CITA hereby designates as eligible for preferential treatment under HTSUS subheading 9820.11.27, products covered by textile categories 340, 341, 347, 348, 350, 351, and 352, that are both cut and sewn or otherwise assembled in one or more eligible CBTPA beneficiary countries, from certain woven, 100 percent cotton, flannel fabrics, of the specifications detailed below, classified in the indicated HSTUS subheadings, not formed in the United States, provided that all other fabrics are wholly formed in the United States from yarns wholly formed in the United States, subject to the special rules for findings and trimmings, certain interlinings and de minimis fibers and yarns under section 112(d) of the CBTPA, and that such articles are imported directly into the customs territory of the United States from an eligible CBTPA beneficiary country.

Specifications

Fabric 1

Petitioner Style No:	4835
HTS Subheading:	5208.42.30.00
Fiber Content:	100% Cotton
Weight:	152.6 g/m2
Width:	150 centimeters cuttable
Thread Count:	24.4 warp ends per centimeter; 15.7 filling picks per centimeter; total: 40.1 threads per square centimeter
Yarn Number:	Warp: 40.6 metric, ring spun; filling: 20.3 metric, open end spun; overall average yarn number: 39.4 metric
Finish:	of yarns of different colors; napped on both sides, sanforized

Fabric 2

Petitioner Style No:	0443B
HTS Subheading:	5209.41.60.40
Fiber Content:	100% Cotton
Weight:	251 g/m2
Width:	160 centimeters cuttable
Thread Count:	22.8 warp ends per centimeter; 17.3 filling picks per centimeter; total: 40.1 threads per square centimeter
Yarn Number:	Warp: 40.6 metric, ring spun; filling: 8.46 metric, open end spun; overall average yarn number: 24.1 metric
Finish:	Of yarns of different colors; napped on both sides, sanforized

Fabric 3

Petitioner Style No:	4335
HTS Subheading:	5209.41.60.40
Fiber Content:	100% Cotton
Weight:	251 g/m2
Width:	160 centimeters cuttable
Thread Count:	20.1 warp ends per centimeter; 16.5 filling picks per centimeter; total: 36.6 threads per square centimeter
Yarn Number:	Warp: 27.07 metric, ring spun; filling: 10.16 metric, open end spun; overall average yarn number: 23.3 metric
Finish:	Of yarns of different colors; napped on both sides, sanforized

An ''eligible CBTPA beneficiary country'' means a country which the President has designated as a CBTPA beneficiary country under section 213(b)(5)(B) of the CBERA (19 U.S.C. 2703(b)(5)(B)) and which has been the subject of a finding, published in the **Federal Register**, that the country has satisfied the requirements of section 213(b)(4)(A)(ii) of the CBERA (19 U.S.C. 2703(b)(4)(A)(ii)) and resulting in the enumeration of such country in U.S. note 1 to subchapter XX of Chapter 98 of the HTSUS.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E4–3388 Filed 11–29–04; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF EDUCATION

[CFDA No. 84.031H]

Office of Postsecondary Education; Strengthening Institutions (SIP), American Indian Tribally Controlled Colleges and Universities (TCCU), Alaska Native and Native Hawaiian-Serving Institutions (ANNH) and Developing Hispanic-Serving Institutions (HSI) Programs; Notice Inviting Applications for Designation as Eligible Institutions for Fiscal Year (FY) 2005

Purpose of Programs: Under the SIP, TCCU, and ANNH Programs, (Title III Part A programs) authorized under Part A of Title III of the Higher Education Act of 1965, as amended (HEA), institutions of higher education are eligible to apply for grants if they meet specific statutory and regulatory eligibility requirements. Similarly, institutions of higher education are eligible to apply for grants under the HSI Program, authorized under Title V of the HEA, if they meet specific statutory and regulatory requirements. In addition, an institution that is designated as an eligible institution under those programs may also receive a waiver of certain non-Federal share requirements under the Federal Supplemental Educational Opportunity Grant (FSEOG), the Federal Work Study (FWS), the Student Support Services (SSS) and the Undergraduate International Studies and Foreign Language (UISFL) Programs. The FSEOG, FWS and SSS Programs are authorized under Title IV of the HEA; the UISFL Program is authorized under Title VI of the HEA.

Qualified institutions may receive these waivers even if they are not recipients of grant funds under the Title III, Part A Programs or the HSI Program.

Special Note: To qualify as an eligible institution under the Title III, Part A Programs or the HSI Program, your institution must satisfy several criteria,

including one related to needy student enrollment and one related to average Educational and General (E&G) expenditures for a particular base year. The most recent data available for E&G expenditures is for base year 2001–2002. In order to award FY 2005 grants in a timely manner, we will use the most recent data available. Therefore, we will use E&G expenditure threshold data from the base year 2001–2002. In completing your eligibility application, please use E&G expenditure data from the base year 2001–2002.

Eligible Applicants: To qualify as an eligible institution under the Title III, Part A Programs or the HSI Program, an accredited institution must, among other requirements, have an enrollment of needy students, and its average E&G expenditures per full-time equivalent (FTE) undergraduate student must be low in comparison with the average E&G expenditures per FTE undergraduate student of institutions that offer similar instruction. To be an eligible Hispanic Serving Institution, an institution must—

(1) Be accredited or preaccredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered;

(2) Be legally authorized by the State in which it is located to be a junior college or to provide an educational program for which it awards a bachelor's degree;

(3) Have an enrollment of needy students as described in the *Enrollment Of Needy Students* section of this notice;

(4) Have low average educational and general expenditures per full-time equivalent undergraduate student as described in the *Educational And General Expenditures Per Full-Time Equivalent Student* section of this notice and the application booklet;

(5) Have, at the time of application, an enrollment of undergraduate full-time equivalent students that is at least 25 percent Hispanic students; and

(6) Provide assurances that not less than 50 percent of its Hispanic students are low-income individuals.

Note: Numbers five and six above are required at the time of submission of the grant application.

The complete eligibility requirements for the Title III, Part A Programs are found in 34 CFR 607.2 through 607.5. These regulations may be accessed by visiting the following Department of Education Web site: *http://www.access.gpo.gov/nara/cfr/waisidx_02/34cfr607_02.html.* The complete eligibility requirements for the HSI Program are found in 34 CFR 606.2 through 34 CFR 606.5. These regulations may be accessed by visiting the following Department of Education Web site: *http://www.access.gpo.gov/nara/cfr/waisidx_01/34cfr606_01.html.*

Enrollment of Needy Students: Under 34 CFR 606.3(a) and 607.3(a), an institution is considered to have an enrollment of needy students if (1) at least 50 percent of its degree students received financial assistance under one or more of the following programs: Federal Pell Grant, FSEOG, FWS, and Federal Perkins Loan Programs; or (2) the percentage of its undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants at comparable institutions that offered similar instruction.

To qualify under this latter criterion, an institution's Federal Pell Grant percentage for base year 2002–2003 must be more than the median for its category of comparable institutions provided in the table in this notice.

Educational And General Expenditures Per Full-Time Equivalent Student: An institution should compare its 2001-2002 average E&G expenditures per FTE student to the average E&G expenditure per FTE student for its category of comparable institutions contained in the table in this notice. If the institution's average E&G expenditures for the 2001-2002 base year are less than the average for its category of comparable institutions, it meets this eligibility requirement.

An institution's average E&G expenditures are the total amount it expended during the base year for instruction, research, public service, academic support, student services, institutional support including library expenditures, operation and maintenance, scholarships and fellowships, and mandatory transfers.

The following table identifies the relevant median Federal Pell Grant percentages for the base year 2002–2003 and the relevant average E&G expenditures per FTE student for the base year 2001–2002 for the four categories of comparable institutions:

Type of institution	2002–2003 Median Pell grant percentage	2001–2002 Average E&G per FTE
2-year Public Institutions	24.6	$8,738
2-year Non-Profit Private Institutions	40.6	22,452
4-year Public Institutions	20.9	21,037
4-year Non-Profit Private Institutions	21.7	33,509

Waiver Information: Institutions of higher education that are unable to meet the needy student enrollment requirement or the average E&G expenditures requirement may apply to the Secretary for waivers of these requirements, as described in 34 CFR 606.3(b), 606.4(c) and (d), 607.3(b) and 607.4(c) and (d). Institutions requesting a waiver of the needy student enrollment requirement or the average E&G expenditures requirement must include in their application detailed information supporting the waiver request, as described in the instructions for completing the application.

The regulations governing the Secretary's authority to waive the needy student requirement waiver, 34 CFR 606.3(b)(2) and (3) and 607.3(b)(2) and (3) refers to ''low-income'' students or families. The regulations define ''low-income'' as an amount that does not exceed 150 percent of the amount equal to the poverty level, as established by the U.S. Bureau of the Census, 34 CFR 606.3(c) and 607.3(c).

For the purposes of this waiver provision, the following table sets forth the low-income levels for the various sizes of families:

2004 ANNUAL LOW-INCOME LEVELS

Size of family unit	Contiguous 48 states, the District of Columbia and outlying	Alaska	Hawaii
1	$13,965	$17,445	$16,050

2004 ANNUAL LOW-INCOME LEVELS—Continued

Size of family unit	Contiguous 48 states, the District of Columbia and outlying	Alaska	Hawaii
2	18,735	23,415	21,540
3	23,505	29,385	27,030
4	28,275	35,355	32,520
5	33,045	41,325	38,010
6	37,815	47,295	43,500
7	42,585	53,265	48,990
8	47,355	59,235	54,480

For family units with more than eight members, add the following amount for each additional family member: $4,770 for the contiguous 48 states, the District of Columbia and outlying jurisdictions; $5,970 for Alaska; and $5,490 for Hawaii.

The figures shown under family income represent amounts equal to 150 percent of the family income levels established by the U.S. Bureau of the Census for determining poverty status. The poverty guidelines were published by the U.S. Department of Health and Human Services in the **Federal Register** on February 13, 2004 (69 FR 7336–7338).

The information about ''metropolitan statistical areas'' referenced in 34 CFR 606.3(b)(4) and 607.3(b)(4) may be obtained by requesting the Metropolitan Statistical Areas, 1999 publication, order number PB99-501538, from the National Technical Information Service, Document Sales, 5285 Port Royal Road, Springfield, Virginia 22161, telephone number 1–800–553–6847. There is a charge for this publication.

Applications Available: November 30, 2004.

Deadline For Transmittal Of Applications: January 13, 2005, for an applicant institution that wishes to apply for a FY 2005 new grant under the Title III, Part A Programs or the HSI Program; April 28, 2005, for an institution that wishes to apply only for cost-sharing waivers under the FSEOG, FWS, SSS or UISFL Programs; and, January 13, 2005, for an institution that wishes to apply for both a grant under the Title III, Part A Programs or the HSI Program and a waiver of the non-Federal share requirement.

Electronic Submission Of Applications: We are requiring that applications for institutional eligibility for FY 2005 under Request for Designation as an Eligible Institution be submitted electronically at the following Web site: *http://webprod.cbmiweb.com/Title3and5/index.html.*

If you are unable to submit an application electronically you may submit a written request for a waiver of the electronic submission requirement. In the request, you should explain the reason or reasons that prevent you from using the Internet to submit your application. The request should be addressed to: Dr. Maria Carrington, U.S. Department of Education, 1990 K Street, NW., room 6033, Washington, DC 20202-8513. Please submit your request no later than two weeks before the application deadline date.

If, within two weeks of the application deadline date, you are unable to submit an application electronically, you must submit a paper application by the application deadline date in accordance with the transmittal instructions in the application package. The paper application must include a written request for a waiver documenting the reasons that prevented the applicant from using the Internet to submit the application.

To enter the Web site, you must use your institution's unique 8-digit identifier, *i.e.,* your Office of Postsecondary Education Identification Number (OPE ID number). If you receive a hard copy of the eligibility application and instructions from us in the mail, look for the OPE ID number on the address label. Otherwise, your business office or student financial aid office should have the OPE ID number. If your business office or student financial aid office does not have the OPE ID number, contact the Department, using the e-mail addresses of the contact persons listed in this notice under **FOR FURTHER INFORMATION CONTACT.**

You will find detailed instructions for completing the application form electronically under the ''eligibility 2005'' link at either of the following Web sites: *http://www.ed.gov/programs/iduestitle3a.index.html;* or *http://www.ed.gov/his.*

For institutions of higher education that are unable to meet the needy student enrollment requirement or the average E&G expenditure requirement and wish to request a waiver of one or both of those requirements, you must complete your designation application form electronically and transmit your waiver request narrative document from the following Web site: *http://webprod.cbmiweb.com/Title3and5/index.html.*

If your institution is unable to electronically submit your narrative waiver request, print the electronic application form and mail it along with the waiver request narrative to Dr. Maria Carrington, Team Leader, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 1990 K Street, NW., room 6033, Request for Eligibility Designation, Washington, DC 20202–8513.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 79, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for the Title III, Part A Programs in 34 CFR part 607, and for the HSI Program in 34 CFR part 606.

FOR FURTHER INFORMATION CONTACT: Imogene Byers, Don Crews, Ellen M. Sealey, Kelley Harris, Sophia McArdle or Carnisia Proctor, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 1990 K Street, NW., room 6033, Request for Eligibility Designation, Washington, DC 20202–8513. They may be contacted at the following e-mail addresses or phone numbers: *Imogene.Byers@ed.gov,* 202–502–7672; *Don.Crews@ed.gov,* 202–502–7574; *Ellen.Sealey@ed.gov,* 202–502–7580; *Kelley.Harris@ed.gov,* 202–219–7083; *Sophia.McArdle@ed.gov,* 202–219–7078; *Carnisia.Proctor@ed.gov,* 202–502–7606.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audio tape, or computer diskette) on request to the contact persons listed under **FOR FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting those persons.

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Program Authority: 20 U.S.C. 1057–1059d, 1101–1103g.

Dated: November 24, 2004.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. E4–3375 Filed 11–29–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: The Department gives notice that on July 18, 2003, an arbitration panel rendered a decision in the matter of *Rodney Jackson* v. *Tennessee Department of Human Services, the Division for the Blind and Visually Impaired (Docket No. R–S/02–2).* This panel was convened by the U.S. Department of Education, under 20 U.S.C. 107d–1(a), after the Department received a complaint filed by the petitioner, Rodney Jackson.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the full text of the arbitration panel decision from Suzette E. Haynes, U.S. Department of Education, 400 Maryland Avenue, SW., room 5022, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–7374. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: Under section 6(c) of the Randolph-Sheppard Act (the Act), 20 U.S.C. 107d–2(c), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

This dispute concerns the alleged improper termination of Mr. Rodney Jackson's vending operator's license by the Tennessee Department of Human Services, the Division for the Blind and Visually Impaired, in violation of the Act (20 U.S.C. 107 *et seq.*) and the implementing regulations in 34 CFR part 395.

A summary of the facts is as follows: On October 16, 1998, Mr. Rodney Jackson (complainant) was the successful bidder and was assigned by the Tennessee Department of Human Services, the Division for the Blind and Visually Impaired, the State licensing agency (SLA), to operate Facility #218 located in the Shelby County Administrative Complex in Memphis, Tennessee. In 1998, Facility #218 was a vending-only operation and later was converted to a manual food service and vending machine operation.

Complainant alleged that before being assigned to Facility #218, he had completed the SLA's Business Enterprise management training program, graduating as the top student in the class, and had completed a course on health and sanitation from the National Restaurant Association. Complainant also alleged that, from July 1999 through April 2000, he successfully managed Facility #218 in such a manner that he was awarded the title ''Rookie of the Year.'' Moreover, complainant alleged that when he began managing Facility #218, he repeatedly requested cooking utensils, surveillance equipment, mop and food preparation sinks, and a viable connection to the hot food table, which he maintained were not provided at the time Facility #218 was converted from a vending-only facility to a manual food service and vending machine facility. Complainant further alleged that a former disgruntled employee was the motivating factor behind a petition by the Shelby County employees to remove him from Facility #218 and that he had never failed a Shelby County Government health inspection.

Conversely, the SLA maintained that it complied fully with the Act, implementing regulations, and State laws and regulations governing the removal of complainant from Facility #218 and the revocation of his vending facility operator's license.

The SLA alleged that beginning in or about January 2000 the situation at Facility #218 began to deteriorate. The SLA stated that the facility was closed a number of times when it should have been open, and customers began to complain about sanitation, fluctuating item prices, lack of items in the vending machines, and cleanliness. During the summer of 2000, more than one-third of the employees in the building where Facility #218 was located signed a complaint petition. The SLA further alleged that inspection reports by the SLA showed that complainant failed seven of eight inspections.

In September 2000, the SLA stated that it gave complainant a letter citing poor inspection reports and customer complaints and then placed him on probation. In October 2000, the SLA gave complainant a second notice advising him of a 30-day notice of intent to terminate his operating license.

Subsequently, in November 2000 the property managing official at the Shelby County Administrative Complex sent written notice to the SLA terminating its food and vending machine services. On December 6, 2000, the SLA notified complainant of the termination of his operating license to manage Facility #218.

Complainant requested a State fair hearing, which was held on February 16, 2001. On March 26, 2003, the hearing officer affirmed the SLA's termination of complainant's license and removal from Facility #218.

Arbitration Panel Decision

The issue heard by the panel was whether the SLA violated the Act, 20 U.S.C. 107 *et seq.*, the implementing regulations in 34 CFR part 395, and the State regulations by allegedly improperly terminating complainant's vendor operating license and removing him from Facility #218, and, if so, what was the appropriate remedy.

After reviewing all of the records and hearing testimony of witnesses, the panel unanimously ruled that the SLA acted properly and in full and fair compliance with the Act, implementing regulations, and State rules and regulations in removing complainant from Facility #218. The panel stated that the SLA has the responsibility to both vendors and customers, as well as to the

agencies where vending facilities are located, to provide quality service and to preserve job opportunities for blind vendors.

Therefore, the panel denied complainant's grievance, but instructed the SLA to allow Mr. Jackson the opportunity to qualify for issuance of a license to operate another vending facility following appropriate training at the SLA's expense. Upon Mr. Jackson's re-qualifying for a license, the SLA was instructed to reinstate his seniority as if his license had not been terminated. However, his placement would follow normal agency assignment protocol.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

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Dated: November 24, 2004.

Troy R. Justesen,

Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E4–3377 Filed 11–29–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: The Department gives notice that on February 3, 2003, an arbitration panel rendered a decision in the matter of *North Carolina Department of Human Resources, Division of Services for the Blind* v. *United States Postal Service (Docket No. R–S/98–8).* This panel was convened by the U.S. Department of Education, under 20 U.S.C. 107d–1(b), after the Department received a complaint filed by the petitioner, North Carolina Department of Human Resources, Division of Services for the Blind.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the full text of the arbitration panel decision from Suzette E. Haynes, U.S. Department of Education, 400 Maryland Avenue, SW., room 5022, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–7374. If you use a telecommunication device for the deaf (TDD), you may call the Federal Information Relay Services (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: Under section 6(c) of the Randolph-Sheppard Act (the Act), 20 U.S.C. 107d–2(c), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

This dispute concerns the alleged violation by the United States Postal Service (USPS) of the priority provisions of the Act (20 U.S.C. 107 *et seq.*) and the implementing regulations in 34 CFR part 395 in awarding a contract to a private vending company at the Greensboro Processing and Distribution Center (P&DC) in Greensboro, North Carolina.

A summary of the facts is as follows: Beginning in 1995, the North Carolina Department of Human Resources, Division of Services for the Blind, the State licensing agency (SLA), operated a cafeteria on the second floor of the P&DC and also various vending machines in a break area and swing room on the first floor of the building under a contract agreement with USPS. The cafeteria included a hot food line and was staffed by attendants. Later, the cafeteria operation became not as profitable as the SLA desired, and discussions took place between the SLA and USPS wherein the SLA proposed closing the attendant hot food cafeteria and replacing it with a facility comprised of vending machines.

In January 1998, USPS issued a request for proposal (RFP) for a vending machine facility at P&DC, the same type of facility that the SLA had previously discussed with USPS. The SLA received the RFP and proposed to USPS that a single blind licensee be allowed to operate all vending operations at the P&DC under a permit agreement rather than a contract.

After the SLA's proposal, USPS declined to enter into a permit agreement with the SLA, and the SLA elected not to submit a response to the RFP. USPS then awarded a contract for the operation of the new vending machine facility to a private vending company.

Thereafter, the SLA filed a complaint with the Secretary of Education requesting the convening of a Federal arbitration panel. In its complaint, the SLA alleged that USPS violated the priority provisions of the Act and implementing regulations in awarding the contract to a private vending company. The SLA further alleged that the Act specifically recognizes that the operation of vending machines are to be under a permit agreement, while the operation of a cafeteria is required to be under a contract.

As a result of this dispute, an arbitration panel was convened, and a hearing on this matter was held on June 6, 2000.

Arbitration Panel Decision

The issue heard by the panel was whether USPS had violated the Act (20 U.S.C. 107 *et seq.*) and the implementing regulations in 34 CFR part 395 in awarding a contract to a private vending company to operate the vending machine facility at P&DC.

After considering all of the evidence, the majority of the panel ruled that the P&DC vending facility was not a cafeteria as defined by the Act and implementing regulations. The panel stated that the regulations in § 395.1(d) define a cafeteria as a facility ''capable of providing a broad variety of prepared foods and beverages (including hot meals) primarily through the use of a line where the customer serves himself from displayed selections.'' On this basis, the panel ruled that USPS was required to approve the SLA's permit application for P&DC or indicate in writing to the Secretary of Education the reasons for refusing approval.

The panel also determined that the vending facility at P&DC operated by the private vending company and comprised of vending machines was being operated in direct competition with vending machines operated by the SLA. Moreover, because the private vending company's vending machines were readily accessible to most or all of the employees at P&DC, the panel ruled that the SLA was entitled to receive 100 percent of all vending machine income

collected by the private vending company as provided by the regulations in 34 CFR 395.32(b).

Accordingly, the panel made the following award: (1) USPS should terminate at the earliest practicable date the contract with the private vending company, thus allowing for an SLA-licensed blind vendor to operate the vending machine facility at P&DC; (2) USPS should promptly approve an appropriate permit agreement with the SLA for the continued operation of the vending facility at P&DC; and (3) USPS should pay to the SLA all sums received from the private vending company for the operation of the vending machines at P&DC and all sums to be received until the termination of the contract with the private vending company.

One panel member dissented.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

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Dated: November 24, 2004.

Troy R. Justesen,

Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E4–3378 Filed 11–29–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1326–011, et al.]

PJM Interconnection, L.L.C., et al.; Electric Rate and Corporate Filings

November 18, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. PJM Interconnection, L.L.C.

[Docket No. ER02–1326–011]

Take notice that on November 12, 2004, PJM Interconnection, L.L.C. (PJM) submitted an amendment to its report entitled ''Compliance Report To The Federal Energy Regulatory Commission Docket No. ER02–1326–006 Assessment of PJM Load Response Programs'' prepared by the PJM Market Monitoring Unit filed on November 1, 2004 and amended on November 3 and November 8, 2004.

Comment Date: 5 p.m. eastern time on December 3, 2004.

2. United Illuminating Company

[Docket No. ER03–31–008]

Take notice that on November 12, 2004, United Illuminating Company (United Illuminating) submitted an amendment to its October 29, 2004 compliance filing in Docket No. ER03–31–007.

Comment Date: 5 p.m. eastern time on December 3, 2004.

3. Hartford Steam Company

[Docket No. ER04–582–004]

Take notice that, on November 12, 2004, Hartford Steam Company submitted a compliance filing pursuant to the letter order issued by the Director of the Division of Tariffs and Market Development—South on September 10, 2004, in Docket Nos. ER04–582–000, *et al.*

Hartford Steam Company states that copies of the filing were served on parties on the official service list in this proceeding.

Comment Date: 5 p.m. eastern time on December 3, 2004.

4. Southern California Edison Company

[Docket No. ER05–205–000]

Take notice that on November 12, 2004, Southern California Edison Company (SCE) submitted for filing Service Agreement No. 129 under SCE's Electric Tariff, First Revised Volume No. 5, an Interconnection Facilities Agreement and Service Agreement No. 130 under SCE's Electric Tariff, First Revised Volume No. 5, a Service Agreement for Wholesale Distribution Service between SCE and the City of Corona, California (Corona). SCE states that the agreements specify the terms and conditions under which SCE will provide wholesale Distribution Service for up to 32 MW of power produced by the Corona Cogen Project and delivered to the ISO Grid at SCE's Mira Loma Substation, and for 2.5 MW of Wholesale Distribution Load.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and Corona.

Comment Date: 5 p.m. eastern time on December 3, 2004.

5. PJM Interconnection, L.L.C.

[Docket No. ER05–206–000]

Take notice that on November 12, 2004, PJM Interconnection, L.L.C. (PJM), submitted for filing an executed construction service agreement among PJM, FPL Energy Marcus Hook, L.P., and Delmarva Power & Light Company d/b/a Conectiv Power Delivery designated as Original Service Agreement No. 1193 under PJM's FERC Electric Tariff, Sixth Revised Volume No. 1. PJM requests an effective date of October 14, 2004.

PJM states that copies of this filing were served upon the parties to the agreement and the state regulatory commissions within the PJM region.

Comment Date: 5 p.m. eastern time on December 3, 2004.

6. Southern California Edison Company

[Docket No. ER05–207–000]

Take notice that on November 12, 2004, Southern California Edison Company (SCE) tendered for filing revisions to its Transmission Owner Tariff, FERC Electric Tariff, Second Revised Volume No. 6, Appendices I, II and III, to reflect the change in transmission rates resulting from the annual update of the Transmission Revenue Balancing Account Adjustment.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California, the California Independent System Operator Corporation, all Participating Transmission Owners, the Cities of Azusa, Banning, Colton, Riverside, California, the Department of Water and Power of the City of Los Angeles, California, the City of Pasadena, California and all Scheduling Coordinators certified by the California Independent System Operator Corporation.

Comment Date: 5 p.m. eastern time on December 3, 2004.

7. PJM Interconnection, L.L.C.

[Docket No. ER05–208–000]

Take notice that on November 12, 2004, PJM Interconnection, L.L.C. (PJM), submitted for filing an executed interconnection service agreement among PJM, AC Landfill, LLC, and Atlantic city Electric Company d/b/a Conectiv Power Delivery designated as Original Service Agreement No. 1194

under PJM's FERC Electric Tariff, Sixth Revised Volume No. 1. PJM requests an effective date of October 14, 2004.

PJM states that copies of this filing were served upon the parties to the agreement and the state regulatory commissions within the PJM region.

Comment Date: 5 p.m. eastern time on December 3, 2004.

8. Reliant Energy Hunterstown, LLC

[Docket No. ER05–209–000]

Take notice that on November 12, 2004, Reliant Energy Hunterstown, LLC (Hunterstown) submitted for filing a notice of cancellation of its FERC Electric Tariff, Original Volume No. 1, with a proposed effective date of November 5, 2004.

Comment Date: 5 p.m. eastern time on December 3, 2004.

9. California Independent System Operator Corporation

[Docket No. ER05–210–000]

Take notice that on November 12, 2004, California Independent System Operator Corporation (ISO) tendered for filing Amendment No. 3 to the Interconnected Control Area Operating Agreement (ICAOA) between the ISO and Nevada Power Company (NEVP). The ISO states that the purpose of Amendment No. 3 is to incorporate requirements for the scheduling and delivery of non-regulation ancillary services into the ISO Control Area from the NEVP Control Area. The ISO requests an effective date of October 27, 2004.

The ISO states that this filing has been served on NEVP, the California Public Utilities Commission, and all entities on the official service lists for the original ICAOA in Docket No. ER00–2292–000, Amendment No. 1 to the ICAOA in Docket No. ER01–1995–000, and Amendment No. 2 to the ICAOA in Docket No. ER04–885–000.

Comment Date: 5 p.m. eastern time on December 3, 2004.

10. Delmarva Power & Light Company

[Docket No. ER05–211–000]

Take notice that on November 12, 2004, Delmarva Power & Light Company (Delmarva) tendered for filing a Notice of Cancellation of Delmarva's Rate Schedule FERC No. 125 terminating the rate schedule between Delmarva and Old Dominion Electric Cooperative (Old Dominion). Delmarva also tendered for filing PJM Interconnection, L.L.C. FERC Electric Tariff, Sixth Revised Volume No. 1, Original Service Agreement No. 1132, an amended executed Interconnection Agreement between Delmarva and Old Dominion (IA). Delmarva requests that the Commission allow the Cancellation Documents to become effective on September 30, 2004, and the IA to become effective on October 1, 2004.

Delmarva states that copies of the filing were served upon Old Dominion and the Delaware Public Service Commission.

Comment Date: 5 p.m. eastern time on December 3, 2004.

11. Cleco Power LLC

[Docket No. ER05–212–000]

Take notice that on November 12, 2004, Cleco Power LLC (Cleco) tendered for filing proposed revisions to Attachment K (the Large Generator Interconnection procedures) of its Open Access Transmission Tariff to incorporate miscellaneous terms for inclusion in the *pro forma* agreements for feasibility studies system impact studies, facilities studies, and optional interconnection studies. Cleco requests an effective date of November 13, 2004.

Cleco states that a copy of this filing was served electronically on Cleco's transmission customers and on the Louisiana Public Service Commission.

Comment Date: 5 p.m. eastern time on December 3, 2004.

12. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER05–213–000]

Take notice that on November 12, 2004 Midwest Independent System Operator, Inc. (Midwest ISO) and the Midwest ISO Transmission Owners submitted for filing proposed revisions to the Midwest ISO Open Access Transmission Tariff to accommodate Great River Energy as a new Transmission-Owning Member of the Midwest ISO. The Midwest ISO and the Midwest ISO Transmission Owners requests an effective date of December 1, 2004.

The Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, as well as all state commissions within the region. In addition, Midwest ISO states that the filing has been posted to Midwest ISO's Web site at *http://www.midwestiso.org* under the heading ''Filings to FERC'' and that hard copies will be provided to any interested parties upon request.

Comment Date: 5 p.m. eastern time on December 3, 2004.

13. Select Energy, Inc., Select Energy New York, Inc.

[Docket Nos. ER05–220–000 and EC05–19–000]

Take notice that on November 15, 2004, Select Energy, Inc.(Select) and Select Energy New York, Inc. (SENY), (collectively, Applicants) submitted pursuant to section 203 of the Federal Power Act and Part 33 of the Commission's regulations, an application for authorization to implement a corporate reorganization. Applicants also filed a Notice of Cancellation of SENY's FERC Electric Tariff, Second Revised Volume No. 1, to be effective upon completion of the corporate reorganization. Applicants state that the merger will have no adverse effect on competition, rates or regulation.

Comment Date: 5 p.m. eastern time on December 6, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E4–3363 Filed 11–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER91–569–024, et al.]

Entergy Services, Inc., et al.; Electric Rate and Corporate Filings

November 22, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Entergy Services, Inc.

[Docket No. ER91–569–024]

Take notice that on November 19, 2004, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., pursuant to the Commission's deficiency letter dated October 29, 2004, filed an amendment to their August 9, 2004, filing,of their generation market power study.

Comment Date: 5 p.m. eastern time on December 7, 2004.

2. Duke Power, a Division of Duke Energy Corporation

[Docket No. ER96–110–012]

Take notice that on November 19, 2004, Duke Power, a Division of Duke Energy Corporation , pursuant to the Commission's deficiency letter dated October 29, 2004, filed an amendment to its August 11, 2004, filing, as corrected on August 12, 2004, of its generation market power study.

Comment Date: 5 p.m. eastern time on December 7, 2004.

3. Public Service Company of New Mexico

[Docket Nos. ER96–1551–009 and ER01–615–006]

Take notice that on November 19, 2004, the Public Service Company of New Mexico, pursuant to the Commission's deficiency letter dated October 29, 2004, filed an amendment to its August 11, 2004, filing, as supplemented on October 7, 2004, of its generation market power study.

Comment Date: 5 p.m. eastern time on December 7, 2004.

4. AEP Power Marketing, Inc. AEP Service Corporation, CSW Power Marketing, Inc., CSW Energy Services, Inc., Central and South West Services, Inc.

[Docket Nos. ER96–2495–023, ER97–4143–011, ER97–1238–018, ER98–2075–017, and ER98–542–013]

Take notice that on November 19, 2004, the American Electric Power Service Corporation, on behalf of AEP Power Marketing, Inc., AEP Service Corporation, CSW Power Marketing, Inc., CSW Energy Services, Inc. and Central South West Services, Inc., pursuant to the Commission's deficiency letter dated October 29, 2004, filed an amendment to their August 11, 2004, filing of their generation market power study.

Comment Date: 5 p.m. eastern time on December 7, 2004.

5. Dayton Power and Light Company, DPL Energy, LLC

[Docket Nos. ER96–2601–018 and ER96–2602–007]

Take notice that on November 19, 2004, Dayton Power and Light Company and DPL Energy, LLC, pursuant to the Commission's deficiency letter dated October 29, 2004, filed an amendment to their October 15, 2004, filing of their generation market power study.

Comment Date: 5 p.m. eastern time on December 7, 2004.

6. Southern Company Energy Marketing, L.P., Southern Company Services, Inc.

[Docket Nos. ER97–4166–016 and ER96–780–006]

Take notice that on November 19, 2004, Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Savannah Electric and Power Company, and Southern Power Company, pursuant to the Commission's deficiency letter dated October 29, 2004, filed an amendment to their August 9, 2004, filing of their generation market power study.

Comment Date: 5 p.m. eastern time on December 7, 2004.

7. Duke Energy Moss Landing LLC, Duke Energy Morro Bay LLC, Duke Energy Oakland LLC, Duke Energy South Bay LLC

[Docket Nos. ER98–2680–008, ER98–2681–008, ER98–2682–008, and ER99–1785–007]

Take notice that on November 19, 2004, Duke Energy Moss Land LLC, Duke Energy Morro Bay LLC, Duke Energy Oakland LLC and Duke Energy South Bay LLC, pursuant to the Commission's deficiency letter dated October 29, 2004, filed an amendment to their August 11, 2004, filing of their generation market power study.

Comment Date: 5 p.m. eastern time on December 7, 2004.

8. Consumers Energy Company, CMS Energy Resource Management Company, Grayling Generating Station Limited Partnership, Genesee Power Station Limited Partnership , CMS Generation Michigan Power, L.L.C., Dearborn Industrial Generation, L.L.C.

[Docket Nos. ER98–4421–005, ER96–2350–025, ER99–791–003, ER99–806–002, ER99–3677–004, and ER01–570–005]

Take notice that on November 18, 2004, Consumers Energy Company, CMS Energy Resource Management Company, Grayling Generating Station Limited Partnership, Genesee Power Station Limited Partnership, CMS Generation Michigan Power, L.L.C. and Dearborn Industrial Generation, L.L.C., pursuant to the Commission's deficiency letter dated October 29, 2004, filed an amendment to their October 1, 2004, filing of their generation market power study.

Comment Date: 5 p.m. eastern time on December 7, 2004.

9. Alliant Energy Corporate Services, Inc.

[Docket Nos. ER99–230–006 and ER03–762–005]

Take notice that on November 19, 2004, Alliant Energy Corporate Services, Inc., pursuant to the Commission's deficiency letter dated October 29, 2004, filed an amendment to its August 20, 2004 filing of its generation market power study.

Comment Date: 5 p.m. eastern time on December 7, 2004.

10. Puget Sound Energy, Inc.

[Docket No. ER99–845–007]

Take notice that on November 19, 2004, Puget Sound Energy, Inc. (Puget), pursuant to the Commission's deficiency letter dated October 29, 2004, filed an amendment to its August 11, 2004, filing, as amended on September 24, 2004, of its generation market power study.

Comment Date: 5 p.m. eastern time on December 7, 2004.

11. Kansas City Power & Light Company, Great Plains Power, Inc.

[Docket No. ER99–1005–003 and ER02–725–004]

Take notice that on November 19, 2004, Great Plains Energy Incorporated, on behalf of Kansas City Power & Light Company and Great Plains Power, Inc., pursuant to the Commission's

deficiency letter dated October 29, 2004, filed an amendment to their August 11, 2004, filing of their generation market power study.

Comment Date: 5 p.m. eastern time on December 7, 2004.

12. El Paso Electric Company

[Docket Nos. ER99–2416–004 and ER99–2416–005]

Take notice that on November 17, 2004, as supplemented on November 18, 2004, El Paso Electric Company submitted a technical amendment to its Market-Based Rate Tariff and a supplement to the revised generation market power studies filed on August 11, 2004.

Comment Date: 5 p.m. eastern time on December 7, 2004.

13. Pinnacle West Capital Corporation, Arizona Public Service Company, Pinnacle West Energy Corporation, APS Energy Services Company, Inc.

[Docket No. ER00–2268–007, ER99–4124–005, ER00–3312–006, ER99–4122–008]

Take notice that on November 19, 2004, pursuant to the Commission's deficiency letter dated October 29, 2004, the Pinnacle West Capital Corporation, the Arizona Public Service Company, the Pinnacle West Energy Corporation and APS Energy Services Company, Inc. (collectively, the Pinnacle West Companies) filed an amendment to their August 11, 2004, filing, as supplemented on September 28, 2004, of their generation market power analysis.

Comment Date: 5 p.m. eastern time on December 7, 2004.

14. Duke Energy Marketing America, LLC

[Docket No. ER03–956–003]

Take notice that on November 19, 2004, Duke Energy Marketing America, LLC, pursuant to the Commission's deficiency letter dated October 29, 2004, filed an amendment to its August 11, 2004, filing of its generation market power study.

Comment Date: 5 p.m. eastern time on December 7, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E4–3366 Filed 11–29–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–396–000 and PF04–12–000]

Transcontinental Gas Pipe Line Corporation; Notice of Availability of the Environmental Assessment for the Proposed Central New Jersey Expansion Project

November 22, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Transcontinental Gas Pipe Line Corporation (Transco) in the above-referenced dockets.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the facilities proposed in the Central New Jersey Expansion Project. The facilities include about 3.77 miles of 36-inch-diameter pipeline that would loop Transco's existing Trenton Woodbury Line, located in Bordentown and Mansfield Townships, Burlington County, New Jersey.

In addition, Transco would build a meter station/delivery point in Gloucester County, New Jersey (Repaupo Meter Station) pursuant to its automatic authorization provisions set forth in section 157.211(a), and Transco's blanket certificate issued in Docket No. CP82–426–000.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426. (202) 502–8371.

Copies of the EA have been mailed to Federal, State and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the (Gas Branch 1), PJ 11.1.
- Reference Docket No. CP04–396–000; and
- Mail your comments so that they will be received in Washington, DC on or before December 23, 2004.

Please note that the Commission encourages electronic filing of comments. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments you will need to create an account by clicking on ''Login to File'' and then ''New User Account.'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.''

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*). Using the ''eLibrary'', select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' (*i.e.,* CP04–396) and follow the instructions. Searches may also be done using the phase ''Central New Jersey Expansion in the ''Text Search'' field. For assistance with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *ferconlinesupport@ferc.gov*. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm*.

Linda L. Mitry,

Acting Secretary.

[FR Doc. E4–3361 Filed 11–29–04; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD04–13–000]

Assessing the State of Wind Energy in Wholesale Electricity Markets; Notice, Agenda and Staff Paper for the December 1, 2004 Technical Conference on Wind Energy

November 22, 2004.

As announced in the Notices of Technical Conference issued October 4, 2004 and November 18, 2004, the Federal Energy Regulatory Commission will host a technical conference on December 1, 2004 to assess the state of wind energy in wholesale electricity markets. The goal of the technical conference is to explore possible policy changes that would better accommodate the participation of wind energy in wholesale markets.

The conference will begin at 10 a.m. and end at approximately 6 p.m. (Mountain Standard Time) at the Adams Mark Denver Hotel, 1550 Court Place,Denver, Colorado. The conference is open for the public to attend, and registration is not required; however, in-person attendees are asked to register for the conference on-line by close of business on Monday, November 29, 2004 at *http://www.ferc.gov/whats-new/registration/wind-1201-form.asp*.

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available for the public on the Commission's eLibrary system seven calendar days after FERC receives the transcript. Additionally, Capitol Connection offers the opportunity for remote listening of the conference via the Internet or a Phone Bridge Connection for a fee. Interested persons should make arrangements as soon as possible by visiting the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and clicking on ''FERC.'' If you have any questions contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100).

For more information about the conference, please contact Sarah McKinley at 202–502–8004, *sarah.mckinley@ferc.gov*.

Linda Mitry,

Deputy Secretary.

[FR Doc. E4–3362 Filed 11–29–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7843–5]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Susan Auby (202) 566–1672, or e-mail at *auby.susan@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1710.04; Residential Lead-Based Paint Hazardous Disclosure Requirements; in 40 CFR part 745, subpart F and 24 CFR part 35, subpart H; was approved 11/05/2004; OMB Number 2070–0151; expires 11/30/2007.

EPA ICR No. 2143.01; ECOS Survey of State Performance Measures; was approved 10/29/2004; OMB Number 2020–0028; expires 11/30/2005.

EPA ICR No. 1713.05; Federal Operating Permit Regulations; in 40 CFR part 71; was approved 11/01/2004; OMB Number 2060–0336; expires 03/31/2007.

EPA ICR No. 1587.06; State Operating Permits Regulations; in 40 CFR part 70; was approved 11/01/2004; OMB Number 2060–0243; expires 03/31/2007.

EPA ICR No. 1198.07; Chemical-Specific Rules, Toxic Substances Control Act Section 8(a); in 40 CFR part 704; was approved 10/20/2004; OMB Number 2070–0067; expires 10/31/2007.

EPA ICR No. 1572.06; Hazardous Waste Specific Unit Requirements and Special Waste Processes and Types; in 40 CFR part 261; 40 CFR part 264; 40 CFR part 265; 40 CFR part 266; was approved 10/14/2004; OMB Number 2050–0050; expires 10/31/2007.

EPA ICR No. 1693.03; Plant-Incorporated Protectants; CBI Substantiation and Adverse Effects Reporting; in 40 CFR part 174; was

approved 10/07/2004; OMB Number 2070–0142; expires 10/31/2007.

EPA ICR No. 1591.15; Regulation of Fuel and Fuel Additives; in 40 CFR part 80, subparts D, E, and F; was approved 10/12/2004; OMB Number 2060–0277; expires 10/31/2007.

EPA ICR No. 1764.03; National Volatile Organic Compound Emission Standards for Consumer Products; in 40 CFR part 59, subpart C; was approved 10/06/2004; OMB Number 2060–0348; expires 10/31/2007.

EPA ICR No. 1049.10; Notification of Episodic Releases of Oil and Hazardous Substances; in 40 CFR parts 110, 117 and 302; was approved 10/05/2004; OMB Number 2050–0046; expires 10/31/2007.

EPA ICR No. 1136.07; NSPS for VOC Emissions From Petroleum Refinery Wastewater Systems; in 40 CFR part 60, subpart QQQ; was approved 10/05/2004; OMB Number 2060–0172; expires 10/31/2007.

EPA ICR No. 1246.09; Reporting and Recordkeeping Requirements for Asbestos Abatement Worker Protection; in 40 CFR part 763, subpart G; was approved 10/05/2004; OMB Number 2070–0072; expires 10/31/2007.

EPA ICR No. 1949.03; Implementation of Incentives Designed for EPA's National Environmental Performance Track Program; was approved 11/12/2004; OMB Number 2010–0032; expires 08/31/2006.

EPA ICR No. 1748.04; Annual Reporting form for State Small Business Stationary Source Technical and Environmental Compliance Assistance Program (SBTCP); was approved 11/09/2004; OMB Number 2060–0337; expires 11/30/2007.

EPA ICR No. 1564.06; NSPS for Small Industrial-Commercial-Institutional Steam Generating Units ; in 40 CFR part 60, subpart Dc; was approved 11/09/2004; OMB Number 2060–0202; expires 11/30/2007.

Short Term Extensions

EPA ICR No. 1726.03; Marine Engine Manufacturer In-use Emission Testing Program Reporting and Recordkeeping, in 40 CFR part 91, subpart N; OMB Number 2060–0322; on 10/28/2004 OMB extended the expiration date to 01/31/2005.

EPA ICR No. 1897.04; Information Requirements for Marine Diesel Engines (nonroad Large SI Engines and Marine Diesel Engines) (Amendments) (Final Rule); in 40 CFR part 94, 40 CFR part 1048; OMB Number 2060–0460; on 10/28/2004 OMB extended the expiration date to 01/31/2005.

EPA ICR No. 1680.03; Information Collection Request for the Combined Sewer Overflow Policy; OMB Number 2040–0170; on 10/27/2004 OMB extended the expiration date to 01/31/2005.

EPA ICR No. 2018.01; Pollution Prevention Compliance Alternative; Transportation Equipment Cleaning (TEC) Point Source Category; in 40 CFR part 442; OMB Number 2040–0235; on 10/26/2004 OMB extended the expiration date to 01/31/2005.

EPA ICR No. 1139.06; TSCA Section 4 Test Rules, Consent Orders, Test Rule Exemptions, and Voluntary Data Submission; OMB Number 2070–0033 on 10/27/2004 OMB extended the expiration date to 01/31/2005.

EPA ICR No. 2052.01; Information Collection Request for Long Term 1 Enhanced Surface Water Treatment Rule (Final Rule); OMB Number 2040–0229; on 10/26/2004 OMB extended the expiration date to 01/31/2005.

EPA ICR No. 0586.09; TSCA Section 8(a) Preliminary Assessment Information Rule (PAIR); OMB Number 2070–0054 on 10/27/2004 OMB extended the expiration date to 01/31/2005.

Withdrawn and Continued

EPA ICR No. 1230.14; Prevention of Significant Deterioration and Non-Attainment Area New Source Review (The Establishment of a Definition for Equipment Replacement for the New Source Review Program); OMB No. 2060–0003; was withdrawn on 10/05/2004.

Dated: November 16, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–26399 Filed 11–29–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7843–7]

Clean Air Act Advisory Committee (CAAAC) Notice of Meeting

Summary: The Environmental Protection Agency (EPA) established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990, to provide independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises on economic, environmental, technical scientific, and enforcement policy issues.

Open Meeting Notice: Pursuant to 5 U.S.C. App. 2 section 10 (a) (2), notice is hereby given that the Clean Air Act Advisory Committee will hold its next open meeting on Thursday, December 16, 2004, from approximately 8:30 a.m. to 3:30 p.m. at the Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC. Seating will be available on a first come, first served basis. Subcommittee meetings will be held on, December 15, 2004, from approximately 8:30 a.m to 3:30 p.m. at the Renaissance Mayflower, the same location as the full Committee. The Mobile Source Technical Review Panel will not meet at this time. The agenda for the meeting will be posted on the CAAAC Web site: *http://www.epa.gov/oar/caaac/*.

Inspection of Committee Documents: The Committee agenda and any documents prepared for the meeting will be publicly available at the meeting. Thereafter, these documents, together with CAAAC meeting minutes, will be available by contacting the Office of Air and Radiation Docket and requesting information under docket item A–94–34 (CAAAC). The Docket office can be reached by telephoning 202–260–7548; FAX 202–260–4400.

For Further Information Contact: Concerning the CAAAC , please contact Pat Childers, Office of Air and Radiation, U.S. EPA (202) 564–1082, FAX (202) 564–1352 or by mail at U.S. EPA, Office of Air and Radiation (Mail code 6102 A), 1200 Pennsylvania Avenue, NW., Washington, DC 20004. For information on the Subcommittee meetings, please contact the following individuals: (1) Permits/NSR/Toxics IntegrationB Debbie Stackhouse, 919–541–5354; and (2) Linking Transportation, Land Use and Air Quality Concerns B Robert Larson, 734–214–4277; and (3) Economic Incentives and Regulatory Innovations B Carey Fitzmaurice, 202–564–1667. Additional Information on these meetings, CAAAC and its Subcommittees can be found on the CAAAC Web site: *http://www.epa.gov/oar/caaac/*.

Dated: November 22, 2004.

Robert D. Brenner,

Principal Deputy Assistant Administrator for Air and Radiation.

[FR Doc. 04–26398 Filed 11–29–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7843–8]

National Drinking Water Advisory Council's Water Security Working Group Meeting Announcement

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) announces the third public meeting of the Water Security Working Group (WSWG) of the National Drinking Water Advisory Council (NDWAC), which was established under the Safe Drinking Water Act. The purpose of this meeting is to provide an opportunity for the WSWG members to continue deliberations on the features of active and effective security programs for drinking water and wastewater utilities (water sector), to continue deliberations on incentives to encourage broad adoption of active and effective security programs throughout the water sector, and to begin deliberations on mechanisms to measure the extent of implementation of water security programs. Final WSWG findings and recommendations will be provided to the NDWAC for their consideration. The WSWG anticipates providing findings and recommendations to the NDWAC in Spring 2005. Two additional meetings of the WSWG are planned and will be announced in the near future.

DATES: The WSWG meeting is December 15–17, 2004. On December 15, 2004, the meeting is scheduled from 12:30 p.m. to 6 p.m., eastern time (e.t.). On December 16, 2004, the meeting is scheduled from 8 a.m. to 5:30 p.m., e.t. On December 17, 2004, the meeting is schedule from 8 a.m. to 12 p.m., e.t.

ADDRESSES: The meeting will take place at the Radisson Barceló Hotel, Washington, 2121 P Street, NW., Washington, DC 20037. The telephone number for this hotel is (202) 293–3100.

FOR FURTHER INFORMATION CONTACT: Interested participants from the public should contact Marc Santora, Designated Federal Officer, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water, Water Security Division (Mail Code 4601–M), 1200 Pennsylvania Avenue, NW., Washington, DC, 20460. Please contact Marc Santora at *santora.marc@epa.gov* or call 202–564–1597 to receive additional details.

SUPPLEMENTARY INFORMATION:

Background

The WSWG mission is to: (1) Identify, compile, and characterize best security practices and policies for drinking water and wastewater utilities and provide an approach for considering and adopting these practices and policies at a utility level; (2) consider mechanisms to provide recognition and incentives that facilitate a broad and receptive response among the water sector to implement these best security practices and policies and make recommendations as appropriate; (3) consider mechanisms to measure the extent of implementation of these best security practices and policies, identify the impediments to their implementation, and make recommendations as appropriate. The Group is comprised of sixteen members from water and wastewater utilities, public health, academia, state regulators, and environmental and community interests. It is supported by technical experts from the Environmental Protection Agency, the Department of Homeland Security, the Centers for Disease Control and Prevention, and the Department of Defense.

Closed and Open Parts of the Meeting

The WSWG is a working group of the NDWAC; it is not a Federal advisory committee and therefore not subject to the same public disclosure laws that govern Federal advisory committees. The Group can enter into closed session as necessary to provide an opportunity to discuss security-sensitive information relating to specific water sector vulnerabilities and security tactics. Currently, the WSWG does not anticipate closing any parts of the December meeting to the public. However, the Group reserves the right to enter into closed session, if necessary, late in the afternoon of December 15, 2004, immediately before lunch on December 16, 2004, and late in the day on December 17, 2004. If closed sessions are needed, opportunities for public comment will be provided before the closed sessions begin.

If the there is a closed meeting session, only WSWG members, Federal resource personnel, facilitation support contractors and outside experts identified by the facilitation support contractors will attend the closed meeting. A general summary of the topics discussed during closed meetings and the individuals present will be included with the summary of the open portions of the WSWG meeting.

Public Comment

An opportunity for public comment will be provided during the open part of the WSWG meeting. Oral statements will be limited to five minutes, and it is preferred that only one person present the statement on behalf of a group or organization. Written comments may be provided at the meeting or may be sent, by mail, to Marc Santora, Designated Federal Officer for the WSWG, at the e-mail address listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Special Accommodations

Any person needing special accommodations at this meeting, including wheelchair access, should contact Marc Santora, Designated Federal Officer, at the number or e-mail address listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Requests for special accommodations should be made at least five business days in advance of the WSWG meeting.

Dated: November 23, 2004.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 04–26402 Filed 11–29–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0402; FRL–7690–3]

Notice of Availability of the Preliminary Risk Assessment (PRA) for Pentachlorophenol (PCP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability.

SUMMARY: This notice announces the availability of documents that were developed as part of EPA's six-phase public participation reregistration process for pentachlorophenol. This notice starts the 60–day public comment period for the Preliminary Risk Assessment (PRA) for pentachlorophenol (PCP only). EPA will review all comments received and address them accordingly. The Agency will then announce and conduct a public technical briefing on the revised risk assessment to provide an opportunity for the public to learn more about the data, information, and methods used to develop the revised risk assessment. The revised assessment will then be made available to the public, and the public will be invited to submit risk management ideas and/or proposals. By allowing access and opportunity for comments on the PRA, the Agency is seeking to strengthen stakeholder involvement and help ensure its decisions under the Food Quality Protection Act (FQPA) are transparent, and based on the best available information.

DATES: Comments, identified by docket control number OPP–2004–0402, must be received on or before January 31, 2005.

ADDRESSES: Comments may be submitted by mail, electronically, or in

person. Please follow the detailed instructions for each method as provided in Unit I of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: By mail: Heather A. Garvie, Office of Pesticide Programs (7510C), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail address: Rm. 308, Crystal Mall #2, 1801 S. Bell Street, Arlington, VA 22202, (703) 308–0034; e-mail: *garvie.heather@epa.gov*.

SUPPLEMENTARY INFORMATION: This announcement consists of two parts. The first part contains general information. The second part provides information on what actions the Agency intends to take.

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use PCP products. The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2004–0402. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number. Copies of the PRA for PCP can also be obtained via *http://www.epa.gov/pesticides/REREGISTRATION*.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and

follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0402. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0402. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0402.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2004–0402. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare my Comments for EPA?

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and /or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line of your response. You also may provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

The production of PCP for wood preserving began on an experimental basis in the 1930s. In 1947 nearly 3,200 metric tons of PCP were reported to have been used in the United States by the commercial wood preserving industry. PCP was one of the most widely used biocides in the United States prior to regulatory actions to cancel and restrict certain non-wood preservative uses of PCP in 1987. Prior to the 1987 **Federal Register** Notice which canceled and restricted certain non-wood uses of PCP, PCP was registered for use as a herbicide, defoliant, mossicide, and as a disinfectant.

Indoor applications of PCP are prohibited in accordance with the restrictions indicated in the U.S. EPA Position Document 4 for Wood Preservative Pesticides: Creosote, Pentachlorophenol and Inorganic Arsenicals (1984, amended 1986). The use of PCP to treat wood intended for use in interiors is prohibited, except for a few low exposure uses (i.e., those support structures which are in contact with the soil in barns, stables, and similar sites and which are subject to decay or insect infestation). PCP is a restricted use pesticide for sale and use by certified applicators only. There are currently 10 active products containing PCP listed in the EPA Office of Pesticide Programs Information Network (OPPIN) database for chemical code 63001.

EPA is making available preliminary risk assessments that have been developed as part of EPA's process for making reregistration eligibility decisions on PCP (the HCB and dioxin Preliminary Risk Assessment (PRA) chapters will be released at a later date). The Agency is providing the opportunity, through this notice, for interested parties to provide written comments and input to the Agency on the preliminary risk assessments for the chemical specified in this notice. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific chemical. Comments should be limited to issues raised within the preliminary risk assessments and associated documents. EPA will provide other opportunities for public comment on other science issues associated with PCP. Failure to comment on any issues as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments should be submitted by 60 days from the date of the publication of this **Federal Register** notice.

List of Subjects

Environmental protection, pentachlorophenol, wood preservatives, pesticides and pests.

Dated: November 24, 2004.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 04–26404 Filed 11–29–04; 8:45 a.m.]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

November 18, 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 that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 31, 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 Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION: *OMB Control No.:* 3060–0513.

Title: ARMIS Joint Cost Report.

Report No.: FCC Report 43–03.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit institutions.

Number of Respondents: 83.

Estimated Time Per response: 50 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 4,150 hours.

Total Annual Cost: Not Applicable.

Privacy Act Impact Assessment.: Not Applicable.

Needs and Uses: The Joint Cost Report is needed to administer our joint cost rules (Part 64) and to analyze data in order to prevent cross-subsidization of non-regulated operations by the regulated operations of Tier 1 carriers. The information contained in the ARMIS Report 43–03 provides the necessary detail to enable the Commission to fulfill its regulatory responsibilities. Automated reporting of these data greatly enhances the Commission's ability to process and analyze the extensive amounts of data that it needs to administer its rules. ARMIS facilitates the timely and efficient analysis of revenue requirements, rates of return and price caps, and provides an improved basis for auditing and other oversight functions. It also enhances the Commission's ability to quantify the effects of policy proposals.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–26335 Filed 11–29–04; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Monday, December 6, 2004.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Director, Office of Board Members; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, November 26, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–26452 Filed 11–26–04; 10:55 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Information Collections Related to Reunificiation Procedures for Unaccompanied Alien Children.

OMB No: New Collection.

Description: Following the passage of the 2002 Homeland Security Act (Pub. L. 107–296), the Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR), is charged with the care and placement of unaccompanied alien children in Federal custody, and implementing a policy for the release of these children, when appropriate, upon the request of suitable sponsors while awaiting immigration proceedings. In order for ORR to make determinations regarding the release of these children, the potential sponsors must meet certain conditions pursuant to section 462 of the Homeland Security Act and the *Flores* v. *Reno* settlement agreement, No. CV85–4544–RJK (C.D. Cal. 1997). ORR considers the suitability of a sponsor based on the sponsor's ability

and agreement to provide for the physical, mental and financial well-being of an unaccompanied minor and the sponsor's assurance to appear before immigration courts. To ensure the safety of the children, sponsors must undergo a background check. Suitable sponsors may be parents, close relatives, friends or entities concerned with the child's welfare. In this Notice, ACF announces that it proposes to employ the use of several information collections for recording: (1) The Sponsor's Agreement to Conditions of Release, which collects the sponsor's affirmation to the terms of the release; (2) the Verification of Release, which collects the children's affirmation to the terms of their release; (3) the Family Reunification Packet, which collects information related to the sponsor's ability to provide for the physical, mental and financial well-being of the child(ren); and (4) the Authorization for Release of Information, which collects information to be utilized for a background check.

Respondents: Potential sponsors of unaccompanied alien children and unaccompanied alien children in Federal custody.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Sponsor's Agreement	3,000	1	.166666	500
Verification of Release	3,000	1	.166666	500
Family Reunification Packet	3,000	20	.05	3,000
Authorization for Release of Information	3,000	12	.05	1,800

Estimated Total Annual Burden Hours: 5,800.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *grjohnson@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: November 24, 2004.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 04–26379 Filed 11–29–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0498]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Devices; Device Tracking

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of information of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for tracking of medical devices.

DATES: Submit written or electronic comments on the collection of information by January 31, 2005.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the

collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medical Devices; Device Tracking—21 CFR Part 821 (OMB Control Number 0910–0442)—Extension

Section 211 of the Food and Drug Administration Modernization Act (FDAMA) (Public Law 105–115) became effective on February 19, 1998. It amended the previous medical device tracking provisions in section 519(e)(1) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360i(e)(1) and (e)(2) that were added by the Safe Medical Devices Act of 1990 (SMDA) (Public Law 101–629). Unlike the tracking provisions under SMDA, which required tracking for any device meeting certain criteria, FDAMA allows FDA discretion in applying tracking requirements to devices that meet certain criteria and provides that tracking requirements can be imposed only after FDA issues an order. In the **Federal Register** of February 8, 2002 (67 FR 5943), FDA issued a final rule to conform existing tracking regulations to changes in tracking provisions effected by FDAMA (part 821 (21 CFR part 821)).

Current section 519(e)(1) of the act, as amended by FDAMA, provides that FDA may by order require a manufacturer to adopt a method of tracking a class II or class III device, if the device meets one of three criteria: (1) The failure of the device would be reasonably likely to have serious adverse health consequences; (2) the device is intended to be implanted in the human body for more than 1 year (referred to as a ''tracked implant''); or (3) the device is life-sustaining or life-supporting (referred to as a ''tracked l/s-l/s device'') and is used outside a device user facility.

Tracking information is collected to facilitate identifying the current location of tracked devices and patients possessing the devices, to the extent that patients permit the collection of identifying information. Manufacturers and, as necessary, FDA use the data to expedite the recall of distributed devices that are dangerous or defective, and to facilitate the timely notification of patients or licensed practitioners of the risks associated with the devices.

Respondents to this collection of information are manufacturers, importers, and distributors of tracked implants or tracked l/s-l/s devices used outside a device user facility. Distributors include multiple and final distributors, including hospitals.

The regulations include requirements for exemptions and variances; system and content requirements of tracking; obligations of persons other than device manufacturers, e.g., distributors; records and inspection requirements; confidentiality; and record retention requirements.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
821.2 (also 821.30(e))	4	1	4	12	48
821.25(a)	1	1	1	76	76
821.25(d)	22	1	22	2	44
821.30(a), (b)	17,000	72	1,222,725	0.1666	203,706
821.30(c)(2)	1	1	1	28	28
821.30(d)	17,000	15	259,186	0.1666	43,180
Total					247,082

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
821.25(b)	229	46,260	10,593,433	0.2899	3,071,036
821.25(c)	229	1	229	63.0	14,430
821.25(c)(3)	229	1,124	257,454	0.2899	74,636
Total					3,160,102

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The annual reporting burden hours to respondents for medical device tracking is estimated to be 247,082 hours, and recordkeeping burdens for respondents is estimated to be 3,160,102 hours. These numbers have been rounded up. The estimates cited in tables 1 and 2 of this document are based primarily upon the data and methods provided in FDAs 1999 assessment entitled ''A Cost Assessment of Medical Device Tracking.'' Using implantation procedures from the National Center for Health Statistics, FDA applied a 2 percent annual growth rate to estimate the number of procedures for tracked implant devices from 1997–2006. The assessment also used unit shipment data in combination with various growth rates to estimate annual/sales distribution for the tracked l/s-l/s devices over the same time period. Additionally, the assessment estimates the industry burden for developing and maintaining tracking systems for these devices from 1997–2006.

For the annual recordkeeping burden, the number of manufacturers subject to device tracking (229) is based on data from FDA's manufacturers database. FDA issued tracking orders to 20 additional manufacturers during the time period 2002–2004. Under § 821.25(c), the additional manufacturers collectively bear a one-time burden of 10,560 hours to develop a device tracking system. FDA's estimate of 17,000 distributor respondents contained in the assessment is derived from Dun & Bradstreet sources on medical equipment wholesalers, retailers, home care dealers, and rental companies. Health Forum, an American Hospital Association Company, provided statistics on hospitals.

Dated: November 19, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–26331 Filed 11–29–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0063]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Voluntary Registration of Cosmetic Product Establishments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Voluntary Registration of Cosmetic Product Establishments'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 19, 2004 (69 FR 43001), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0027. The approval expires on November 30, 2007. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: November 19, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–26332 Filed 11–29–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004F–0455]

Sterigenics International, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Sterigenics International, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of ionizing radiation in the production of shelf stable foods, including multiple ingredient shelf stable foods.

FOR FURTHER INFORMATION CONTACT: Lane A. Highbarger, Center for Food Safety and Applied Nutrition (HFS–255), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1204.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 3M4744) has been filed by Sterigenics International, Inc., P.O. Box 17349, Memphis, TN 31817–0349. The petition proposes that the food additive regulations in part 179 *Irradiation in the Production, Processing and Handling of Food* (21 CFR 179) be amended to provide for the safe use of ionizing radiation in the production of fully cooked shelf stable foods, including fully cooked multiple ingredient shelf stable foods, where the absorbed dose required to cause a 12-log reduction in *Clostridium botulinum* has been established.

The agency has determined under 21 CFR 25.32(j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: October 28, 2004.

Laura M. Tarantino,

Deputy Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 04–26334 Filed 11–29–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0383]

Guidance for Industry and Food and Drug Administration Staff; Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use.'' This document provides guidance on the use of selected symbols from international standards already recognized by FDA in place of text to convey some of the information required for in vitro diagnostic devices (IVDs) intended for professional use by FDA's labeling requirements for IVDs.

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled ''Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Paula G. Silberberg, Center for Devices and Radiological Health (HFZ–230), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–1217; or Sheryl A. Kochman, Center for Biologics Evaluation and

Research (HFM–390), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–3524.

SUPPLEMENTARY INFORMATION:

I. Background

The market for in vitro diagnostic devices is international. European Union (EU) member countries have attempted to harmonize their national legislation governing IVDs through the EU's Directive on In Vitro Diagnostic Medical Devices (Directive 98/79/EC) (IVD Directive). The EU's IVD Directive went into full effect on December 8, 2003. As of that date, IVD products marketed in the EU must comply with the IVD Directive and bear the CE mark (mark showing that the product is certified for sale in the European community) to indicate compliance.

The EU's IVD Directive and FDA regulations in § 809.10 (21 CFR 809.10) and parts 610 and 660 (21 CFR parts 610 and 660) all require substantial information to appear on the IVD itself and/or in its labeling. The IVD Directive specifically allows each EU member State to require that such information appear in its national language, so that a single IVD could be required to bear labeling in multiple languages in order to be sold in the EU. As an alternative, the IVD Directive encourages that, in place of text, IVDs use symbols from harmonized standards to convey the required information. Given that the use of national languages may be required by individual member States and that most IVDs and their packaging are quite small, the IVD Directive's symbols provision represents an avenue through which manufacturers can achieve compliance in an international marketplace.

Similarly, the use of symbols helps IVD manufacturers to create uniform labels and labeling for the United States and the EU (and any other countries that may permit use of symbols from these international standards), instead of needing designated labels for each marketplace. Because symbols take up less space than the text for which they may substitute, the use of symbols promotes less crowded and more legible IVD labels. An additional advantage is that there are likely to be fewer labeling errors when using a single label, rather than having one set of labels for use in the United States and another set for use in the EU. Of course, it is essential that the symbol convey the substance of the deleted text and be widely understood.

Therefore, in accordance with the consensus standards recognition process, established by section 514(c) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360d(c)), in the **Federal Register** of April 28, 2003 (68 FR 22391), corrected by 68 FR 61448 (October 28, 2003), FDA recognized for use on the labels and labeling of IVDs intended for professional use 25 symbols from the 2 international consensus standards:

- ISO 15223, Medical Devices; Symbols to be Used With Medical Device Labels, Labeling and Information to be Supplied, and
- EN 980, Graphical Symbols for Use in the Labeling of Medical Devices.

The guidance document entitled ''Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use'' provides guidance on the use of those recognized symbols.

FDA announced the availability of the level 1 draft guidance document in the **Federal Register** of October 28, 2003 (68 FR 61449). While comments on guidances may be submitted at any time, FDA invited interested persons to submit written or electronic comments on the draft guidance by November 28, 2003, to ensure adequate consideration of the comments. The comment period for the proposed information collection provisions closed on December 29, 2003. FDA received seven comments from manufacturers on the draft guidance. However, many of the comments addressed issues beyond the scope of the use of the 25 FDA recognized symbols on IVD for professional use. FDA will continue to study these comments to determine what other actions may be appropriate. One comment suggested that the glossary of symbols recommended by the guidance be permitted to be provided as a separate labeling piece, rather than being incorporated into the package insert. In the guidance document, FDA continues to express its preference for the inclusion of the glossary as part of the package insert, although it recognizes that while package inserts are being revised, manufacturers may prefer to provide the glossary as a separate labeling piece. As with all aspects of the guidance, this position represents FDA's recommendation, and manufacturers may select an alternative approach if that approach satisfies the requirements of the applicable statute and regulations.

In addition, in the guidance document, FDA has decided to remove the statement in section III where FDA had proposed to exercise enforcement discretion if a company used the symbol that represents ''Manufacturer'' to satisfy § 610.64. Upon reflection, that symbol does not appear applicable to § 610.64.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance, when finalized, will represent the agency's current thinking on the use of symbols on the labels and in labeling only of IVDs intended for professional use, and not for over-the-counter or prescription home-use IVDs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

To receive ''Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use'' by fax, call the CDRH Facts-on-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (4444) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (the PRA). The collections of information described in sections VII and VIII of the guidance regarding a glossary of terms and educational outreach were approved by OMB in accordance with the PRA under OMB control number 0910–0553 which

expires on October 31, 2007. The guidance document also refers to labeling requirements, annual reporting requirements, and other information collections established under existing regulations. The collections of information described in section III of the guidance that result from § 809.10 were approved under OMB control number 0910–0485. The collections of information described in section III of the guidance that result from §§ 610.60, 610.61, and 610.62 were approved under OMB control number 0910–0338. The collections of information described in section III of the guidance that result from part 660 (§§ 660.2, 660.28, 660.35, 660.45, and 660.55) were approved under OMB control number 0910–0527. The collections of information described in section X of the guidance, regarding annual reports, were approved under OMB control numbers 0910–0231 and 0910–0338. The collections of information described in section X of this guidance, regarding adverse event reporting, were approved under OMB control numbers 0910–0437 and 0910–0291.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 9, 2004.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 04–26333 Filed 11–29–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Health Extramural Clinical Research Loan Repayment Program for Individuals From Disadvantaged Backgrounds

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) and the National Center on Minority Health and Health Disparities (NCMHD) announce the 2005 Extramural Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds (ECR–LRP or Program). The ECR–LRP provides for the repayment of educational loan debt of up to $35,000 annually for qualified health professionals from disadvantaged backgrounds conducting clinical research for domestic non-profit or government entities. In addition, the program will cover up to 39 percent of the Federal tax liability resulting from loan repayments, and may provide reimbursement for State and local tax liabilities.

The purpose of the Extramural Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds is the recruitment and retention of highly qualified health professionals from disadvantaged backgrounds in careers in clinical research. Through this notice, the NIH and NCMHD invite qualified health professionals who are from disadvantaged backgrounds and interested in engaging in clinical research for at least two years, and who agree to engage in this area of research for at least 50 percent of their time, *i.e.*, no less than 20 hours per week, to apply for participation in the NIH Extramural Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds (ECR–LRP).

DATES: Interested persons may request information about the Program beginning on November 30, 2004.

FOR FURTHER INFORMATION CONTACT: Jerry Moore, NIH Regulations Officer, Office of Management Assessment, NIH, 6011 Executive Blvd., Room 601, MSC 7669, Rockville, MD 20892, by e-mail: Moorej@mail.nih.gov, by fax: 301–402–0169, or by telephone: 301–496–4607 (not a toll-free number). For information regarding the requirements, application deadline dates, and on-line application for the ECR–LRP program, please visit the NIH Loan Repayment Program Web site at *http://www.lrp.nih.gov*, send an e-mail to *lrp@nih.gov*, call the LRP helpline at 866–849–4047 (toll-free number) or contact the NCMHD Loan Repayment Coordinator, Kenya McRae, at 301–402–1366 (not a toll-free number) or via e-mail: *mcraek@mail.nih.gov*.

SUPPLEMENTARY INFORMATION: The Extramural Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds, which was originally authorized by section 487E of the Public Health Service (PHS) Act (42 U.S.C. 288–5), as amended by the National Institutes of Health Revitalization Act of 1993 (Pub. L. 103–43), provides for the repayment of the educational loan debt of health professionals who are from disadvantaged backgrounds, who have substantial debt relative to income, and who agree to conduct clinical research as employees of the NIH. The Consolidated Appropriations Act of 2001 (Pub. L. 106–554) amended section 487E of the PHS Act to allow expansion of the existing program to include health professionals who are not employees of the National Institutes of Health. Under the expanded authority, the Secretary of Health and Human Services (HHS) in consultation with the Director of NIH will enter into contracts with qualified health professionals from disadvantaged backgrounds under which such health professionals agree to conduct clinical research; in return, the Federal Government agrees to repay for each year of such research, up to $35,000 of their student loan debt.

The objective of the ECR–LRP is the recruitment and retention of highly qualified health professionals from disadvantaged backgrounds to clinical research careers. The emphasis on clinical research and individuals from disadvantaged backgrounds highlights the need for the involvement of a cadre of competent health professionals in clinical research.

''Clinical research'' as defined in section 206 of Pub. L. 106–505, the Public Health Improvement Act, enacted on November 13, 2000, means patient-oriented clinical research conducted with human subjects, or research on the causes and consequences of disease in human populations involving material of human origin (such as tissue specimens and cognitive phenomena) for which an investigator or colleague directly interacts with human subjects in an outpatient or inpatient setting to clarify a problem in human physiology, pathophysiology or disease, or epidemiological or behavioral studies, outcomes research or health services research, or developing new technologies, therapeutic interventions, or clinical trials.

''An individual from a disadvantaged background'' is defined as one who comes from a family with an annual income below a level based on low-income thresholds according to family size published by the U.S. Bureau of the Census, adjusted annually for the changes in the Consumer Price Index, and adjusted by the Secretary of the U.S. Department of Health and Human Services (Secretary) for use in all health professions programs. The Secretary

periodically publishes these income levels in the **Federal Register**. An applicant must certify his or her disadvantaged status under the above definition by submitting (a) a written statement from the individual's former health professions school(s) that indicates that he or she qualified for Federal disadvantaged assistance during attendance; or (b) documentation that he or she received any financial aid from Health Professions Student Loans (HPSL) or Loans for Disadvantaged Student Program; or (c) documentation that he or she received scholarships from the U.S. Department of Health and Human Services (HHS) under the Scholarship for Individuals with Exceptional Financial Need.

Eligibility Criteria

Specific eligibility criteria for the ECR–LRP include the following:

1. Applicants must be United States citizens, nationals, or permanent residents;

2. Applicants must have a Ph.D., M.D., D.O., D.D.S., D.M.D., D.P.M., Pharm.D., D.C., N.D., or equivalent doctoral degree from an accredited institution;

3. Applicants come from a disadvantaged background;

4. Applicants must have total qualifying educational debt equal to or in excess of 20 percent of their institutional base salary at the time of award (projected to be between July 1 and September 1, 2005). Institutional base salary is the annual amount the organization pays for the individual's appointment, whether the time is spent on research, teaching, patient care, or other activities. Institutional base salary excludes any income that an applicant may earn outside of the duties of the organization, and may not include or comprise any income (salary or wages) earned as a Federal employee;

5. Applicants must conduct qualifying research supported by a domestic non-profit foundation, non-profit professional association, or other non-profit institution, or a U.S. or other government agency (Federal, State or local). A domestic foundation, professional association or institution is considered to be non-profit if exempt from Federal tax under the provisions of Section 501 of the Internal Revenue Code (26 U.S.C. 501);

6. Applicants must engage in qualified clinical research for at least 50 percent of their time, *i.e.*, not less than 20 hours per week based on a 40-hour work week;

7. Full-time employees of Federal Government agencies are ineligible to apply for LRP benefits. Part-time Federal employees who engage in qualifying research as part of their non-Federal duties for at least 20 hours per week, and whose funding source is from a domestic non-profit source as defined in subparagraph 4 of this section, are eligible to apply for loan repayment if they meet all other eligibility requirements;

8. Applicants must agree to conduct research for which funding is not prohibited by Federal law, regulations, or HHS/NIH policy. Recipients who receive ECR–LRP awards must conduct their research in accordance with applicable Federal, State and local law (*e.g.*, applicable human subject protection regulations) for the entire period of time;

9. Applicants will not be excluded from consideration on the basis of age, race, culture, religion, gender, sexual orientation, disability, or other non-merit factors; and

10. No individual may submit more than one LRP application to the NIH in any fiscal year. Unsuccessful ECR–LRP applicants may reapply in subsequent fiscal years.

The following individuals are ineligible for participation in the ECR–LRP:

1. Persons who are not United States citizens, nationals, or permanent residents;

2. Any individual who has a Federal judgment lien against his/her property arising from a Federal debt is barred from receiving Federal funds until the judgment is paid in full or satisfied;

3. Any individual who owes an obligation of health professional service to the Federal Government, a State, or other entity, unless deferrals or extensions are granted for the length of their Extramural Loan Repayment Program service obligation. The following are examples of programs with service obligations that disqualify an applicant from consideration, unless a deferral for the length of participation in the Loan Repayment Program is obtained:

(a) Armed Forces (Army, Navy, or Air Force) Professions Scholarship Program,

(b) Exceptional Financial Need (EFN) Scholarship Program,

(c) Financial Assistance for Disadvantaged Health Professions Students (FADHPS),

(d) Indian Health Service (IHS) Scholarship Program,

(e) National Health Service Corps (NHSC) Scholarship Program,

(f) National Institutes of Health Undergraduate Scholarship Program (UGSP),

(g) Physicians Shortage Area Scholarship Program,

(h) Primary Care Loan (PCL) Program,

(i) Public Health Service (PHS) Scholarship Program, and

(j) National Research Service Award (NRSA) Program;

4. Full-time employees of Federal Government agencies. Part-time Federal employees who engage in qualifying research supported by a domestic non-profit institution, as part of their non-Federal duties, for an outside entity for at least 20 hours per week, based on a 40-hour work week, are eligible to apply for the ECR–LRP if they meet all other eligibility requirements;

5. Current recipients of NIH Intramural Research Training Awards (IRTA) or Cancer Research Training Awards (CRTA);

6. Individuals conducting research for which funding is precluded by Federal law, regulations or HHS/NIH policy, or that does not comply with applicable Federal, State, and local law regarding the conduct of the research (*e.g.*, applicable human subject protection regulations); and

7. Individuals with ineligible loans, which include loans that have been consolidated with a loan of another individual (including spouses or children), or loans that are not educational, such as home equity loans.

Selection Process

Upon receipt, applications for both initial and renewal awards will be reviewed for eligibility and completeness. Incomplete or ineligible applications will not be considered. Applications that are complete and eligible will be forwarded for peer review. In evaluating the application, reviewers will be directed to consider the following components as they relate to the likelihood that the applicant will continue in a clinical research career:

a. Potential of the applicant to pursue a career in clinical research:

- Appropriateness of the applicant's previous training and experience to prepare him/her for a clinical research career.
- Suitability of the applicant's proposed clinical research activities in the two-year loan repayment period to foster a research career.
- Assessment of the applicant's commitment to a research career as reflected by the personal statement of long-term career goals and the plan outlined to achieve those goals.
- Strength of recommendations attesting to the applicant's potential for a research career.

b. Quality of the overall environment to prepare the applicant for a clinical research career:

• Availability of appropriate scientific colleagues to achieve and/or enhance the applicant's research independence.

• Quality and appropriateness of institutional resources and facilities.

LRP renewal contracts are available for one- and two-year periods and are based upon the same criteria as the initial application plus two additional criteria'an assessment of research accomplishments and development of an individual as an independent investigator. An explanation of research accomplishments during the initial award period is required. Progress toward development as an independent investigator is a major factor in awarding renewal of loan repayment support. Renewal LRP awards are competitive and submission of a renewal application does not ensure the award of loan repayment.

The following information is furnished by applicants or others on behalf of applicants (forms are completed electronically at the LRP Web site at *http://www.lrp.nih.gov*):

Applicants electronically transmit the following to the NIH Office of Loan Repayment:

1. Applicant information statement.
2. Biosketch.
3. Personal statement, which includes a discussion of career goals and academic objectives.
4. Description of research activities, which describes the current or proposed research project including the specific responsibilities and role of the applicant in conducting the research. The research supervisor or mentor will be asked to concur.
5. Identification of three recommenders (one of whom is identified as research supervisor or mentor).
6. Identification of Institutional Contact.
7. On-line certification.
8. Loan information, including current account statement(s) and promissory note(s) or disclosure statement(s) obtained from lending institution(s), submitted via facsimile to 866–849–4046.
9. If applying based on NIH support, Notice of Grant/Award (or PHS Form 2271 for Ruth L. Kirschstein NRSA training fellowships).
10. Certification of disadvantaged background that verifies the applicant's disadvantaged status and consists of one of the following:

a. Written statement from the applicant's former health professions school(s) that indicates that the applicant qualified for Federal disadvantaged assistance during attendance;

b. Documentation that the applicant received any of the following financial aid: Health Professions Student Loans (HPSL) or Loans for Disadvantaged Student Program; or

c. Documentation that the applicant received scholarships from the U.S. Department of Health and Human Services (HHS) under the Scholarship for Individuals with Exceptional Financial Need.

Research supervisors or mentors electronically transmit the following to the NIH Office of Loan Repayment:

1. Recommendation.
2. Biosketch.
3. Assessment of the research activities statement submitted by the applicant.
4. Description of the research environment, which provides detailed information about the lab where the applicant is or will be conducting research, including funding, lab space, and major areas under investigation.
5. Training or mentoring plan, which includes a detailed discussion of the training or mentoring plan, including a discussion of the research methods and scientific techniques to be taught. This document is completed by the research supervisor or mentor and is submitted for all applicants.
6. Biosketch of any supplemental mentors/advisors or laboratory staff member if involved in the training and mentoring of the applicant.

The other Recommenders electronically transmit recommendation forms to the NIH Office of Loan Repayment.

Institutional Contacts electronically transmit a certification to the NIH Office of Loan Repayment that:

(a) Assures that the applicant will be provided the necessary time and resources to engage in the research project for two years from the date a Loan Repayment Program contract is executed;

(b) Assures that the applicant is or will be engaged in qualifying research for 50 percent of his/her work effort or not less than 20 hours per week based on a 40-hour work week;

(c) Certifies that the sponsoring entity is a domestic non-profit institution (exempt from tax liability under 26 U.S.C. 501); and

(d) Provides the applicant's institutional base salary.

Program Administration and Details

Under the ECR–LRP, the NIH will repay a portion of the extant qualified educational loan debt incurred to pay for the researcher's undergraduate, graduate, and/or health professional school educational expenses.

The NIH will repay lenders for the extant principal, interest, and related expenses (such as the required insurance premiums on the unpaid balances of some loans) of educational loans from a U.S. Government entity, an academic institution, or a commercial or other chartered U.S. lending institution, such as banks, credit unions, savings and loan associations, not-for-profit organizations, insurance companies, and other financial or credit institutions that are subject to examination and supervision in their capacity as lending institutions by an agency of the United States or of the State in which the lender has its principal place of business, obtained by participants for the following:

• Undergraduate, graduate, and health professional school tuition expenses;

• Other reasonable educational expenses required by the school(s) attended, including fees, books, supplies, educational equipment and materials, and laboratory expenses; and

• Reasonable living expenses, including the cost of room and board, transportation and commuting costs, and other living expenses as determined by the Secretary.

Repayments are made directly to lenders, following receipt of (1) the Principal Investigator, Program Director, or Research Supervisor's verification of completion of the prior period of research, and (2) lender verification of the crediting of prior loan repayments, including the resulting account balances and current account status. The NIH will repay loans in the following order, unless the Secretary determines that significant savings would result from a different order of priority:

1. Loans guaranteed by the U.S. Department of Health and Human Services:

• Health Education Assistance Loan (HEAL);

• Health Professions Student Loan (HPSL);

• Loans for Disadvantaged Students (LDS); and

• Nursing Student Loan Program (NSL);

2. Loans guaranteed by the U.S. Department of Education:

• Direct Subsidized Stafford Loan;
• Direct Unsubsidized Stafford Loan;
• Direct Consolidation Loan;
• Perkins Loan;
• FFEL Subsidized Stafford Loan;
• FFEL Unsubsidized Stafford Loan; and
• FFEL Consolidation Loan;

3. Loans made or guaranteed by a State, the District of Columbia, the

Commonwealth of Puerto Rico, or a territory or possession of the United States;

4. Loans made by academic institutions; and

5. Private (''Alternative'') Educational Loans:

- MEDLOANS; and
- Private (non-guaranteed) Consolidation Loans.

The following loans are not repayable under the Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds:

1. Loans not obtained from a U.S. or other government entity, an academic institution, or a commercial or other chartered U.S. lending institution, such as loans from friends, relatives, or other individuals, and non-educational loans, such as home equity loans;

2. Loans for which contemporaneous documentation (current account statement, and promissory note or lender disclosure statement) is not available;

3. Loans that have been consolidated with loans of other individuals, such as a spouse or child;

4. Loans or portions of loans obtained for educational or living expenses that exceed a reasonable level, as determined by the standard school budget for the year in which the loan was made, and are not determined by the LRP to be reasonable based on additional contemporaneous documentation provided by the applicant;

5. Loans, financial debts, or service obligations incurred under the following programs, or other programs that incur a service obligation that converts to a loan on failure to satisfy the service obligation:

- Armed Forces (Army, Navy, or Air Force) Health Professions Scholarship Program;
- Indian Health Service (IHS) Scholarship Program;
- National Institutes of Health Undergraduate Scholarship Program (UGSP);
- National Research Service Award (NRSA) Program;
- Physicians Shortage Area Scholarship Program (Federal or State);
- Primary Care Loan (PCL) Program; and
- Public Health Service (PHS) and National Health Service Corps (NHSC) Scholarship Program;

6. Delinquent loans, loans in default, or loans not current in their payment schedule;

7. PLUS Loans;

8. Loans that have been paid in full; and

9. Loans obtained after the execution of the NIH Loan Repayment Program Contract (*e.g.*, promissory note signed after the LRP contract has been awarded) (this provision does not apply to qualifying loan consolidations).

Before the commencement of loan repayment, or during lapses in loan repayments due to NIH administrative complications, Leave Without Pay (LWOP), or a break in service, LRP participants are wholly responsible for making payments or other arrangements that maintain loans current, such that increases in either principal or interest do not occur. The LRP contract period will not be modified or extended as a result of LWOP or a break in service. Penalties assessed participants as a result of NIH administrative complications to maintain a current payment status may not be considered for reimbursement.

LRP payments are not retroactive. Loan repayment for fiscal year 2005 will commence after a loan repayment contract has been executed, which is expected to be no earlier than July 2005.

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs.

This program is subject to OMB clearance under the requirements of the Paperwork Reduction Act of 1995. The OMB approval of the information collection associated with the ECR–LRP expires on December 31, 2004. The Catalog of Federal Domestic Assistance number for the Extramural Clinical Research LRP for Individuals from Disadvantaged Backgrounds is 93.308.

Dated: November 19, 2004.

Elias A. Zerhouni,

Director, NIH.

[FR Doc. 04–26369 Filed 11–29–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Loan Repayment Program for Health Disparities Research

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) and the National Center on Minority Health and Health Disparities (NCMHD) announce the 2005 Loan Repayment Program for Health Disparities Research (HDR–LRP or Program). The HDR–LRP provides for the repayment of educational loan debt of up to $35,000 annually for qualified health professionals conducting minority health or other health disparities research for domestic non-profit or government entities. In addition, payments equal to 39 percent of the loan repayments are issued to the Internal Revenue Service on behalf of the program participants to offset Federal tax liabilities incurred as a result of participating in the program. The Program may also provide reimbursement for State and local tax liabilities.

The purpose of the HDR–LRP is the recruitment and retention of highly qualified health professionals to research careers that focus on minority health or other health disparity issues. Through this notice, NIH and NCMHD invite qualified health professionals who contractually agree to engage in minority health or other health disparities research for at least two years, and who agree to engage in this area of research for at least 50 percent of their time, *i.e.*, not less than 20 hours per week, to apply for participation in the Loan Repayment Program for Health Disparities Research.

DATES: Interested persons may request information about the HDR–LRP beginning on November 30, 2004.

FOR FURTHER INFORMATION CONTACT: Jerry Moore, NIH Regulations Officer, Office of Management Assessment, NIH, 6011 Executive Blvd., Room 601, MSC 7669, Rockville, MD 20892, by e-mail: *Moorej@mail.nih.gov*, by fax: 301–402–0169, or by telephone: 301–496–4607 (not a toll-free number). For information regarding the requirements, application deadline dates, and on-line application for the HDR–LRP program, please visit the NIH Loan Repayment Program Web site at *http://www.lrp.nih.gov*, send an e-mail to *lrp@nih.gov*, call the LRP helpline at 866–849–4047 (toll-free number) or contact the NCMHD Loan Repayment Coordinator, Kenya McRae, at 301–402–1366 (not a toll-free number) or via e-mail: *mcraek@mail.nih.gov*.

SUPPLEMENTARY INFORMATION: The Minority Heath and Health Disparities Research and Education Act of 2000 (Pub. L. 106–525), adds section 485G of the PHS Act to allow the Director, NCMHD, to enter into contracts for loan repayment with appropriately qualified health professionals who agree to conduct minority health or other health disparities research. Under such contracts, qualified health professionals agree to conduct minority health or health disparities research for a minimum of two years in consideration of the Federal Government agreeing to repay, for each year of service, not more than $35,000 of the principal and

interest of the extant qualified educational loans of such health professionals.

The objective of the HDR–LRP is the recruitment and retention of highly qualified health professionals to research careers that focus on minority health or other health disparity issues. The Program serves as an avenue for NIH and the NCMHD to engage in and promote the development of research programs that reflect the variety of issues and problems associated with disparities in health status. In addition, the Director, NCMHD, is statutorily required to ensure that not fewer than 50 percent of the contracts are awarded to qualified health professionals that are members of health disparities populations. This highlights the need for the involvement of a cadre of culturally competent health professionals in minority health and other health disparities research.

''Health disparity populations'' are determined by the Director of NCMHD, after consultation with the Director of the Agency for Healthcare Research and Quality, and are defined as populations in which there is significant disparity in the overall rate of disease incidence, prevalence, morbidity, mortality, or survival rates as compared to the health status of the general population. For purposes of this announcement, the following populations have been determined to be health disparities populations: Blacks/African Americans, Hispanics/Latinos, Native Americans, Alaska Natives, Asian Americans, Native Hawaiians, Pacific Islanders, and the medically underserved, such as individuals from the Appalachian region.

''Health disparities research'' is defined as basic, clinical, or behavioral research on a health disparities population (including individual members and communities of such populations), including the causes of such health disparities and methods to prevent, diagnose, and treat such disparities.

''Medically underserved'' refers to individuals that lack access to primary and specialty care either because they are socioeconomically disadvantaged, and may or may not live in areas with high poverty rates, or because they reside in rural areas. The term also refers to individuals that reside in geographic areas where the Index of Medical Underservice (IMU) is 62 or less. The Health Resources and Services Administration (HRSA) criteria designate a service area with an IMU of 62 or less as a ''medically underserved area (MUA).'' The IMU is a weighted score derived from four variables: The ratio of primary medical care physicians per 1,000 population, the infant mortality rate, the percentage of population below the Federal poverty level, and the percentage of the population age 65 years or over.

''Minority health conditions'' refers to all diseases, disorders, and other conditions (including mental health and substance abuse) that are unique to, more serious in, or more prevalent in racial and ethnic minorities, for which the medical risk factors or types of medical interventions may be different, or research involving such populations as subjects or data on such individuals is insufficient.

''Minority health disparities research'' is defined as basic, clinical, or behavioral research on minority health conditions, including research to prevent, diagnose, and treat such conditions.

Eligibility Requirements

Specific eligibility criteria for the HDR–LRP include the following:

1. Applicants must be United States citizens, nationals, or permanent residents;

2. Applicants must have a Ph.D., M.D., D.O., D.D.S., D.M.D., D.P.M., Pharm.D., D.C., N.D., or equivalent doctoral degree from an accredited institution;

3. Applicants must have total qualifying educational debt equal to or in excess of 20 percent of their institutional base salary at the time of award (projected to be between July 1 and September 1, 2005). Institutional base salary is the annual amount the organization pays for the individual's appointment, whether the time is spent on research, teaching, patient care, or other activities. Institutional base salary excludes any income that an applicant may earn outside of the duties of the organization and may not include or comprise any income (salary or wages) earned as a Federal employee;

4. Applicants must conduct qualifying research supported by a domestic non-profit foundation, non-profit professional association, or other non-profit institution, or a U.S. or other government agency (Federal, State or local). A domestic foundation, professional association or institution is considered to be non-profit if exempt from Federal tax under the provisions of Section 501 of the Internal Revenue Code (26 U.S.C. 501);

5. Applicants must engage in qualified minority health or other health disparities research for at least 50 percent of their time, *i.e.*, not less than 20 hours per week based on a 40-hour work week;

6. Full-time employees of Federal Government agencies are ineligible to apply for LRP benefits. Part-time Federal employees who engage in qualifying research as part of their non-Federal duties for at least 20 hours per week, and whose funding source is from a domestic non-profit source as defined in subparagraph 4 of this section, are eligible to apply for loan repayment if they meet all other eligibility requirements;

7. Applicants must agree to conduct research for which funding is not prohibited by Federal law, regulations, or HHS/NIH policy. Recipients who receive HDR–LRP awards must conduct their research in accordance with applicable Federal, State and local law (*e.g.*, applicable human subject protection regulations) for the entire period of time;

8. Applicants will not be excluded from consideration on the basis of age, race, culture, religion, gender, sexual orientation, disability, or other non-merit factors; and

9. No individual may submit more than one LRP application to the NIH in any fiscal year. Unsuccessful HDR–LRP applicants may reapply in subsequent fiscal years if they meet all of the above eligibility criteria.

The following individuals are ineligible for participation in the HDR–LRP:

1. Persons who are not United States citizens, nationals, or permanent residents;

2. Any individual who has a Federal judgment lien against his/her property arising from a Federal debt is barred from receiving Federal funds until the judgment is paid in full or satisfied;

3. Any individual who owes an obligation of health professional service to the Federal Government, a State, or other entity, unless deferrals or extensions are granted for the length of their Extramural Loan Repayment Program service obligation. The following are examples of programs with service obligations that disqualify an applicant from consideration, unless a deferral for the length of participation in the Loan Repayment Program is obtained:

(a) Armed Forces (Army, Navy, or Air Force) Professions Scholarship Program,

(b) Exceptional Financial Need (EFN) Scholarship Program,

(c) Financial Assistance for Disadvantaged Health Professions Students (FADHPS),

(d) Indian Health Service (IHS) Scholarship Program,

(e) National Health Service Corps (NHSC) Scholarship Program,

(f) National Institutes of Health Undergraduate Scholarship Program (UGSP),

(g) Physicians Shortage Area Scholarship Program,

(h) Primary Care Loan (PCL) Program,

(i) Public Health Service (PHS) Scholarship Program, and

(j) National Research Service Award (NRSA) Program;

4. Full-time employees of Federal Government agencies. Part-time Federal employees who engage in qualifying research supported by a domestic non-profit institution, as part of their non-Federal duties, for an outside entity for at least 20 hours per week, based on a 40-hour work week, are eligible to apply for the HDR–LRP if they meet all other eligibility requirements;

5. Current recipients of NIH Intramural Research Training Awards (IRTA) or Cancer Research Training Awards (CRTA);

6. Individuals conducting research for which funding is precluded by Federal law, regulations or HHS/NIH policy, or that does not comply with applicable Federal, State, and local law regarding the conduct of the research (*e.g.*, applicable human subject protection regulations); and

7. Individuals with ineligible loans, which include loans that have been consolidated with a loan of another individual (including spouses or children), or loans that are not educational, such as home equity loans.

Selection Process

Upon receipt, applications for both initial and renewal awards will be reviewed for eligibility and completeness. Incomplete or ineligible applications will not be considered. Applications that are complete and eligible will be forwarded for peer review. In evaluating the application, reviewers will be directed to consider the following components as they relate to the likelihood that the applicant will continue in a health disparities research career:

a. Potential of the applicant to pursue a career in minority health or other health disparities research:

- Appropriateness of the applicant's previous training and experience to prepare him/her for a minority health or other health disparities research career.
- Suitability of the applicant's proposed minority health or other health disparities research activities in the two-year loan repayment period to foster a research career.
- Assessment of the applicant's commitment to a research career as reflected by the personal statement of long-term career goals and the plan outlined to achieve those goals.
- Strength of recommendations attesting to the applicant's potential for a research career.

b. Quality of the overall environment to prepare the applicant for a research career in health disparities:

- Availability of appropriate scientific colleagues to achieve and/or enhance the applicant's research independence.
- Quality and appropriateness of institutional resources and facilities.

LRP renewal contracts are available for one- and two-year periods and are based upon the same criteria as the initial application plus two additional criteria—an assessment of research accomplishments and development of an individual as an independent investigator. An explanation of research accomplishments during the initial award period is required. Progress toward development as an independent investigator is a major factor in awarding renewal of loan repayment support. Renewal LRP awards are competitive and submission of a renewal application does not ensure the award of loan repayment.

The following information is furnished by applicants or others on behalf of applicants (forms are completed electronically at the LRP Web site at *www.lrp.nih.gov*):

Applicants electronically transmit the following to the NIH Office of Loan Repayment:

1. Applicant information statement.
2. Biosketch.
3. Personal statement, which includes a discussion of career goals and academic objectives.
4. Description of research activities, which describes the current or proposed research project including the specific responsibilities and role of the applicant in conducting the research. The research supervisor or mentor will be asked to concur.
5. Identification of three recommenders (one of whom is identified as research supervisor or mentor).
6. Identification of institutional contact.
7. On-line certification.
8. Loan information, including current account statement(s) and promissory note(s) or disclosure statement(s) obtained from lending institution(s), submitted via facsimile to 866–849–4046.
9. If applying based on NIH support, Notice of Grant/Award (or PHS Form 2271 for Ruth L. Kirschstein NRSA training fellowships).

Research supervisors or mentors electronically transmit the following to the NIH Office of Loan Repayment:

1. Recommendation.
2. Biosketch.
3. Assessment of the research activities statement submitted by the applicant.
4. Description of the research environment, which provides detailed information about the lab where the applicant is or will be conducting research, including funding, lab space, and major areas under investigation.
5. Training or mentoring plan, which includes a detailed discussion of the training or mentoring plan, including a discussion of the research methods and scientific techniques to be taught. This document is completed by the research supervisor or mentor and is submitted for all applicants.
6. Biosketch of any supplemental mentors/advisors or laboratory staff member if involved in the training and mentoring of the applicant.

The other Recommenders electronically transmit recommendation forms to the NIH Office of Loan Repayment.

Institutional contacts electronically transmit a certification to the NIH Office of Loan Repayment that:

(a) Assures that the applicant will be provided the necessary time and resources to engage in the research project for two years from the date a Loan Repayment Program contract is executed;

(b) Assures that the applicant is or will be engaged in qualifying research for 50 percent of his/her work effort or not less than 20 hours per week based on a 40-hour work week;

(c) Certifies that the sponsoring entity is a domestic non-profit institution (exempt from tax liability under 26 U.S.C. 501); and

(d) Provides the applicant's institutional base salary.

Program Administration and Details

Under the HDR–LRP, the NIH will repay a portion of the extant qualified educational loan debt incurred to pay for the researcher's undergraduate, graduate, and/or health professional school educational expenses.

The NIH will repay lenders for the extant principal, interest, and related expenses (such as the required insurance premiums on the unpaid balances of some loans) of educational loans from a U.S. Government entity, an academic institution, or a commercial or other chartered U.S. lending institution, such as banks, credit unions, savings and loan associations, not-for-profit organizations, insurance companies,

and other financial or credit institutions that are subject to examination and supervision in their capacity as lending institutions by an agency of the United States or of the State in which the lender has its principal place of business, obtained by participants for the following:

- Undergraduate, graduate, and health professional school tuition expenses;
- Other reasonable educational expenses required by the school(s) attended, including fees, books, supplies, educational equipment and materials, and laboratory expenses; and
- Reasonable living expenses, including the cost of room and board, transportation and commuting costs, and other living expenses as determined by the Secretary.

Repayments are made directly to lenders, following receipt of (1) the Principal Investigator, Program Director, or Research Supervisor's verification of completion of the prior period of research, and (2) lender verification of the crediting of prior loan repayments, including the resulting account balances and current account status. The NIH will repay loans in the following order, unless the Secretary determines that significant savings would result from a different order of priority:

1. Loans guaranteed by the U.S. Department of Health and Human Services:
   - Health Education Assistance Loan (HEAL);
   - Health Professions Student Loan (HPSL);
   - Loans for Disadvantaged Students (LDS); and
   - Nursing Student Loan Program (NSL);
2. Loans guaranteed by the U.S. Department of Education:
   - Direct Subsidized Stafford Loan;
   - Direct Unsubsidized Stafford Loan;
   - Direct Consolidation Loan;
   - Perkins Loan;
   - FFEL Subsidized Stafford Loan;
   - FFEL Unsubsidized Stafford Loan; and
   - FFEL Consolidation Loan;
3. Loans made or guaranteed by a State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States;
4. Loans made by academic institutions; and
5. Private (''Alternative'') Educational Loans:
   - MEDLOANS; and
   - Private (non-guaranteed) Consolidation Loans.

The following loans are NOT repayable under the Loan Repayment Program for Health Disparities Research:

1. Loans not obtained from a U.S. or other government entity, academic institution, or a commercial or other chartered U.S. lending institution such as loans from friends, relatives, or other individuals, and non-educational loans, such as home equity loans;
2. Loans for which contemporaneous documentation (current account statement, and promissory note or lender disclosure statement) is not available;
3. Loans that have been consolidated with loans of other individuals, such as a spouse or child;
4. Loans or portions of loans obtained for educational or living expenses, which exceed a reasonable level, as determined by the standard school budget for the year in which the loan was made, and are not determined by the LRP to be reasonable based on additional contemporaneous documentation provided by the applicant;
5. Loans, financial debts, or service obligations incurred under the following programs, or other programs that incur a service obligation that converts to a loan on failure to satisfy the service obligation:
   - Armed Forces (Army, Navy, or Air Force) Health Professions Scholarship Program;
   - Indian Health Service (IHS) Scholarship Program;
   - National Institutes of Health Undergraduate Scholarship Program (UGSP);
   - National Research Service Award (NRSA) Program;
   - Physicians Shortage Area Scholarship Program (Federal or State);
   - Primary Care Loan (PCL) Program; and
   - Public Health Service (PHS) and National Health Service Corps (NHSC) Scholarship Program;
6. Delinquent loans, loans in default, or loans not current in their payment schedule;
7. PLUS Loans;
8. Loans that have been paid in full; and
9. Loans obtained after the execution of the NIH Loan Repayment Program Contract (*e.g.*, promissory note signed after the LRP contract has been awarded) (this provision does not apply to qualifying loan consolidations).

Before the commencement of loan repayment, or during lapses in loan repayments due to NIH administrative complications, Leave Without Pay (LWOP), or a break in service, LRP participants are wholly responsible for making payments or other arrangements that maintain loans current, such that increases in either principal or interest do not occur. The LRP contract period will not be modified or extended as a result of LWOP or a break in service. Penalties assessed participants as a result of NIH administrative complications to maintain a current payment status may not be considered for reimbursement.

LRP payments are NOT retroactive. Loan repayment for fiscal year 2005 will commence after a loan repayment contract has been executed, which is expected to be no earlier than July 2005.

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs.

This program is subject to OMB clearance under the requirements of the Paperwork Reduction Act of 1995. The OMB approval of the information collection associated with the HDR–LRP expires on December 31, 2004. The Catalog of Federal Domestic Assistance number for the Health Disparities LRP is 93.307.

Dated: November 19, 2004.

Elias A. Zerhouni,

Director, NIH.

[FR Doc. 04–26366 Filed 11–29–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Paul Calabresi Award for Clinical Oncology PAR–04–096.

Date: January 20, 2005.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Robert Bird, PhD, Scientific Review Administrator, Resources and Training Review Branch, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., MSC 8328, Room 8113, Bethesda, MD 20892–8328, 301–496–7978, *birdr@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 22, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–26364 Filed 11–29–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group.

Date: December 14, 2004.

Time: 3 p.m. to 5 p.m.

Agenda: Update on NCI Listens and Learns Operations; Update on NCI Listens and Learns Summit and Discussion; Update on NCI Promotion Efforts; Update on NCI Listens and Learns Evaluation Plan and Discussion; Public Comment; Next Steps.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Nancy Caliman, Executive Secretary, Office of Liaison Activities, National Institutes of Health, National Cancer Institute, 6116 Executive Boulevard, Suite 220, MSC8324, Bethesda, MD 20892, (301) 496–0307, *calimann@mail.nih.gov*.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/dclg/dclg.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 22, 2004.

LaVerne Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–26365 Filed 11–29–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel ZAA1 EE (02)—Application Reviews.

Date: November 29, 2004.

Time: 9 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: Dorita Sewell, PhD, Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Office of Extramural Research, 5635 Fishers Lane, Bethesda, MD 20892–9304, (301) 443–2890, *dsewell@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel ZAA1 HH (03)—Application Reviews.

Date: December 3, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: Jeffrey I. Toward, PhD, Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Extramural Project Review Branch, OSA, 5635 Fishers Lane, Bethesda, MD 20892–9304, (301) 435–5337, *jtoward@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel ZAA1 HH (07)—U18 Cooperative Agreement Applications.

Date: December 6, 2004.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Fishers Building—MSC 9304, 5635 Fishers Lane, Suite 3033, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jeffrey I. Toward, PhD, Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Extramural Project Review Branch, OSA, 5635 Fishers Lane, Bethesda, MD 20892–9304, (301) 435–5337, *jtoward@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: November 22, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–26360 Filed 11–29–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed 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 Mental Health Special Emphasis Panel Dissertation Research Grants.

Date: December 10, 2004.

Time: 11:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Aileen Schulte, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1225, *aschulte@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: November 22, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–26361 Filed 11–29–04; 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 Review of One Unsolicited K22 Application.

Date: December 14, 2004.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Quirijn Vos, 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, *qvos@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 22, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–26362 Filed 11–29–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, R03 Telephone SEP.

Date: December 10, 2004.

Time: 1 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Division of Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Hua-Chuan Sim, MD, Health Science Administrator, National Library of Medicine, Extramural Programs, Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: November 22, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–26363 Filed 11–29–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4910–N–25]

Notice of Proposed Information Collection for Public Comment; Management Operations Certification

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* January 31, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Aneita Waites, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Aneita Waites, (202) 708–0713, extension 4114, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Management Operations Certification.

OMB Control Number: 2535–0106.

Description of the Need for the Information and Proposed Use: To meet the requirements of the Public Housing Assessment System (PHAS) rule, the Department has developed the management operations template that public housing agencies (PHAs) use to annually submit electronically specific management information to HUD. HUD uses the management operations information it collects from each PHA to assist in the evaluation and assessment of the PHAs' overall condition. Requiring PHAs to report electronically has enabled HUD to provide a more comprehensive assessment of the PHAs receiving federal funds from HUD.

Agency Form Number, if Applicable: Form HUD–50072.

Members of Affected Public: Public housing agencies.

Estimation of the Total Number of Hours Needed To Prepare the Information Collection Including Number of Respondents: The estimated number of respondents is 3,174 PHAs that submit one certification annually. The average number for each PHA response is 1.147 hours, for a total reporting burden of 3,643 hours.

Status of the Proposed Information Collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: November 22, 2004.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. E4–3376 Filed 11–29–04; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed Low Effect Habitat Conservation Plan for Whiskey Creek Bald Eagle Nest Site in Tillamook County, OR

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; receipt of application.

SUMMARY: This notice advises the public that Mick and Donna Ghormley, Ken Bilyeu, and Forrest Dickerson (Applicants) have applied to the Fish and Wildlife Service (Service or ''we'') for an incidental take permit (ITP), pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The requested 25-year permit would authorize the incidental take of the federally-listed as threatened bald eagle (*Haliaeetus leucocephalus*), associated with the lawful construction of three residential homes, associated utilities, access driveways, and human-use activities adjacent to a nest tree. The property is located adjacent to Netarts Bay, Tillamook County, Oregon.

We are requesting comments on the permit application and on whether the proposed Habitat Conservation Plan (HCP) qualifies as a ''low effect'' HCP, eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended. We explain the basis for this possible determination in a draft Environmental Action Statement (EAS), which is also available for public review.

DATES: Written comments must be received by 5 p.m. on December 30, 2004.

ADDRESSES: Comments should be addressed to Kemper McMaster, State Supervisor, Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Ave., Suite 100, Portland, Oregon, 97266; facsimile (503) 231–6195.

FOR FURTHER INFORMATION CONTACT: Richard Szlemp, Fish and Wildlife Biologist (*see* **ADDRESSES**), or telephone (503) 231–6179.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals wishing copies of the application, proposed HCP, or EAS, should contact the Service by telephone (*see* **FOR FURTHER INFORMATION CONTACT**) or by letter (*see* **ADDRESSES**). Copies of the subject documents also are available for public inspection during regular business hours at the Oregon Fish and Wildlife Office (*see* **ADDRESSES**).

Background

Section 9 of the Act and its implementing regulations prohibit the take of animal species listed as endangered or threatened. Under the Act, the following activities are defined as take: to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). However, under section 10(a) of the Act, the Service may issue permits to authorize incidental take of listed animal species. ''Incidental take'' is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32. The Applicants are seeking a permit for the incidental take of the bald eagle during the life of the permit.

Proposed covered activities under this HCP include construction of three conventional homes, associated utilities, access driveways and parking areas, and activities associated with occupation of the homes. The proposed three residential lots (lot 400, approx. 0.52 acre; lot 500, approx. 0.43 acre; and lot 201, approx. 4.3 acres) are platted in a subdivision. The Whiskey Creek bald eagle nest tree occurs on lot 400. The nest was discovered in 2001 and has been monitored for the past 4 years. There have been no chicks or eggs observed to date.

The proposed minimization and mitigation measures include protecting all but one of the 26 suitable bald eagle perch trees (greater than 30 inches in diameter) on the three lots. The proposed access road to lot 201 comes close to four other large trees and excavation near these trees will be minimized as practicable. The landowner plans to preserve the remaining large trees as a management action. This proposal has the potential to impact nesting success of the Whisky Creek bald eagle pair by loss of the nest tree and/or disturbance (*i.e.*, noise and human activity). The possibility that the nest tree will be lost is related to the likelihood that the proposed houses and utilities will cut the roots of the nest tree or the adjacent large spruce tree. All excavations for house foundations, driveways and septic fields are proposed outside of the estimated root zones for each tree (50 feet from the nest tree). Outdoor construction will be prohibited from 15 January to 15 August of any year if the nest is successful and

from 15 January to 15 May of any year if the nest is not successful.

Approval of the HCP may qualify as a categorical exclusion under NEPA, as provided by the Departmental Manual (516 DM 2, Appendix 1, and 516 DM 6, Appendix 1) and as a ''low effect'' plan as defined by the Habitat Conservation Planning Handbook (Service, November 1996). Determination of low effect HCPs is based upon the plan having: Minor or negligible effects on federally-listed, proposed, and candidate species and their habitats; minor or negligible effects on other environmental values or resources; and impacts that considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to the environmental values or resources which would be considered significant. If it is found to qualify as a low-effect HCP, further NEPA documentation would not be required.

Public Review and Comment

If you wish to comment on the permit application, draft Environmental Action Statement or the proposed HCP, you may submit your comments to the address listed in the **ADDRESSES** section of this document. We will evaluate this permit application, associated documents, and comments submitted thereon to determine whether the permit application meets the requirements of section 10(a) of the Act and NEPA regulations. 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. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety. If we determine that the requirements are met, we will issue an incidental take permit under section 10(a)(1)(B) of the Act to the Applicants for the take of the bald eagle, incidental to otherwise lawful activities in accordance with the terms of the permit. We will not make our final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

Pursuant to an order issued on June 10, 2004, by the District Court for the District of Columbia in *Spirit of the Sage Council* v. *Norton*, Civil Action No. 98–1873 (D. D.C.), the Service is enjoined from issuing new section 10(a)(1)(B) permits or related documents containing ''No Surprises'' assurances, as defined by the Service's ''No Surprises'' rule published at 63 FR 8859 (February 23, 1998), until such time as the Service adopts new permit revocation rules specifically applicable to section 10(a)(1)(B) permits in compliance with the public notice and comment requirements of the Administrative Procedures Act. This notice concerns a step in the review and processing of a section 10(a)(1)(B) permit and any subsequent permit issuance will be in accordance with the Court's order. Until such time as the June 10, 2004, order has been rescinded or the Service's authority to issue permits with ''No Surprises'' assurances has been otherwise reinstated, the Service will not approve any incidental take permits or related documents that contain ''No Surprises'' assurances.

The Service provides this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6).

Dated: November 2, 2004.

Daniel H. Diggs,

Acting Deputy Regional Director, Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 04–26418 Filed 11–29–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare Comprehensive Conservation Plan and Environmental Assessment for the Lacreek National Wildlife Refuge Complex, Martin, SD

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of intent.

SUMMARY: The U.S. Fish and Wildlife Service intends to gather information necessary to prepare a Comprehensive Conservation Plan and associated environmental documents for the Lacreek National Wildlife Refuge Complex located in South Dakota. The Service is issuing this notice in compliance with its policy to advise other organizations and the public of its intentions and to obtain suggestions and information on the scope of issues to be considered in the planning process.

DATES: Written comments should be received by January 1, 2005.

ADDRESSES: Comments and request for more information should be sent to: Lacreek NWR Planning Project, HC5 Box 114, Martin, South Dakota 57551.

FOR FURTHER INFORMATION CONTACT: Linda Kelly, Refuge Planner, Division of Refuge Planning, P.O. Box 25486, DFC, Denver, Colorado 80225; (303) 236–8132.

SUPPLEMENTARY INFORMATION: The Service has initiated comprehensive conservation planning for the management of its natural resources. The complex consists of Bear Butte NWR, located southeast of Sturgis, South Dakota, and Lacreek NWR and Wetland Management District located near Martin, South Dakota in the southwestern part of the state.

Comprehensive planning will develop management goals, objectives, and strategies to carry out the purposes of the Complex's refuges and Wetland Management District, and comply with laws and policies governing refuge management and public use of refuges. Opportunities will be provided for public input at open houses to be held near Lacreek and Bear Butte Refuges.

All information provided voluntarily by mail, phone, or at public meetings becomes part of the official public record (*i.e.* names, addresses, letters of comment, input recorded during meetings). If requested under the Freedom of Information Act by a private citizen or organization, the Service may provide copies of such information. The environmental impact assessment of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, Executive Order 12996, and the National Wildlife Refuge System Improvement Act of 1997, and Service policies and procedures for compliance with those regulations.

Dated: October 15, 2004.

Sharon R. Rose,

Acting Regional Director, Region 6, Denver, Colorado.

[FR Doc. 04–26422 Filed 11–29–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1320–EL, WYW150210]

Notice of Competitive Coal Lease Sale Reoffer, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Competitive Coal Lease Sale Reoffer.

SUMMARY: Notice is hereby given that certain coal resources in the NARO North Tract described below in Campbell County, WY, will be reoffered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*).

DATES: The lease sale reoffer will be held at 10 a.m., on Wednesday, December 29, 2004. Sealed bids must be submitted on or before 4 p.m., on Tuesday, December 28, 2004.

ADDRESSES: The lease sale reoffer will be held in the First Floor Conference Room (Room 107), of the Bureau of Land Management (BLM) Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003. Sealed bids must be submitted to the Cashier, BLM Wyoming State Office, at the address given above.

FOR FURTHER INFORMATION CONTACT: Mavis Love, Land Law Examiner, or Robert Janssen, Coal Coordinator, at 307–775–6258, and 307–775–6206, respectively.

SUPPLEMENTARY INFORMATION: This coal lease sale reoffer is being held in response to a lease by application (LBA) filed by Powder River Coal Company of Gillette, WY. The NARO North Tract was previously offered on August 31, 2004, and the one bid received at that sale was rejected because it did not meet the BLM's estimate of fair market value. The coal resources to be reoffered consist of all reserves recoverable by surface mining methods in the following-described lands located in southeastern Campbell County approximately 6 miles east of State Highway 59, 10 miles south of State Highway 450, and adjacent to the Piney Canyon and Antelope County Roads:

T. 42 N., R. 70 W., 6th PM, Wyoming
Sec. 28: Lots 5–16;
Sec. 29: Lots 5–16;
Sec. 30: Lots 9–20;
T. 42 N., R. 71 W., 6th P.M, Wyoming
Sec. 25: Lots 5–15;
Sec. 26: Lots 7–10;
Sec. 35: Lots 1, 2, 7–10, 15, 16.
Containing 2,369.38 acres, more or less.

The tract is adjacent to Federal and State of Wyoming coal leases to the south held by the North Antelope Rochelle Mine. It is also adjacent to additional unleased Federal coal to the east, north, west, and southwest.

All of the acreage offered has been determined to be suitable for mining. Features such as the county roads and pipelines can be moved to permit coal recovery. Numerous oil and/or gas wells have been drilled on the tract. The estimate of the bonus value of the coal lease will include consideration of the future production from these wells. An economic analysis of this future income stream will determine whether a well is bought out and plugged prior to mining or re-established after mining is completed. The surface estate of the tract is owned by the North Antelope Rochelle Mine and the United States.

The tract contains surface mineable coal reserves in the Wyodak seam currently being recovered in the adjacent, existing mine. On the tract, the Wyodak seam is generally a single seam averaging about 77 feet thick. A small area in the northeast corner of the LBA has a split off the bottom of the main seam. This split starts at about 17 feet thick but thins rapidly to the east. The interburden increases to about 15 feet thick at the eastern edge of the LBA. The overburden depths range from about 290 to 365 feet thick on the LBA.

The tract contains an estimated 324,627,000 tons of mineable coal. This estimate of mineable reserves includes the main Wyodak seam and split mentioned above, but does not include any tonnage from localized seams or splits containing less than 5 feet of coal. It does not include the State of Wyoming coal, although these reserves are expected to be recovered by the NARO mine. The total mineable stripping ratio (BCY/Ton) of the coal is about 3.9:1. Potential bidders for the LBA should consider the recovery rate expected from thick seam and multiple seam mining.

The NARO North LBA coal is ranked as subbituminous C. The overall average quality on an as-received basis is 9090 BTU/lb with about 0.25% sulfur and 2.4% sodium in the ash. These quality averages place the coal reserves at the top of the range of coal quality currently being mined in the Wyoming portion of the Powder River Basin.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets or exceeds BLM's estimate of the fair market value of the tract. The minimum bid for the tract is $100 per acre or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The bids should be sent by certified mail, return receipt requested, or be hand delivered. The Cashier will issue a receipt for each hand-delivered bid. Bids received after 4 p.m., on Tuesday, December 28, 2004, will not be considered. The minimum bid is not intended to represent fair market value. The fair market value of the tract will be determined by the Authorized Officer after the sale. The lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre, or fraction thereof, and of a royalty payment to the United States of 12.5 percent of the value of coal produced by strip or auger mining methods and 8 percent of the value of the coal produced by underground mining methods. The value of the coal will be determined in accordance with 30 CFR 206.250.

Bidding instructions for the tract offered and the terms and conditions of the proposed coal lease are available from the BLM Wyoming State Office at the addresses above. Case file documents, WYW150210, are available for inspection at the BLM Wyoming State Office.

Phillip C. Perlewitz,

Acting Deputy State Director, Minerals and Lands.

[FR Doc. 04–26448 Filed 11–29–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–0777–XZ–241A]

Notice of Meeting, Front Range Resource Advisory Council (Colorado)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Front Range Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held January 5, 2005 from 9:15 a.m. to 4 p.m.

ADDRESSES: Holy Cross Abbey Community Center, 2951 E. Highway 50, Canon City, Colorado 81212.

FOR FURTHER INFORMATION CONTACT: Ken Smith, (719) 269–8500.

SUPPLEMENTARY INFORMATION: The 15 member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the Royal Gorge Field Office and San Luis Valley, Colorado. Planned agenda topics include: Manager updates on current land management issues; a presentation and discussion on Tamarisk control and local BLM weed control efforts and a briefing on power transmission and supply across public land. All meetings are open to the

public. The public is encouraged to make oral comments to the Council at 9:30 a.m. or written statements may be submitted for the Councils consideration. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Summary minutes for the Council Meeting will be maintained in the Royal Gorge Field Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting. Meeting Minutes are also available at: *http://www.blm.gov/rac/co/frrac/co_fr.htm*.

Dated: November 18, 2004.

Linda McGlothlen,

Acting Royal Gorge Field Manager.

[FR Doc. 04–26420 Filed 11–29–04; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review; Claims of U.S. Nationals Against Albania.

The Department of Justice (DOJ), Foreign Claims Settlement Commission (FCSC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public. This proposed information collection was previously published in the **Federal Register** Volume 69, Number 156, on page 50215, on August 13, 2004, allowing for a 60 day comment period. The purpose of this notice is to allow for an additional 30 days for public comment until December 30, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* Claims of U.S. Nationals Against Albania.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number FCSC 1–04, Foreign Claims Settlement Commission.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Others: Not-for-profit institutions. The Information collected will be used as the basis for determining the entitlement of claimants to awards payable by the Department of the Treasury, out of the Albania Compensation Fund in claims of U.S. nationals against the Albanian government for expropriation of property.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 one-time annual respondents at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 200 annual burden hours.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: November 23, 2004.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 04–26353 Filed 11–29–04; 8:45 am]

BILLING CODE 4410–BA–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11211, et al.]

Proposed Exemptions; J.C.O., Inc. Retirement Plan and Trust (the Plan)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No._____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to:

moffitt.betty@dol.gov, or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

J.C.O., Inc. Retirement Plan and Trust (the Plan) Located in Boulder, CO

[Application No. D–11211]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[1] If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the cash sale (the Sale) of certain improved real property (the Property) to the Plan by Cynthia G. Vogels, a party in interest with respect to the Plan and a 50% shareholder of J.C.O., Inc. (JCO), the Plan sponsor; and (2) the simultaneous lease (the New Lease) of the Property by the Plan to JCO, provided that the following conditions are met:

(a) The terms and conditions of the transactions are not less favorable to the Plan than those obtainable in an arm's length transaction between unrelated parties.

(b) The Sale is a one-time transaction for cash.

(c) The acquisition price that is paid by the Plan for the Property is not more than the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale.

(d) The value of the Property that is acquired by the Plan does not exceed 20% of the Plan's assets at the time of the Sale nor throughout the duration of the New Lease.

(e) The Plan does not pay any real estate fees, commissions or other expenses with respect to the transactions.

(f) Mrs. Vogels indemnifies and holds the Plan harmless from any liability arising from the Sale, including but not limited to hazardous materials found on the Property, violation of zoning or land use regulations or restrictions, and violations of federal, state or local environmental regulations or laws.

(g) The New Lease is a triple-net lease under which the JCO, as lessee, pays, in addition to the base rent, all expenses incurred by the Property, including all taxes and assessments, insurance, maintenance, utilities and any other expenses.

(h) The annual rental amount under the New Lease is the higher of $40,800 or the fair market rental value of the Property, as determined by a qualified, independent appraiser on the date the New Lease is entered into by the parties.

(i) The rent payable under the New Lease is adjusted every year after the first 12 months of the New Lease by an amount equal to the percentage increase in the Consumer Price Index for All Urban Consumers for the Denver Metropolitan Area (the CPI). In addition, the Property is reappraised every five years by a qualified, independent appraiser selected by the Plan's independent fiduciary and the independent fiduciary then adjusts the rental for the Property based on the appraisal. However, in no event is the rent adjusted below the rental amount paid for the preceding year.

(j) The Plan is represented at all times and for all purposes with respect to the Sale and the New Lease by a qualified, independent fiduciary.

(k) The Plan's independent fiduciary has negotiated, reviewed, and approved the terms and conditions of the Sale and the New Lease and has determined that the transactions are appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries.

(l) The Plan's independent fiduciary monitors and enforces compliance with the terms and conditions of the New Lease and this exemption throughout the duration of the New Lease.

Summary of Facts and Representations

1. JCO is a Colorado corporation and maintains its principal place of business in Boulder, Colorado. JCO publishes the Journal of Clinical Orthodontics, a monthly professional journal. The stock of JCO is owned equally by Cynthia G. Vogels and her husband, David S. Vogels III (the Vogels). Mrs. Vogels is Secretary/Treasurer of JCO and Mr. Vogels is President and Managing Editor of JCO.

2. The Plan is a defined benefit pension plan. The Plan was established by JCO on January 1, 1978. As of December 31, 2003, the Plan had total assets of $4,916,444, and as of October 27, 2003, the Plan had eight participants,[2] including the Vogels and Eugene and Jacqueline Gottlieb, the parents of Mrs. Vogels. Mr. Vogels and Mr. Gottlieb are trustees of the Plan and are the only persons who have investment discretion over any assets involved in the exemption transactions.

3. Mrs. Vogels is the owner of certain improved real property that is located at 1828 Pearl Street in Boulder, Colorado. The Property is a rectangular, 7,000 square-foot site, measuring 50 feet by 140 feet, and is improved with a 1,630 square-foot, brick building which was constructed, according to Boulder County records, in 1898, and includes a 352 square-foot brick garage. Mrs. Vogels originally acquired the Property by a series of gifts beginning November 30, 1978, and ending December 27, 1996, from her father, Eugene L. Gottlieb. The Property is currently leased (the Current Lease) to JCO. The

[1] For purposes of this proposed exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

[2] There are six active participants and two participants who are separated and are either receiving benefits or have elected to defer the receipt of benefits.

Current Lease is a 15 year, triple net lease which commenced on October 1, 2003 and expires on November 30, 2018. Under the Current Lease, JCO is required to pay Mrs. Vogels all expenses relating to the Property, including property taxes, utilities, insurance, and janitorial services. The annual rental under the Current Lease is $40,800, payable in monthly installments of approximately $3,400.

4. The Property was initially appraised by Russell C. Bowie, MAI, Certified General Appraiser, a qualified, independent real estate broker/appraiser affiliated with Bowie Appraisal Service located in Boulder, Colorado. Mr. Bowie states that he has been active in Colorado real estate since 1972 and is experienced in sales, leasing, management, and appraisal of commercial, industrial, and residential properties. Mr. Bowie represents that he has specialized in commercial and industrial appraisals for the past 20 years, including easements, rights-of-way, standardized form reports, and narrative appraisal reports, and has completed over 700 appraisals of commercial properties in Boulder County. In addition, Mr. Bowie certifies that he has no present or prospective interest in the Property and has no personal interest or bias with respect to the parties involved.

In an independent appraisal report dated April 28, 2003 (the 2003 Appraisal), Mr. Bowie placed the fair market value of the Property in fee simple [3] at $525,000 as of April 15, 2003 utilizing the Sales Comparison Approach to valuation. As of the same date, and as confirmed in a letter from Mr. Bowie dated July 15, 2004 (the July 2004 Letter), Mr. Bowie also placed the annual fair market rental value of the Property at $27,710 as of April 15, 2003 or approximately $2,309 per month on a triple net basis.

In a full, updated independent appraisal report dated June 3, 2004 (the 2004 Appraisal), Mr. Bowie determined that the fair market value of a leased fee interest [4] in the Property was $530,000 as of June 2, 2004, utilizing the Sales Comparison Approach to valuation. As of the same date, Mr. Bowie also placed the monthly fair market rental value of the Property at $2,037.50 and its annual fair market rental value at $24,450.[5] Mr. Bowie will update the 2004 Appraisal on the date of the Sale and New Lease transactions.

5. Due to the recent rapid appreciation of real estate within Boulder, Colorado, the applicant has deemed acquisition of the Property by the Plan to be a better long-term investment on behalf of the Plan than most other available investments. Therefore, the applicant proposes that the Plan purchase the Property from Mrs. Vogels for $530,000 or an amount that is not more than the fair market value of the Property on the date of the Sale, as determined by a qualified, independent appraiser. Contemporaneously with the Plan's purchase of the Property, the Current Lease will be assigned by Mrs. Vogels to the Plan to reflect the new ownership of the Property, at which time the New Lease will go into effect.

The terms of both the Sale and the New Lease will be not less favorable to the Plan than those obtainable in an arm's length transaction between unrelated parties. In this regard, the Sale will be a one-time transaction for cash. The Property will not represent more than 20% of the Plan's assets. The Plan will not be required to pay any real estate fees, commissions or other expenses in connection with its acquisition of the Property or with the administration of the New Lease. Finally, Mrs. Vogels will indemnify and hold the Plan harmless from any liability arising from the Sale, including but not limited to, hazardous materials found on the Property, violation of zoning or land use regulations or restrictions, and violations of federal, state or local environmental regulations or laws.

Accordingly, the applicant requests an administrative exemption from the Department with respect to the Sale of the Property by Mrs. Vogels to the Plan and the leasing of the Property by the Plan to JCO under the New Lease. The exemption will also be subject to the terms and conditions described herein.

6. The proposed New Lease will have the same terms as the Current Lease. In this regard, it will have a 15 year term and be triple-net to the Plan. Under such circumstances, JCO will pay the Plan all expenses related to the Property including real estate taxes, insurance, common area maintenance and property management. In addition, JCO will continue to pay the Plan an initial monthly rent of $3,400 per month, or $25 per square foot, based upon the rental amount paid currently by JCO. This amounts to an additional $10 per square foot over the fair market rental value of the Property as reported in Mr. Bowie's 2004 Appraisal.

The rent payable under the New Lease will be increased, if necessary, to equal the fair market rental value of the Property, as determined by a qualified, independent appraiser at the time it becomes effective. Then, every year after the first 12 months of the New Lease, the rent will be adjusted in accordance with the CPI. In no event will the rent be adjusted below the $25 per square foot presently being paid by JCO to Mrs. Vogels.

In addition, the New Lease requires that the Property be reappraised every five years by a qualified, independent appraiser selected by the Plan's independent fiduciary. The independent fiduciary will then adjust the rental for the Property based on the independent appraisal. In no event will the rent be adjusted below the rental amount paid for the preceding year.

Although the New Lease contains no renewal provisions, it will terminate upon any termination of the Plan. However, such termination must be determined, by the qualified, independent fiduciary, to be in the best interests of the Plan and its participants and beneficiaries.

7. An independent party, Mr. Richard B. Hayes, began his service as the Plan's independent fiduciary in August 2003, followed by a formal agreement to serve as the Plan's independent fiduciary executed on October 27, 2003. Mr. Hayes represents that he is qualified to act as an independent fiduciary for the Plan because he has been a certified public accountant for twenty-nine years. Mr. Hayes further states that he serves as a trustee for three different trusts with assets of $4.2 million, and as manager of a family partnership with assets of $3 million. In such capacities, Mr. Hayes states that he is responsible for determining the appropriate investment objectives and policies for such entities, monitoring and reviewing the investment strategy and asset allocation of such trusts and partnership, and making investment decisions for such entities. Mr. Hayes confirms that he is independent of JCO, and, in any one year, he will derive less than one percent of his gross annual income from JCO.

8. Mr. Hayes, acting as the Plan's independent fiduciary, represents that the transactions are in the interests of the Plan participants and beneficiaries, and comply with the Plan's investment

[3] The Property was not encumbered by the Current Lease at the time of the 2003 Appraisal.

[4] At the time of the 2004 Appraisal, the Property was encumbered by the Current Leases.

[5] In the 2004 Appraisal, Mr. Bowie explained that the fair market value of the Property increased from the value reached in the 2003 Appraisal due to a strong market for small office properties in Boulder that can be owner-occupies. Mr. Bowie also explained that the fair market rental value decreased from the value reached in the 2003 Appraisal due to abnormally high vacancy rates for office space in the surrounding area resulting from the strained economic conditions in the current market.

objectives and policies. In reaching this conclusion, Mr. Hayes represents that he has analyzed the Plan's overall investment portfolio as well as the Plan's liquidity and diversification requirements. In addition, after reviewing both the 2003 Appraisal and the 2004 Appraisal and considering the New Lease terms compared to similar leases in the area, Mr. Hayes also certifies that the terms of the New Lease, including CPI adjustments to the rent, are no less favorable to the Plan than those obtainable in an arm's length transaction with unrelated parties.

In addition, Mr. Hayes represents that he will monitor the performance of the New Lease over its term and has been empowered to direct the Plan trustee to divest the Plan of the Property in the event it exceeds 20% of the Plan's assets when added to other transactions with interested parties to the transactions. Moreover, Mr. Hayes states that he has also been empowered to direct the Plan trustee to sell the Property or take other appropriate legal action against JCO in the event JCO defaults on the New Lease.

9. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The terms and conditions of the transactions will not be less favorable to the Plan than those the Plan would receive in an arm's length transaction with an unrelated party.

(b) The Sale will be a one-time transaction for cash.

(c) The acquisition price that is paid by the Plan for the Property will be no more than the fair market value of the Property, as determined by a qualified, independent appraiser on the date of the Sale.

(d) The value of the Property that is acquired by the Plan will not exceed 20% of the Plan's assets at the time of the Sale and throughout the duration of the New Lease.

(e) The Plan will not pay any real estate fees, commissions or other expenses with respect to the transactions.

(f) Mrs. Vogels will indemnify and hold the Plan harmless from any liability arising from the Sale, including but not limited to hazardous materials found on the Property, violation of zoning or land use regulations or restrictions, and violations of federal, state or local environmental regulations or laws.

(g) The annual rental amount under the New Lease will be the higher of $40,800 or the fair market rental value of the Property, as determined by a qualified, independent appraiser on the date the New Lease is entered into by the parties.

(h) The New Lease will be a triple net lease under which the JCO, as lessee, will pay, in addition to the base rent, all expenses incurred by the Property, including all taxes and assessments, insurance, maintenance, utilities and any other expenses.

(i) The rent payable under the New Lease will be adjusted every year after the first 12 months of the New Lease by an amount equal to the percentage increase in the CPI. In addition, the Property will be reappraised at least every five years by a qualified, independent appraiser selected by the Plan's independent fiduciary and the independent fiduciary will then adjust the rental for the Property based on the appraisal. However, in no event will the rent be adjusted below the rental amount paid for the preceding year.

(j) The Plan will be represented at all times and for all purposes with respect to the Sale and the New Lease by a qualified, independent fiduciary.

(k) The Plan's independent fiduciary has negotiated, reviewed, and approved the terms and conditions of the Sale and the New Lease and has determined that the transactions are appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries.

(l) The Plan's independent fiduciary will monitor and enforce compliance with the terms and conditions of the New Lease and this exemption throughout the duration of the New Lease.

FOR FURTHER INFORMATION CONTACT: Ms. Anna M.N. Mpras of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

Wheeling-Pittsburgh Corporation and Wheeling Pittsburgh Steel Corporation Located in Wheeling, WV

[Application No. L–11200]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a)(1)(E), 407(a)(2), 406(b)(1), and 406(b)(2) of the Act, shall not apply to: (1) The initial acquisition of 4,000,000 shares on August 1, 2003 (Initial Shares) of publicly traded Employer Stock through the in-kind contribution of such Initial Shares, and subsequent in-kind acquisitions of Employer Stock, by the Wheeling-Pittsburgh Steel Corporation Retiree Benefits Plan (the Plan) for the purpose of pre-funding welfare benefits provided by the Plan; (2) the holding by the Plan of Employer Stock acquired pursuant to the contributions; and (3) the extension of credit between Wheeling Pittsburgh Corporation (WPC), Wheeling-Pittsburgh Steel Corporation (WPSC) and the Plan, which will occur in conjunction with WPC's and WPSC's contributions of Employer Stock and cash for the benefit of the retirees, provided that the following conditions are satisfied:

(a) An Independent Fiduciary will represent the Plan and its participants and beneficiaries for all purposes related to such contributions for the duration of the Plan's holding of such Employer Stock and will have sole responsibility relating to the acquisition, holding, disposition, ongoing management, and voting of Employer Stock. The Independent Fiduciary will authorize the Trustee to accept or dispose of Employer Stock only after such Independent Fiduciary determines, at the time of each transaction, that such transaction is feasible, in the interest of the Plan, and protective of the participants and beneficiaries of such Plan, subject to the terms of the Registration Rights Agreement, Stock Transfer Restriction and Voting Agreement;

(b) The appropriate fair market value of any Employer Stock contributed by WPC and WPSC to the Trust will be established by the Independent Fiduciary;

(c) The Plan or Trust incurs no fees, costs or other charges (other than those described in the Engagement Letter Agreement and the Trust Agreement) as a result of any of the transactions described herein;

(d) The terms of any transactions between the Plan and the Companies will be no less favorable to the Plan than terms negotiated at arm's length under similar circumstances between unrelated third parties;

(e) Employer Stock contributed in-kind to the Plan will be held in a separate account under a Trust which is qualified under section 501(c)(9) of the Code;

(f) The Committee maintains, for a period of six years from the date of the initial acquisition of shares by the Plan and from the date of any subsequent contributions of Employer Stock, any and all records necessary to enable the persons described in paragraph (g) below to determine whether the conditions of this exemption have been met, except that: (1) If the records necessary to enable the persons described in paragraph (g) to determine

whether the conditions of the exemption have been met are lost or destroyed, due to circumstances beyond the control of the plan fiduciary, then no prohibited transaction will be considered to have occurred solely on the basis of unavailability of those records; and (2) no party in interest other than the Committee shall be subject to the civil penalty that may be assessed under section 502(i) of the Act if the records are not maintained, or are not available for examination as required by paragraph (g) below;

(g)(1) Except as provided below in paragraph (g)(2) and notwithstanding any provisions of subsections 504(a)(2) and (b) of the Act, the records referred to in paragraph (f) above shall be unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department;

(B) The USWA or any duly authorized representative of the USWA; and

(C) Any participant or beneficiary of the Plan, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in subparagraphs (B) and (C) of this paragraph (g) shall be authorized to examine the trade secrets of WPC or WPSC or commercial or financial information that is privileged or confidential.

Definitions

(a) For purposes of this exemption, the term ''Independent Fiduciary'' means a fiduciary with respect to the Plan who is: (1) Independent of and unrelated to WPC, WPSC or its affiliates; and (2) appointed to act on behalf of the Plan with respect to the acquisition, holding, management, and disposition of the shares. In this regard, the fiduciary will not be deemed to be independent of and unrelated to WPC and WPSC if: (1) Such fiduciary directly or indirectly controls, is controlled by or is under common control with WPC or WPSC; (2) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this proposed exemption; except that the Independent Fiduciary may receive compensation for acting as an Independent Fiduciary from WPC in connection with the transactions contemplated herein if the amount or payment of such compensation is not contingent upon or in any way affected by the Independent Fiduciary's ultimate decision, and (3) the annual gross revenue received by the Independent Fiduciary, during any year of its engagement, from WPC exceeds one percent (1%) of the Independent Fiduciary's annual gross revenue from all sources (for federal income tax purposes) for its prior tax year;

(c) The term ''Initial Shares'' means the 4,000,000 shares of common stock of WPC that were contributed to the Trust on August 1, 2003.

(d) The term ''Participant'' shall mean former employees of WPC, WPSC and its subsidiaries who separated from service from USWA-represented bargaining units and who are designated as beneficiaries of the newly-created WPSC Retiree Benefit Plan, as well as any dependent, surviving spouse or other beneficiary of a bargaining unit retiree who is entitled to receive benefits under the Plan.

(e) The term ''Plan'' refers to the Wheeling-Pittsburgh Steel Corporation Retiree Benefits Plan. The Plan is an employee welfare benefit plan established and maintained by the Committee.

(f) The term ''Shares'' or ''Employer Stock'' means shares of publicly traded common stock of WPC.

(g) The term ''Trust'' means a Code section 501(c)(9) trust which is established for the purpose of funding life, sickness, accident, and other welfare benefits for the participants and beneficiaries of the Plan.

(h) ''USWA'' shall mean the United Steelworkers of America, AFL–CIO–CLC.

Summary of Facts and Representations

1. Wheeling-Pittsburgh Corporation (WPC), the parent company of Wheeling-Pittsburgh Steel Corporation (WPSC), is a metal products company with 3,100 employees in facilities located in Steubenville, Mingo Junction, Yorkville, and Martins Ferry, Ohio; Beech Bottom and Follansbee, West Virginia; and Allenport, Pennsylvania. WPC owns a 50% equity interest in Ohio Coatings Company and a 35.7% equity interest in Wheeling-Nisshin, Inc. WPC is the holding company for WPSC, its wholly owned operating subsidiary. WPSC is located in Wheeling, West Virginia, and produces carbon flat rolled products for the construction, container, appliance, automotive, and other markets. WPSC's products include sheet products, such as hot rolled, cold rolled, and hot dipped galvanized steel. The proposed exemption is requested on behalf of the applicants, WPC and WPSC (collectively, the Companies), whose former employees are covered under the recently established WPSC Retiree Benefit Plan.

2. WPC and WPSC filed for Chapter 11 bankruptcy protection in November 2000 and operated under bankruptcy protection until August 1, 2003. According to the applicants, WPC and WPSC provided retiree health benefits to an estimated 10,000 participants and beneficiaries under a predecessor retiree health plan. While under bankruptcy protection, WPSC maintained post-retirement benefits (as defined in Section 1114(a) of the Bankruptcy Code) for its USWA-represented retirees in accordance with an existing collective bargaining agreement. However, the applicants represent that WPC and WPSC could not emerge from bankruptcy as a viable integrated steel company while also maintaining the existing welfare benefit programs.

3. A key issue in the negotiation between the Companies and the USWA was the extent to which the Companies could satisfy the claims of current and future retirees who would lose their welfare benefits post bankruptcy. On October 1, 2003, in accordance with both section 1114(e) of the Bankruptcy Code and the plan of reorganization, the Companies terminated all existing welfare benefit programs, and established a new retiree medical insurance Plan, the Wheeling-Pittsburgh Steel Corporation Retiree Benefits Plan, pursuant to a new collective bargaining agreement (CBA or 2003 Settlement Agreement) on the same date. Thus, the termination of benefits under the predecessor retiree health plan was coincident with the implementation of the Plan. The applicants state that both the Companies and the USWA recognize that the establishment of the Plan was the only viable alternative for funding welfare benefits for current and future retirees. According to the applicants, terminating the predecessor retiree health plan was the only financially viable option because of cash scarcity and the inability of WPSC to adequately fund existing and future obligations under the predecessor plan. The applicants state that during the pendency of the bankruptcy, the Companies and the Union agreed to numerous modifications in an effort to address the Companies' cash shortage caused by continuing operating losses. In October 2001, the Union agreed to temporarily modify its agreement during bankruptcy to provide for, among other things, reductions of wages and medical benefits to active and retired employees in exchange for improvement in wages and pension benefits for hourly employees upon emergence from bankruptcy protection. The Companies estimate that this agreement, together with related reductions in compensation for salaried employees, reduced cash

advances for wages, salaries, and other benefits by more than $47 million during the period of October 1, 2001 through December 31, 2002.

4. The Companies emergence from bankruptcy was dependent on the achievement of a number of interrelated agreements among its creditors, lenders, interested government agencies, and unionized employees. In particular, on July 30, 2003, members of the USWA successfully negotiated a new post-reorganization collective bargaining agreement with WPC and WPSC.[6] The applicants represent that this CBA provided for: wage concessions; workforce reductions of both hourly and salaried employees; discontinuance of WPSC's participation in the WHX Corporation defined benefit pension plan which covered, among others, substantially all of the employees of WPSC; and the termination of all predecessor existing retiree medical and life insurance programs and the implementation of the new retiree health Plan to satisfy existing and future claims of retirees who lost their welfare benefits in connection with the reorganization. An exemption is needed because the transactions that are intended to adequately fund the Plan will result in violations of sections 406(a)(1)(E), 407(a)(2), 406(b)(1) and 406(b)(2) of the Act.

5. After several months of arms length negotiations, on October 1, 2003, WPC, WPSC, and the USWA announced the establishment of the Plan. The Plan provides retiree health and death benefits to retirees.[7] The Plan will be funded through a separate Trust designed to meet the requirements contained in section 501(c)(9) of the Code pertaining to voluntary employees' beneficiary associations (VEBAs).[8]

The Trustee, Wesbanco Bank, Inc., a West Virginia banking corporation, shall hold the assets and income of the Trust Fund for the exclusive purpose of providing welfare benefits to participants and beneficiaries in accordance with the Plan. According to the applicants, the Trustee has no discretionary authority with respect to the Employer Stock and shall hold the Employer Stock in one or more segregated accounts and shall be subject to direction by the Independent Fiduciary with respect to the acquisition, management, disposition, and voting of such Employer Stock.[9] The applicants represent that the Trustee shall be responsible only for the management and disbursement of amounts from the Trust Fund in accordance with the Trust Agreement.

6. The applicants note that the transactions described herein require the oversight of an Independent Fiduciary. In this regard, the Employer Stock will be managed by an Independent Fiduciary, U.S. Trust, who is independent of WPC, WPSC, and the Trustee, and shall have exclusive authority with respect to the acquisition, management, and disposition (including the valuation of the shares) of the shares of stock contributed to the Plan, subject to the provisions of the Stock Transfer Restriction and Voting Agreement of August 1, 2003 (Stock Agreement), and the Registration Rights Agreement of August 1, 2003 (RRA). The applicants note that the Independent Fiduciary's sole responsibilities were to (i) conduct a due diligence review of the proposed transaction; (ii) negotiate such additional terms or different terms on behalf of the Plan as it deems necessary, and; (iii) determine whether to cause the Plan to participate in the proposed transaction.

Prospectively, the Independent Fiduciary shall have sole authority and control with respect to the Employer Stock, including authority to direct the trustee, to effect (directly or indirectly) any purchase, sale, exchange, or liquidation of the stock and to enter into any agreements relating to the stock for the benefit of the Plan.[10] The applicants represent that the Independent Fiduciary is not responsible for any assets of the Plan except the management of the Employer Stock. Additionally, the investment of the proceeds of the sale, exchange, or liquidation of the stock shall be the responsibility of the other fiduciaries.

The Companies will provide the Independent Fiduciary with access to all information that the Independent Fiduciary reasonably requires pertaining to the Employer Stock, including but not limited to financial statements, annual reports, materials filed with the Securities and Exchange Commission, and independent research and reports.

The Independent Fiduciary has notified the Department that since August 1, 2003 it has: (1) Conducted a due diligence review of the proposed contribution of WPC stock to the Plan; (2) made a determination to cause the Plan to accept the contribution of Employer Stock, subject to negotiated terms, including the Registration Rights Agreement, Stock Transfer Restriction and Voting Agreement; and (3) managed the Employer Stock that was contributed to the Plan, in accordance with the terms of the Registration Rights Agreement, and Stock Transfer Restriction and Voting Agreement.

In March 2004, the Independent Fiduciary filed Form 144 with the Securities and Exchange Commission evidencing its intent to sell Employer Stock pursuant to Rule 144 under the Securities Act of 1933. The Independent Fiduciary sold 42,000 shares of Employer Stock from March 25, 2004 to April 20, 2004 at an average share price of $20.84 pursuant to Rule 144.

In June 2004, WPC advised the Independent Fiduciary of its intent to register the offer and sale of Employer Stock (the Offering). The Registration Statement permitted the Plan to participate as a selling shareholder for up to 357,600 shares of Employer Stock held by the Plan. In September 2004, the

[6] Pursuant to the CBA, the USWA is responsible for appointing and retaining half of the fiduciaries (other than the Independent Fiduciary) that will administer the Plan. The transactions that are subject of this proposed exemption were negotiated by the USWA and both WPSC and WPC.

[7] The applicants represent that retirees covered by the plan will include: (1) Retirees from USWA represented bargaining units (and their dependents) who, by reason of any collectively bargained agreement between the Union and the companies, were eligible for retiree insurance benefits as of the effective Plan date, and are adversely affected by the elimination of such coverage; (2) employees from USWA represented bargaining units who retire from the Companies after the Plan's effective date in connection with the window buyout program with eligibility for retiree insurance coverage as of the effective date who were adversely affected by the elimination of such coverage, to the extent of their eligibility as of that date and; (3) employees not described above from USWA represented bargaining units who retire from the Companies, who were eligible for retiree insurance coverage and who were adversely affected by the elimination of such coverage.

[8] The applicants represent that the Plan is an employee welfare benefit plan within the meaning of section 3(1) of ERISA.

[9] Under ERISA section 403(a)(1), a plan may expressly provide that a trustee is subject to the direction of a named fiduciary who is not a trustee, in which case the trustee shall be subject to proper directions of such fiduciary which are made in accordance with the terms of the plan and which are not contrary to the Act. 29 U.S.C. 1103(a)(1).

[10] The Department notes that the Act's general standards of fiduciary conduct would apply to the transactions permitted by this proposed exemption, if granted. In this regard, section 404 of the Act requires, among other things, a fiduciary to discharge his or her duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, the Independent Plan Fiduciary must act prudently with respect to: (1) The decision to enter into the transactions described herein; and (2) the negotiation of the terms of such a transaction, including, among other things, the specific terms by which the Plan will acquire, hold, and sell WPC stock. The Department further emphasizes that it expects the Independent Fiduciary, prior to authorizing each acquisition of WPC stock and any sale of such stock, to fully understand the benefits and risks associated with such transactions.

Independent Fiduciary concluded it was in the best interest of the Plan to offer and sell 357,600 shares of Employer Stock in the Offering. The proceeds of the Plan's sale of 357,600 shares of Employer Stock ($9,774,102) and $596,298 (reimbursement of underwriting commissions and fees) were credited to the Plan's account with the Trustee of the Plan. The applicants represent that WPC reimbursed the Plan for the underwriting commissions from the sale of Employer Stock although WPC was not obligated to pay for the underwriting commissions.

7. The Plan will be administered by a VEBA Committee consisting of four individuals, two appointed by the Companies and two appointed by the Union.[11] Both the Union and the Companies will also have the power to remove and replace the committee members which they appoint.[12] The applicants state that the Committee members will serve without compensation from the Plan. The VEBA Committee shall serve as the named fiduciary and plan administrator. According to the Retiree Benefit Trust Agreement under which the Plan operates, the VEBA Committee shall have the discretion to determine the benefits to be provided to the beneficiaries of the Retiree Trust, including the form and amount of such benefits, and the contributions that the beneficiaries will make to help defray the cost of their coverage.[13] The VEBA Committee may also retain independent service providers that it deems necessary to administer the Plan and Trust.

8. The transactions described in this proposed exemption involve the pre-funding of the Plan by the Companies. The CBA is conditioned on the Companies' contribution to the Plan of employer stock representing forty (40%) percent of WPC fully-diluted common equity and certain cash payments described further in this proposed exemption. The Employer Stock is common stock issued by WPC. The applicants represent that the Employer Stock is widely held, publicly traded, and may be freely exchanged on the Nasdaq National Market with the sticker symbol WPSC. Based on an independent appraisal, before WPSC became a publicly traded company, the estimated equity value of WPC was between $111 million and $176 million, resulting in an estimated equity value for the new Plan between $44.4 and $70.4 million from the 40% contribution of the shares.[14]

Initial Company Contributions

9. The applicants represent that on August 1, 2003, WPC issued to the Trust 4,000,000 shares of common stock of WPC (Initial Contribution) representing 40% of its fully diluted common equity as of the reorganization date. Pursuant to the terms of the CBA, the parties agreed that 2,000,000 shares of the Initial Contribution may be applied by WPC, in its discretion, as a credit against future stock contributions that WPC may be required to make in connection with the variable profit-based contribution schedule described in further detail below. Furthermore, the Initial Contribution of shares are maintained in a separate sub-account within the Plan and will be utilized for the exclusive benefit of the retirees.[15]

On October 1, 2003 and continuing for five months thereafter, WPC contributed cash to the Plan at the rate of $1.5 million per month. This $7.5 million is held by the Plan as a credit against contributions that WPC and WPSC will make in connection with the Variable Profit-Based Contribution schedule set forth below for that five-month period. According to the applicants, if the Variable Profit-Based Contributions total an amount less than $7.5 million, the balance of the credit shall be applied against future contributions made by WPC and WPSC in equal installments over the succeeding 18 months. To the extent the Variable Profit-Based Contributions for this period total an amount greater than $7.5 million, the difference was paid by WPC and WPSC to the Plan no later than April 1, 2004.

On April 1, 2004, and continuing for 6 months thereafter, WPC began making contributions of $300,000 in cash to the Plan on the first day of each month. This total contribution of $1.8 million was also credited against future Variable Profit-Based Contributions in equal installments over the period commencing on April 1, 2005 and ending on October 1, 2006.

Variable Profit-Based Contribution Schedule

10. Subject to the possibility of credits described above, WPC and WPSC shall make quarterly contributions to the Plan in accordance with the following formula, to be known as the Variable Profit-based Contribution Schedule:

(i) 40% of operating cash flow, between $16 and $24 dollars of operating cash flow per ton shipped, payable to the Plan in cash.[16]

(ii) 12% of operating cash flow, above $24 and no more than $65 dollars of operating cash flow per ton shipped, payable to the Plan at WPC or WPSC's discretion in cash or common stock of WPC.

(iii) 25% of operating cash flow, above $65 dollars of operating cash flow per ton shipped, payable to the Plan in cash.

(iv) In addition, within 45 days after the end of each fiscal quarter, a special contribution will be made by WPC and WPSC to the Plan equal to 15% of operating cash flow below $30 of operating cash flow per ton shipped, payable at the Companies' discretion in cash or common stock of WPC.

The applicants represent that any contribution of shares made in satisfaction of an obligation to

[11] According to the Retiree Benefit Trust Agreement, the VEBA Committee shall serve as the named Fiduciary and the Plan Administrator.

[12] The Companies intend that the Committee constitute the joint board of employer and employee representatives within the meaning of section 302(c)(5) of the Labor Management Relations Act, 1947, as amended, and section 3(16)(B) of ERISA.

[13] The Wheeling-Pittsburgh Steel Corporation Retiree Benefits Plan Trust states that the VEBA Committee shall have the discretion to determine the amount of benefits to be paid to beneficiaries provided that the beneficiaries shall make a contribution to the cost of their coverage. In making such decisions, the VEBA Committee may take into account all relevant circumstances, including, without limitation, the degree to which beneficiaries may have alternative coverage sources, as well as the resources of the Trust based upon Company contributions.

[14] The independent appraisal was performed by Conway, Del Genio, Gries & Co., LLC for the purpose of developing an estimated reorganized enterprise value for WPC and WPSC.

[15] The applicants represent that if the proposed exemption is not granted the Trust would likely hold no shares of Employer Stock. WPC requests exemptive relief because of its belief that contributions of WPC stock would not meet the requirements for the acquisition of ''employer securities'' under section 408(e) of the Act. In this regard, 407(d)(5) of the Act provides that term ''qualifying employer security'' means an employer security that is stock or a marketable obligation (as defined in subsection (e)). After December 17, 1987, in the case of a plan, other than an individual account plan, stock is considered a ''qualifying employer security'' only if such stock satisfies the requirements of subsection 407(f)(1) of the Act. Section 407(f)(1) of the Act provides that stock satisfies such requirement if, immediately following the acquisition of such stock—(A) no more than 25 percent of the aggregate amount of stock of the same class issued and outstanding at the time of acquisition is held by the plan, and (B) at least 50 percent of the aggregate amount referred to in subparagraph (A) is held by the persons independent of the issuer. In this regard, after all the contributions of Employer Stock is contributed to the Plan, substantially more than 25 percent of all issued and outstanding shares of WPC will be held by the Plan. Moreover, the requirement that 50 percent of the shares of WPC be held by persons independent of the issuer would not be met.

[16] The applicants define operating cash flow as earnings before interest and taxes, calculated on a consolidated basis in accordance with Generally Accepted Accounting Principles (GAAP). The applicants also define tons shipped in the variable profit-based schedule as tons of steel products sold to third parties.

contribute cash or shares at their discretion, in compliance with the Variable Profit-Based Contribution Schedule, will be valued based on the closing price of the shares for the ten (10) trading days immediately preceding the date on which the shares are contributed to the Plan.

11. The applicants represent that substantially all of the Plan assets will consist of shares until July 30, 2005 because the cash contributions will be applied to the payment of benefits under the Plan. The initial contribution of shares will represent forty percent (40%) of the Companies' fully-diluted common equity, and additional contributions of shares may be made in an aggregate amount of not more than ten percent (10%) of the Companies' fully-diluted common equity.

Stock Transfer Restriction

12. Upon consummation of the plan of reorganization on August 1, 2003, WPSC issued to the Trust 4,000,000 shares (Initial Shares) of Employer Stock representing forty percent (40%) of its fully-diluted common equity as of the reorganization date. Pursuant to the terms of the CBA, the parties agreed that the Initial Shares contributed to the Trust shall be subject to the following conditions:

(i) The applicants represent the Employer Stock contributed to the Plan and managed by the Independent Fiduciary is subject to a two-year disposition restriction which commenced on August 1, 2003 (First Restriction Period) so long as the Plan holds five percent or more of the Initial Shares then held by the Trust; provided that WPC may, in the exercise of its reasonable discretion, consent to the disposition of some portion of the shares during the First Restriction Period by the Independent Fiduciary to the extent that such disposition will not disrupt an orderly market for the shares or impair the Company's ability to retain or make use of its net operating loss carryover.

(ii) During the two-year period commencing on the day following the last day of the First Restriction Period described in (i) above, the Independent Fiduciary shall be permitted to dispose of the Initial Shares then held by the Trust, provided that (1) the Independent Fiduciary shall not dispose of more than one half of the Initial Shares then remaining in the Trust within any consecutive 12 month period, and (ii) the Independent Fiduciary shall dispose of such Initial Shares in a manner reasonably calculated not to disrupt the orderly trading of the WPC's common stock (such as, by way of example, by causing the disposition to occur in several transactions over a period of weeks or months). However, WPC, in the exercise of reasonable discretion, may consent to the disposition of a greater number of Initial Shares during any consecutive 12 month period, to the extent that such disposition will not disrupt the orderly trading of WPC's common stock.

(iii) *Amendment to the CBA.* The applicants represent that on March 24, 2004, both the USWA, WPSC, and WPC amended the CBA to allow an exception from the two-year disposition restriction of selling shares of WPC common stock. The amendment authorizes 400,000 (10%) of the initial shares of WPC stock to be sold in the open market. The applicants represent that the Independent Fiduciary has commenced selling some of the Initial Shares held by the Plan in the open market. According to the applicants, as of March 31, 2004, 22,000 of the Initial Shares have been sold by the Plan at an average price of $20.44 per share. The agreement further provides for the crediting of a portion of the proceeds from the sale of the Initial Shares (the amount in excess of $6.3 million) against future Variable Profit-Based Contributions. WPC is further obligated within 45 days after December 31, 2007 to make an additional contribution of shares of WPC Employer Stock to the Plan equal to the difference between (i) 400,000 shares and (ii) the number of shares of WPC common stock issued to the Plan pursuant to the Variable Profit-Based Contribution Schedule. The agreement further provides that WPC is permitted to apply 1.6 million of the Initial Shares, plus the number of shares determined under the preceding sentence, as a credit against future stock contributions described in the Variable Profit-Based Contribution Schedule.

According to the applicants, the principal purpose of the first restriction is to assure that the Companies' net operating loss carry-over of approximately $180,000,000 will continue to be available to the Companies following bankruptcy. The Companies note that this is a valuable asset that will enable them to operate without an excessive tax burden for a number of years.[17]

The applicants represent that the purpose of the Second Restriction Period is to achieve a reasonable balance between the Plan's need to liquidate its holdings of WPC stock and the adverse impact on the stock price caused by the selling of stock. To that end, the Second Restriction Period is designed to assure that the Initial Shares can be liquidated, but only at a rate that does not unduly impair the market price for WPC stock.

Voting Agreement and Registration Rights Agreement

13. Pursuant to the terms of the CBA, the parties agreed that the Initial Shares contributed to the Trust shall be subject to the following conditions:

(i) The Initial Shares are subject to a voting agreement that requires the Independent Fiduciary to abstain from voting 1,300,000 of the Initial 4,000,000 Shares contributed to the Plan for the election of the WPC's Board of Directors. The applicants represent that the Independent Fiduciary agrees that, for so long as it holds any Initial Shares, it shall abstain from voting 1,300,000 of the shares (or such number of Initial Shares as the Independent Fiduciary may then hold, if less than 1,300,000) for the election of any Board of Directors and will only be able to exercise voting rights on 2.7 million of the Initial Shares.[18] The agreement reflects that two of the Company's eleven directors will be appointed by the USWA.

(ii) *Registration Rights Agreement (the RRA).* The Registration Rights Agreement was entered into on August 1, 2003, by WPC, the Trustee and the Independent Fiduciary in order to comply with necessary securities laws. The applicants represent that because the Plan initially owns 40% of all the outstanding shares of WPC's Employer Stock, an agreement of this type is necessary to comply with applicable securities laws. The Independent Fiduciary is authorized to direct the Trustee to deliver to WPC written notice of a request to cause Registrable Securities to be registered for resale under the Securities Act of 1933. Registrable Securities are any or all of the shares of Employer Stock held by

[17] The applicants represent that in order to preserve the net operating loss carryover, the change in ownership of the Companies upon their emergence from bankruptcy must qualify under section 382(1)(5) of the Code, which requires, among other things, that the shareholders and creditors of the old loss corporation (*i.e.*, WPC), determined immediately before the ownership change, own after such ownership change and as a result of being shareholders or creditors immediately before such change, stock representing at least 50% of the voting power and at least 50% of the value of the stock of WPC. Moreover, the applicants represent that the USWA-represented retirees, who will be entitled to the stock in satisfaction of their medical claims, will be considered creditors of the old loss corporation for purposes of section 382(1)(5) of the Code.

[18] The applicants represent that any reference to a particular number of shares shall be automatically and proportionately adjusted in the event of any stock dividend, stock split, stock combination, recapitalization, or other similar event affecting the Employer Stock.

the Trustee, including but not limited to the Initial Shares. The portion of Employer Stock subject to this ''demand registration'' right is limited at any time to the number of shares that the Independent Fiduciary may sell under the Stock Transfer Restriction and Voting Agreement. Additionally, the Plan is also given ''piggyback'' registration rights under the Registration Rights Agreement, under which it may include a portion of its shares in any registration of shares that the company undertakes for its own account or that of any other stockholder.

14. In summary, the applicants represent that with respect to the transactions described herein, the requirements of section 408(a) of the Act have been met because:

(a) An Independent Fiduciary will represent the Plan and its participants and beneficiaries for all purposes relating to the acquisition, holding, disposition, ongoing management, and voting of Employer Stock. The Independent Fiduciary will authorize the Trustee to accept or dispose of Employer Stock only after such Independent Fiduciary determines, at the time of the transaction, that such transaction is feasible, in the interest of the Plan, and protective of the participants and beneficiaries of such Plan, subject to the terms of the Registration Rights Agreement, and Stock Transfer Restriction and Voting Agreement;

(b) The appropriate fair market value of any Employer Stock contributed by WPC and WPSC to the Trust will be established by the Independent Fiduciary;

(c) The Plan or Trust incurs no fees, costs or other charges (other than those described in the Engagement Letter Agreement and the Trust Agreement) as a result of any of the transactions described herein; and

(d) The terms of any transactions between the Plan and the Companies will be no less favorable to the Plan than terms negotiated at arm's length under similar circumstances between unrelated third parties.

Notice to interested Persons: The applicants represent that notice will be provided by first class mail by WPSC within ten (10) calendar days from the date of this publication of this Notice in the **Federal Register** to each of its retirees, surviving spouses, and/or dependents covered under the Plan. Such notice will contain a copy of the Notice, as it appears in the **Federal Register** on the date of the publication, and a copy of the supplemental statement, as required, pursuant to 29 CFR 2570.43(b)(2), which will advise such interested persons of their right to comment and to request a hearing.

FOR FURTHER INFORMATION CONTACT: Brian J. Buyniski of the Department, telephone (202) 693–8545. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 23rd day of November, 2004.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 04–26355 Filed 11–29–04; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,290]

Butler Manufacturing Company, Subsidiary of Bluescope Steel, Ltd., Buildings Division, Fabricated Frames Production, Including Support Personnel, Galesburg, IL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on September 28, 2004, applicable to workers of Butler Manufacturing Company, subsidiary of BlueScope Steel, Ltd, Buildings Division, Fabricated Frames Production, Galesburg, Illinois. The notice was published in the **Federal Register** on October 4, 2004 (69 FR 62463).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of pre-engineered metal buildings.

New information shows that worker separations have occurred involving the support personnel of the Fabricated Frames Production, Butler Manufacturing Company, Galesburg, Illinois. These workers provided support services for the production of pre-engineered metal buildings systems produced by the subject firm.

Accordingly, the Department is amending this certification to extend coverage to the support personnel of the Fabricated Frames Production, Butler Manufacturing Company, Galesburg, Illinois.

The intent of the Department's certification is to include all workers of Butler Manufacturing Company, Fabricated Frames Production, including support personnel, Galesburg, Illinois who were adversely affected by a shift in production to Mexico.

The amended notice applicable to TA–W–55,290 is hereby issued as follows:

All workers of Butler Manufacturing Company, subsidiary of BlueScope Steel, Ltd., Buildings Division, Fabricated Frames Production, including support personnel, Galesburg, Illinois working at Butler Manufacturing Company, subsidiary of BlueScope Steel, Ltd., Buildings Division, Fabricated Frames Production, Galesburg, Illinois (TA–W–55,290), who became totally or partially separated from employment on or after July 16, 2003, through September 28, 2006, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed in Washington, DC this 12th day of November, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–3365 Filed 11–29–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,903]

Butternut Bakery, Div. of Interstate Bakeries Grand Rapids, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 2, 2004 in response to a worker petition on behalf of workers at Butternut Bakery, division of Interstate Bakeries, Grand Rapids, Michigan.

This worker group was the subject of a recent investigation, the result of which is a negative determination issued on October 28, 2004 (TA–W–55,745). The subject bakery has been closed since December, 2003 and hence there is no new information which would result in a reversal of the Department's recent determination. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 18th day of November 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–3372 Filed 11–29–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,799]

CDI Professional Services, Workers at General Dynamics Land Systems California Technical Center, Goleta, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 14, 2004 in response to a petition filed on behalf of workers at CDI Professional Services employed at General Dynamics Land Systems, California Technical Center, Goleta, California. Workers were largely test engineers and R&D specialists who worked at the California Technical Center supporting production of armored vehicle components at a General Dynamics Land Systems facility in Alabama.

The Department of Labor issued negative determinations applicable to the workers of General Dynamics Land Systems, California Technical Center, Goleta, California (TA–W–55,658), which included leased workers of CDI Professional Services at the Center. No new information or change in circumstances is evident which would result in a reversal of the Department's previous determinations. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 17th day of November 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–3369 Filed 11–29–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,943]

Clinton Tube (USA), Plattsburgh, NY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on November 5, 2004 in response to a petition filed by a company official on behalf of workers at Clinton Tube (USA), Plattsburgh, New York.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 17th day of November 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–3374 Filed 11–29–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,893]

Fiskars Brands, Inc., Soc Wausau, Wausau, WI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 1, 2004, in response to a petition filed by the company on behalf of workers at Fiskars Brands, SOC Wausau, Wausau, Wisconsin.

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 at Washington, DC this 18th day of November, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–3371 Filed 11–29–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,982]

Fort Hill Lumber Company Including Leased Workers of Express Personnel Services/Brown & Dutton, Grand Ronde, OR; Notice of Revised Determination on Reopening

The Department on its own motion reopened the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination signed on July 29, 2004 was based on the finding that imports of various solid wood products, such as dimensional lumber did not contribute importantly to worker separations at the subject plant and no shift of production to a foreign source occurred. The denial notice was published in the **Federal Register** on August 20, 2004 (69 FR 51715).

After the negative determination was issued the Department received additional results of the survey of one of the subject firm's major customers. The survey was initiated but not completed during the original investigation. Upon further review and contact with this customer, it was revealed that the customer significantly increased its import purchases of various solid wood products while decreasing its purchases from the subject firm during the relevant period. The imports accounted for a meaningful portion of the subject plant's lost sales and production.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of Section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Fort Hill Lumber Company, Grande Ronde, Oregon contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

''All workers of Fort Hill Lumber Company, Including leased workers of Express Personnel Services/Brown & Dutton, Grand Ronde, Oregon who became totally or partially separated from employment on or after May 20, 2003 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed in Washington, DC, this 9th day of November 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–3364 Filed 11–29–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-55,520A]

Galey & Lord Industries, Inc., Greensboro Textile Administration LLC, Greensboro Corporate Office, Greensboro, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on September 20, 2004, applicable to workers of Galey & Lord Industries, Inc., Greensboro Corporate Office, Greensboro, North Carolina. The notice was published in the **Federal Register** on October 4, 2004 (69 FR 62463).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of cotton fabric.

New information shows that Greensboro Textile Administration LLC is a wholly owned subsidiary of Galey & Lord Industries, Inc. Workers separated from employment at the subject firm had their wages reported under a separated unemployment insurance (UI) tax account for Galey & Lord Industries, Inc., Greensboro Textile Administration LLC.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Galey & Lord Industries, Inc., Greensboro Textile Administration LLC, Greensboro Corporate Office, Greensboro, North Carolina who were adversely affected by increased imports.

The amended notice applicable to TA–W–55,520A is hereby issued as follows:

''All workers of Galey & Lords Industries, Inc., Greensboro Textile Administration LLC, Greensboro Corporate Office, Greensboro, North Carolina, who became totally or partially separated from employment on or after August 24, 2003, through September 20, 2006, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC this 12th day of November 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–3367 Filed 11–29–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W 55,925]

Lakewood Dyed Yarns, a Subsidiary of Mastercraft Fabrics, LLC; Joan Fabrics Corporation, Cramerton, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 4, 2004 in response to a petition filed by a company official on behalf of workers at Lakewood Dyed Yarns, a subsidiary of Mastercraft Fabrics, LLC, Joan Fabrics Corporation, Cramerton, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 15th day of November 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–3373 Filed 11–29–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II,

Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 10, 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 10, 2004.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed in Washington, DC this 19th day of November, 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 11/01/2004 and 11/12/2004]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
55,892	Learjet, Inc. (Wkrs)	Indianapolis, IN	11/01/2004	10/27/2004
55,893	Fiskars Brands, Inc. (Comp)	Wausau, WI	11/01/2004	10/29/2004
55,894	Delta Mills (Wkrs)	Wallace, SC	11/01/2004	10/27/2004
55,895	Rosemont Analytical, Inc. (Comp)	Orrville, OH	11/01/2004	10/21/2004
55,896	Pliant Corporation (Comp)	Harrisville, RI	11/01/2004	10/28/2004
55,897	Arrow Electronics, Inc. (Comp)	Sun Valley, CA	11/01/2004	10/29/2004
55,898	Glenshaw Glass Co. (GMP)	Glenshaw, PA	11/01/2004	10/11/2004
55,899	Merchants Metal (State)	San Fernando, CA	11/02/2004	10/13/2004
55,900	Alan White Company, Inc. (SCIW)	Stamps, AR	11/02/2004	10/29/2004
55,901	Raltron Electronics (State)	Miami, FL	11/02/2004	11/01/2004
55,902	Lion Ribbon Company, Inc. (Comp)	Anniston, AL	11/02/2004	11/01/2004
55,903	Butternut Bakery (Wkrs)	Grand Rapids, MI	11/02/2004	10/09/2004
55,904	Agilent Technologies, Inc. (Comp)	Ft. Collins, CO	11/02/2004	10/19/2004
55,905	Media Copy—Infodisc Technologies (Wkrs)	El Paso, TX	11/02/2004	11/01/2004
55,906	Osram Sylvania (Wkrs)	Danvers, MA	11/02/2004	10/19/2004
55,907	GlaxoSmithKline (Comp)	Bristol, TN	11/02/2004	10/11/2004
55,908	Boericke and Tafel (State)	Santa Rosa, CA	11/03/2004	10/21/2004
55,909	Turbon International (Comp)	York, PA	11/03/2004	11/03/2004
55,910	Temoinsa Corporation (Comp)	Platsburgh, NY	11/03/2004	10/27/2004
55,911	C-Tech Industries (Wkrs)	Humboldt, IA	11/03/2004	11/01/2004
55,912	Better Bags, Inc. (State)	Houston, TX	11/03/2004	10/29/2004
55,913	Harper's Pet Products, Inc. (Wkrs)	Chicago, IL	11/04/2004	11/03/2004
55,914	American Uniform Co. (Comp)	Cleveland, TN	11/04/2004	11/03/2004
55,915	Freudenberg Nonwovens (State)	Madison, TN	11/04/2004	11/02/2004
55,916	Furnlite, Inc. (Comp)	Fallston, NC	11/04/2004	10/26/2004
55,917	Precision Dynamics Corp. (Comp)	San Fernando, CA	11/04/2004	10/21/2004
55,918	Alpha Spectra (State)	Grand Junction, CO	11/04/2004	11/02/2004
55,919	Macsteel Service Centers USA (Comp)	Liverpool, NY	11/04/2004	10/18/2004
55,920	Village Smith Furniture Makers (State)	Chattanooga, TN	11/04/2004	11/02/2004
55,921	AgWorld Supports Systems, LLC (Comp)	Hermiston, OR	11/04/2004	11/02/2004
55,922	Oldham Saw Company (The) (Comp)	W. Jefferson, NC	11/04/2004	10/25/2004
55,923	OOCL (USA), Inc. (Wkrs)	Bothell, WA	11/04/2004	11/01/2004
55,924	Castle, Inc. (State)	Greenville, SC	11/04/2004	11/02/2004
55,925	Lakewood Dyes Yarns (Comp)	Cramerton, NC	11/04/2004	10/25/2004
55,926	Emerson Heating Products (Comp)	Vernon, AL	11/04/2004	11/03/2004
55,927	A-One Hosiery (Wkrs)	Ft. Payne, AL	11/04/2004	11/02/2004
55,928	Perky Cap Co. (Wkrs)	Eatonton, GA	11/04/2004	11/01/2004
55,929	Agere Systems (IBEW)	Orlando, FL	11/04/2004	10/27/2004
55,930	TriVirix (Comp)	Salt Lake City, UT	11/04/2004	10/26/2004
55,931	Advanced Energy Industries, Inc. (Comp)	Ft. Collins, CO	11/04/2004	11/01/2004
55,932	Leon-Ferenback, Inc. (Comp)	Johnson City, TN	11/04/2004	10/13/2004
55,933	Artisan Software Tools, Inc. (Comp)	Portland, OR	11/04/2004	11/03/2004
55,934	Bogner of America (Comp)	Newport, VT	11/04/2004	11/02/2004
55,935	Faces by Bacon (DHS) Veneer (Wkrs)	Thomasville, NC	11/04/2004	10/27/2004
55,936	3M Center (State)	St. Paul, MN	11/05/2004	10/28/2004
55,937	Cherry Corporation (Wkrs)	Waukegan, IL	11/05/2004	11/03/2004
55,938	Concept Plastics, Inc. (Comp)	High Point, NC	11/05/2004	11/04/2004
55,939	Gemcor (IAMAW)	W. Seneca, NY	11/05/2004	10/26/2004
55,940	D and B (Wkrs)	Bethlehem, PA	11/05/2004	11/02/2004
55,941	Gerity-Schultz Corp. (Comp)	Toledo, OH	11/05/2004	10/12/2004
55,942	Sierra Pine Ltd. (State)	Springfield, OR	11/05/2004	10/29/2004
55,943	Clinton Tube (USA) (Comp)	Plattsburgh, NY	11/05/2004	10/26/2004
55,944	Premium Allied Tool (Wkrs)	Owensboro, KY	11/05/2004	10/29/2004
55,945	Louisville Ladder (Comp)	Louisville, KY	11/05/2004	11/01/2004
55,946	Sanmina-SCI Corp. (Wkrs)	Salem, NH	11/05/2004	11/03/2004
55,947	Wehadkee Yarn Mills (Wkrs)	Roanoke, AL	11/08/2004	11/04/2004

APPENDIX—Continued

[Petitions instituted between 11/01/2004 and 11/12/2004]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
55,948	Dixie Wrap (State)	Taylor, SC	11/08/2004	10/28/2004
55,949	Delaware Ribbon Mfg. (UNITE)	Philadelphia, PA	11/08/2004	11/04/2004
55,950	Enefco U.S.A., Inc. (Comp)	Auburn, ME	11/08/2004	11/04/2004
55,951	Graham Packaging (USWA)	New Kensington, PA	11/08/2004	11/05/2004
55,952	CMD Apparel (Comp)	Detroit, AL	11/08/2004	11/05/2004
55,953	Stimson Lumber Company (Comp)	Forest Grove, OR	11/09/2004	11/05/2004
55,954	Standard Register (Comp)	Radcliff, KY	11/09/2004	11/05/2004
55,955	Atlas Copco Compressors, Inc. (Wkrs)	Holyoke, MA	11/09/2004	11/08/2004
55,956	Sunrise Apparel, Inc. (Comp)	Concord, NC	11/09/2004	11/05/2004
55,957	Stellar Engineering, Inc. (State)	Warren, MI	11/09/2004	11/04/2004
55,958	LSI Logic (Wkrs)	Gresham, OR	11/09/2004	11/03/2004
55,959	Sterling Chemicals, Inc. (Wkrs)	Texas City, TX	11/09/2004	11/08/2004
55,960	Hunter Technologies (Comp)	Montross, VA	11/09/2004	11/05/2004
55,961	Thomas and Betts (Comp)	Jonesboro, AR	11/09/2004	11/08/2004
55,962	Expedia Corporate Travel (State)	Bellevue, WA	11/09/2004	11/05/2004
55,963	Square D (Comp)	Lincoln, NE	11/09/2004	11/05/2004
55,964	Accountemps (State)	Palm Coast, FL	11/09/2004	11/08/2004
55,965	Accidental Anomalies, Inc. (State)	Turner, ME	11/09/2004	11/04/2004
55,966	Vesuvius USA (Comp)	Hillsboro, TX	11/09/2004	11/08/2004
55,967	Lozier Corp. (Wkrs)	Joplin, MO	11/09/2004	11/02/2004
55,968	Bernette Lingerie Corp. (Wkrs)	New Holland, PA	11/09/2004	10/28/2004
55,969	Oxford Slacks (Comp)	Monroe, GA	11/09/2004	11/05/2004
55,970	Cecil Saydah International (Wkrs)	Somerset, KY	11/09/2004	11/08/2004
55,971	Davis Sales Associates (Comp)	Hickory, NC	11/10/2004	11/02/2004
55,972	AMI Semiconductor (Wkrs)	Pocatello, ID	11/10/2004	10/30/2004
55,973	Celanese Acetate LLC (Comp)	Rock Hill, SC	11/10/2004	11/08/2004
55,974	Schnadig Corporation (Comp)	Cornelia, GA	11/10/2004	11/05/2004
55,975	Global Metal Form LLC (Comp)	Scranton, PA	11/10/2004	11/09/2004
55,976	Anna Sportswear (UNITE)	Pen Argyl, PA	11/10/2004	11/09/2000
55,977	Unifi-Kinston, LLC (Comp)	Kinston, NC	11/10/2004	11/03/2000
55,978	Shakespeare Co. Monofilament (State)	Columbia, SC	11/10/2004	11/05/2000
55,979	VF Intimates, LP (Comp)	Monroeville, AL	11/12/2004	11/10/2004
55,980	MeadWestvaco Corporation (Comp)	Chillicothe, OH	11/12/2004	11/11/2004
55,981	Cer Bros. Bag Co. (Wkrs)	New London, MO	11/12/2004	11/11/2004
55,982	Hewlett Packard (Wkrs)	Corvallis, OR	11/12/2004	11/10/2004
55,983	SEH America, Inc. (Wkrs)	Vancouver, WA	11/12/2004	11/10/2004
55,984	H E Microwave Corporation (IAMAW)	Tucson, AZ	11/12/2004	11/10/2004
55,985	Hibino Corporation of America (Comp)	Gainesville, GA	11/12/2004	11/09/2004

[FR Doc. 04–26373 Filed 11–29–04; 8:45 am]

BILLING CODE 7510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,873]

Santee Print Works, Sumter, SC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 27, 2004 in response to petition filed by a company official on behalf of workers at Santee Print Works, Sumter, 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 18th day of November, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–3370 Filed 11–29–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,746B]

Westpoint Stevens, Clemson Finishing Plant, Clemson, SC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 7, 2004 in response to a petition filed by a company official on behalf of workers at WestPoint Stevens, Clemson Finishing Plant, Clemson, South Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 16th day of November, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–26396 Filed 11–29–04; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden,

conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed new collection of the ''Survey of Workplace Violence Prevention.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before January 31, 2005.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

I. Background

The National Institute for Occupational Safety and Health (NIOSH) and the Bureau of Labor Statistics (BLS), U.S. Department of Labor (DOL), have agreed to conduct a survey to evaluate the employer's perspective regarding policies, training, and other related issues on workplace violence prevention, including risk factors associated with workplace violence and prevention strategies, in workplaces within the United States.

As an integral part of a broad-based initiative to reduce the incidence of occupational violence in the United States, NIOSH conducts, funds, and publishes research on risk factors and prevention strategies related to workplace violence. In 2002, Congress appropriated two million dollars to NIOSH and directed them ''* * * to develop an intramural and extramural prevention research program that will target all aspects of workplace violence and to coordinate its efforts with the Departments of Justice and Labor.'' A portion of the intramural funding has been allocated to conduct the Survey of Workplace Violence Prevention.

The findings of the survey will allow characterization of how the issue of workplace violence is being addressed in workplaces and may be useful to identify where educational interventions and prevention strategies are needed.

I.Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Action

Office of Management and Budget clearance is being sought for the Survey of Workplace Violence Prevention.

The NIOSH has been conducting research on workplace violence risk factors and prevention strategies for a number of years using data from NIOSH sources, the BLS, the Bureau of Justice Statistics, the National Electronic Injury Surveillance System, and others. The vast majority of the knowledge regarding workplace violence is based on information about workers who have been victims of violent incidents, both fatal and nonfatal. Very little information exists regarding policies, training, and other related issues from an employer's perspective.

To gather this information, NIOSH has elected to enter into an Interagency Agreement (IA) with the BLS. NIOSH recognizes that the BLS is an unbiased, reliable, and objective source of information and has established contacts and infrastructure to conduct such a survey.

The data collected from the Survey of Workplace Violence Prevention will be used by NIOSH to identify by industry sector (the North American Industry Classification System/NAICS) and establishment size: (1) Workplace violence prevention polices and programs, (2) training regarding workplace violence prevention, (3) risk factors associated with workplace violence, and (4) workplace violence prevention strategies.

Type of Review: New collection.

Agency: Bureau of Labor Statistics.

Title: Survey of Workplace Violence Prevention.

OMB Number: 1220–NEW.

Affected Public: Business or other for-profit; not-for-profit institutions; farms; and State, local or tribal government.

Total Respondents: 40,000.

Frequency: Nonrecurring.

Total Responses: 40,000.

Average Time Per Response: 20 minutes.

Estimated Total Burden Hours: 13,334 hours.

Total Burden Cost (Capital/Startup): $0.

Total Burden Cost (Operating/Maintenance): $0.

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

Signed in Washington, DC, this 22nd day of November, 2004.

Cathy Kazanowski,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 04–26375 Filed 11–29–04; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 1218–0069 (2005)]

Commercial Diving Operations; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comment concerning its request for an extension of the information collection requirements contained in the Commercial Diving Operations Standard (29 CFR part 1910, subpart T).

DATES: Comments must be submitted by the following dates:

Hard copy: Your comments must be submitted (postmarked or received) by January 31, 2005.

Facsimile and electronic transmission: Your comments must be received by January 31, 2005.

ADDRESSES: You may submit comments, identified by OSHA Docket No. ICR–1218–0069 (2005), by any of the following methods:

Regular mail, express delivery, hand delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). OSHA Docket Office and Department of Labor hours are 8:15 a.m. to 4:45 p.m., e.t.

Facsimile: If your comments are 10 pages or fewer in length, including attachments, you may fax them to the OSHA Docket Office at (202) 693–1648.

Electronic: You may submit comments through the Internet at *http://ecomments.osha.gov.* Follow instructions on the OSHA Web page for submitting comments.

Docket: For access to the docket to read or download comments or background materials, such as the complete Information Collection Request (ICR) (containing the Supporting Statement, OMB–83–I Form, and attachments), go to OSHA's Web page at *http://www.OSHA.gov.* In addition, comments, submissions, and the ICR are available for inspection and copying at the OSHA Docket Office at the address above. You also may contact Theda Kenney at the address below to obtain a copy of the ICR. For additional information on submitting comments, please see the ''Public Participation'' heading in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Standards and Guidance, OSHA, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submission

You may submit comments and supporting materials in response to this notice by (1) hard copy, (2) FAX transmission (facsimile), or (3) electronically through the OSHA Web page. Because of security-related problems, a significant delay may occur in receiving comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627)) for information about security procedures concerning the delivery of submissions by express delivery, hand delivery, and courier service.

All comments, submissions, and background documents are available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions posted on OSHA's Web page are available at *http://www.OSHA.gov.* Contact the OSHA Docket Office for information about materials not available through the OSHA Web page, and for assistance using the Web page to locate docket submissions.

Electronic copies of this **Federal Register** notice, as well as other relevant documents, are available on OSHA's Web page.

II. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

Subpart T (''the Subpart'') contains a number of paperwork requirements. The following paragraphs describe these reuqirements; specify who uses them, and what purpose they serve.

§ 1910.401(b). Description of the requirement. Allows employers to deviate from the requirements of the Subpart to the extent necessary to prevent or minimize a situation that is likely to cause death, serious physical harm, or major environmental damage (but not situations in which purely economic or property damage is likely to occur). Employers must notify the OSHA Area Director within 48 hours of taking such action; this notification must describe the situation responsible for the deviation and the extent of the deviation from the requirements. On request of the Area Director, employers must submit this information is writing.

Use and purpose. Employers use this provision to respond to unexpected and sudden emergencies that could cause serious injury and death to their employees, or prevent major harm to the environment. Notification allows OSHA to determine that the situation was serious and unusual, required immediate action not specified by the Subpart, and that the response was appropriate to prevent serious injury and death to employees, or major harm to the environment.

§§ 1910.410(a)(3) and (a)(4). Description of the requirements. Paragraph (a)(3) requires employers to train all dive-team members in cardiopulmonary resuscitation and first aid (*i.e.*, the American Red Cross standard couse or equivalent), while paragraph (a)(4) specifies that employers train dive-team members exposed to hyperbaric conditions, or who control exposures of other employees to such conditions, in diving-related physics and physiology.

Use and purpose. Ensures that dive-team members know how to render emergency first-aid to diving casualties, which improves treatment outcomes. Training dive-team members involved in hyperbaric operations in diving-related physics and physiology results in an understanding of how underwater barometric pressure affects the development of diving-related medical conditions such as decompression sickness (the ''bends;'' referred to hereafter as ''DCS'') and air embolism, thereby enabling theme to prevent these conditions.

§§ 1910.420(a). Description of the requirement. Under paragraph (a), employers must develop and maintain a safe-practices manual and make it available to each dive-team member at the dive location. In addition, for each diving mode used at the dive location, the manual must contain: safety procedures and checklists for diving operations; assignments and responsibilities of the dive-team members; equipment procedures and checklists; and emergency procedures for fire, equipment failures, adverse environmental conditions, and medical illness and injury.

Use and purpose. The safe-practices manual ensures that dive-team members are familiar with the employer's safety and emergency procedures, the functions each member is to perform during diving operations conducted at the dive location, and how these procedures and functions relate to the requirements of the Subpart. This knowledge enables dive-team members

to perform their diving-related tasks effectively and safely, thereby, reducing the risk of serious injury and death.

§ 1910.421(b). Description of the requirement. Under this provision, employers are to keep at the dive location a list of telephone or call numbers for the following emergency facilitates and services: An operational decompression chamber (when such a chamber is not at the dive location); accessible hospitals; available physicians and means of emergency transportation; and the nearest U.S. Coast Guard Rescue Coordination Center.

Use and purpose: This list of telephone and call numbers ensures that emergency facilities and services and available to provide prompt medical care for an injured diver.

§ 1910.421(f). Description of the requirement. Requires employers to brief dive-team members on the diving-related tasks they are to perform, safety procedures for the diving mode used at the dive location, any unusual hazards or environmental conditions likely to affect the safety of the diving operation, and any modifications to operating procedures necessitated by the specific diving operation. Before assigning diving-related tasks, employers must ask each dive-team member about their current state of physical fitness, and inform the member about the procedure for reporting physical problems or adverse physiological effects during and after the dive.

Use and purpose. This requirement updates the divers' knowledge of the diving operation, including new information regarding diving hazards and environmental conditions that may jeopardize their safety. The assessment of a diver's physical fitness to dive reduces the risk that they will experience medical problems while diving; information about the procedure used to report diving-related medical problems ensures that divers will obtain prompt treatment of these conditions, which will prevent the problems from becoming serious and life-threatening.

§ 1910.421(h). Description of the requirement. When the diving operation occurs in an area capable of supporting marine traffic and occurs from a surface other than a vessel, employers are to display a rigid replica of the international code flag ''A'' that is at least one meter in height so that it is visible from any direction; the employer must illuminate the flag during night diving operations.

Use and purpose. The flag warns transiting vessels that diving operations are underway and to avoid the diving location, thereby protecting divers from impacting with a vessel while they are underwater or swimming on the surface.

§ 1910.422(e). Description of the requirement. Employers must develop and maintain a depth-time profile for each diver that includes, as appropriate, any breathing gas changes or decompression.

Use and purpose. Informs the diver regarding the depth and time parameters of the dive, which serves as the basis for determining the decompression schedule necessary to avoid diving-related medical problems.

§§ 1910.423(b)(1)(ii) through (b)(2). Description of the requirements. Requires the employer to: Instruct each diver to report any physical symptoms or adverse physiological effects, including symptoms of DCS; advise each diver of the location of a decompression chamber that is ready for use; and alert each diver to the potential hazards of flying after diving. For any dive outside the no-decompression limits, deeper than 100 feet, or that uses mixed gas in the breathing mixture, the employer also must inform the diver to remain awake and in the vicinity of the decompression chamber that is at the dive location for at least one hour after a dive, or after any decompression or treatment associated with a dive.

Use and purpose. This information allows the diver to recognize diving-relating medical problems, receive prompt treatment for such problems at the available decompression chamber, and alerts them to a condition (*i.e.*, flying) that increases the risk of DCS. For divers involved in dives that increase the risk of DCS (*i.e.*, dives outside the no-decompression limits, deeper than 100 feet, or that used mixed gas in the breathing mixture), informing them to remain awake and near the decompression chamber for one hour after a dive, or after any decompression or treatment associated with a dive, enables them a receive prompt and effective treatment for DCS should it occur.

§ 1910.423(d). Description of the requirement. Paragraph (d)(1) specifies that employers are to record and maintain the following information for each diving operation: The names of dive-team members; date, time, and location; diving modes used; general description of the tasks performed; an estimate of the underwater and surface conditions; and the maximum depth and bottom time for each diver. In addition, for each dive outside the no-decompression limits, deeper than 100 feet, or that uses mixed gas in the breathing mixture, paragraph (d)(2) requires the employer to record and maintain the following information for each diver: Depth-time and breathing-gas profiles; decompression table designation (including any modifications); and elapsed time since the last pressure exposure when it is less than 24 hours or the repetitive dive designation. Under paragraph (d)(3), if the dive results in DCS symptoms, or the employer suspects that a diver has DCS, the employer must record and maintain a description of the DCS symptoms (including the depth and time of symptom onset) and the results of treatment.

Use and purpose: This information permits appropriate and effective treatment of a diver should DCS occur after a dive or should the diver have a relapse of DCS after initial treatment, thereby preventing the condition from resulting in a serious injury or death. Maintaining these records ensures that the information is available for use by: the party involved in treatment when the diver experiences late-onset DCS or a subsequent relapse after treatment; and the employer for assessing the DCS incident (*see* § 1910.423(e) below).

§ 1910.423(e). Description of the requirement. Requires employers to assess each DCS incident by: investigating and evaluating it based on the recorded information, consideration of the past performance of the decompression profile used, and the diver's individual susceptibility to DCS; taking appropriate corrective action to reduce the probability of a DCS recurrence; and, within 45 days of the DCS incident, preparing a written evaluation of this assessment, including any corrective action taken.

Use and purpose. A written assessment enables employers to identify salient variables in existing decompression procedures that may be responsible for the DCS incident, to document modifications of these variables that they believe will reduce the occurrence of DCS, and to evaluate the effectiveness of these modifications during subsequent diving operations. Systematic assessment of decompression procedures in this manner reduces the incidence of DCS, which improves the safety of decompression procedures used by employers and protects divers from the serious and deadly effects fo DCS.

§ 1910.430(a), (b)(4), (c)(1)(ii), (c)(3)(i), (f)(3)(ii), and (g)(2). Description of the requirements. Paragraph (a) contains a general requirement that employers must record by means of tagging or a logging system any work performed on equipment, including any modifications, repairs, tests, calibrations, or maintenance performed on the equipment. This record is to

include a description of the work, the name or initials of the individual who performed the work, and the date they completed the work. Paragraphs (b)(4) and (c)(1)(iii) require employers to test two specific types of equipment, including, respectively: the output of air compressor systems used to supply breathing air to divers for air purity every six months by means of samples taken at the connection to the distribution system; and breathing-gas hoses at least annually at one and one-half times their working pressure. Under paragraph (c)(3)(i), employers must mark each umbilical (*i.e.,* separate lines supplying air and communications to a diver, as well as a safety line, tied together in a bundle), beginning at the diver's end, in 10-foot increments for 100 feet, then in 50-foot increments. Paragraph (f)(3)(ii) mandates that employers regularly inspect and maintain mufflers located in intake and exhaust lines on decompression chambers. According to paragraph (g)(2), employers are to test depth gauges using dead-weigh testing, or calibrate the gauges against a master reference gauge; such testing or calibration is to occur every six months and when the employer finds a discrepancy larger than two percent of the full scale between any two equivalent gauges. Employers must make a record of the tests, calibrations, inspections, and maintenance performed on the equipment specified by these paragraphs in accordance with § 1910.430(a).

Use and purpose. The records required by paragraph (a) (and generated by work performed under paragraphs (b)(4), (c)(1)(ii), (f)(3)(ii), and (g)(2)) permit employers and employees to determine the operating condition of diving equipment before placing it in service. By using only equipment that these records demonstrate is in safe working order, employers and employees will prevent severe injury and death during diving operations. Additionally, marking umbilicals as required by paragraph (c)(3)(i) permits diving supervisors and the employees who are tending a diver to determine the diver's depth, which ensures that the diver undergoes proper decompression as specified by the depth-time profile of the dive; by undergoing proper decompression, the diver avoids DCS.

§§ 1910.440(a)(2) and (b). Description of the requirements. Under paragraph (a)(2) of this provision, employers must record any diving-related injuries and illnesses that result in a dive-team member remaining in hospital for at least 24 hours. This record is to describe the circumstances of the incident and the extent of any injuries or illnesses.

Paragraph (b) of this provision regulates the availability of the records required by the Subpart, including who has access to these records, the retention periods for various records, and in some cases, the final disposition of the records. Under paragraph (b)(1), employers must make any record required by the Subpart available, on request, for inspection and copying by an OSHA compliance officer or to a representative of the National Institute for Occupational Safety and Health (NIOSH). Paragraph (b)(2) specifies that employers are to provide employees, their designated representatives, and OSHA compliance officers with exposure and medical records generated under the Subpart in accordance with § 1910.1020 (''Access to employee exposure and medical records''); these records include safe-practices manuals, depth-time profiles, diving records, DCS incident assessments, and hospitalization records. This paragraph also mandates that employers make equipment inspection and testing records available to employees and their designated representative on request.

According to paragraph (b)(3), employers must retain these records for the following periods: Safe-practices manuals, current document only; depth-time profiles, until completing the diving record or the DCS incident assessment; diving records, one year, except five years when a DCS incident occurred during the dive; DCS incident assessments, five years; hospitalization records, five years; and equipment inspections and testing records (*i.e.,* current tag or log entry), until the employer removes the equipment from service. Paragraphs (b)(4) and (b)(5) specify the requirements for disposing of these records. Under paragraph (b)(4), employers are to forward to NIOSH any record with an expired five-year retention period. Paragraph (b)(5) states that employers who cease to do business must transfer records without unexpired retention dates to the successor employer who will retain them for the required period; however, when employers cease to do business without a successor employer, they must transfer the records to NIOSH.

Use and purpose. The hospitalization records required under paragraph (a)(2) will assist employers and employees, and eventually NIOSH, in determining which depth-time diving profiles and associated decompression procedures are especially hazardous, thereby permitting employers to modify these procedures to prevent DCS and other medical problems. Regarding the record-availability requirements of paragraphs (b)(1) and (b)(2), OSHA compliance officers use these records as an efficient means of assessing employer compliance with the major requirements of the Subpart, while NIOSH may compile these records for research purposes. Employees and their designated representatives use the records to assess the safety of an employer's diving procedures, and to determine if equipment is in safe working order.

The record-retention periods specified by paragraph (b)(3) reinforce the requirements of paragraphs (b)(1) and (b)(2) by allowing an adequate period to inspect records for compliance purposes, to review them in determining if equipment is in safe working order, and to analyze them when assessing the safety of existing diving procedures or developing improved procedures. Sending the records to NIOSH as required by paragraph (b)(4) makes them available for research purposes (*e.g.,* assessing the medical effects of decompression procedures); in addition, employers and employees will have continuous access to the records when they need them to evaluate the safety of diving procedures, identify the causes of latent health effects, or for other reasons. The requirements of paragraph (b)(5) ensure that a responsible party (*i.e.,* a successor employer or NIOSH) will make the records available as mandated by paragraphs (b)(1) and (b)(2).

III. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

IV. Proposed Actions

OSHA proposes to extend the Office of Management and Budget's (OMB) approval of the collection of information (paperwork) requirements necessitated by the Commercial Diving Operations Standard, 29 CFR part 1910, subpart T. The Agency will include this summary

in its request to OMB to extend the approval of these collections of information requirements.

Type of Review: Extension of currently approved information collection requirements.

Title: Commercial Diving Operations.

OMB Number: 1218–0069.

Affected Public: Business or other for-profits; not for profit organizations, Federal government; State, local or tribal government.

Number of Respondents: 3,000.

Frequency: On occasion, annually.

Average Time Per Response: Varies from 3 minutes (.05 hour) to replace the safe practices manual to 1 hour to develop a new manual.

Estimated Total Burden Hours: 205,397.

Estimated Cost (Operation and Maintenance): $0.

V. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed in Washington, DC, on November 23, 2004.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 04–26403 Filed 11–29–04; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before January 14, 2005. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: records.mgt@nara.gov.

Fax: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–3120. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending:

1. Department of Homeland Security, Transportation Security Administration (N1–560–04–16, 15 items, 13 temporary items). Files accumulated by the Office of Maritime and Land Security relating to organizational structure records. Also included are reference files concerning planning, personnel, employment, property management, and information technology and electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of rulemaking and regulations files.

2. Department of Homeland Security, United States Secret Service (N1–87–05–1, 9 items, 6 temporary items). Inputs and outputs for an electronic system containing investigative and criminal history information. Also included are electronic copies of records created using electronic mail and word processing. Master files, a public use version of the master files, and system documentation are proposed for permanent retention.

3. Department of Justice, Federal Bureau of Investigation (N1–65–05–1, 3 items 3 temporary items). Recordings of incoming calls to agency field office

switchboards that contain no evidence of emergencies, threats, or criminal activity, and consent forms signed by switchboard employees. Recordings that are needed as evidence are retained in the appropriate investigative case file.

4. Department of Justice, Bureau of Prisons (N1–129–05–1, 9 items, 9 temporary items). Inputs, outputs, master files, and documentation associated with an electronic system used to track equipment, work orders, vehicle maintenance, security system maintenance, and related expenditures in Federal correctional institutions. Also included are electronic copies of records created using electronic mail and word processing.

5. Department of Justice, Bureau of Prisons (N1–129–05–2, 6 items, 5 temporary items). Criminal investigation case files relating to crimes that occur at agency facilities, except for files relating to the most serious crimes. Also included are videotapes and electronic copies of records created using electronic mail and word processing. Recordkeeping copies of case files relating to the most serious crimes, such as murder, rioting, escapes, and hostage taking, are proposed for permanent retention.

6. Department of Justice, Bureau of Prisons (N1–129–05–3, 2 items, 1 temporary item). Electronic copies of records created using electronic mail and word processing that are associated with facility design and construction project files. Recordkeeping copies of these files are proposed for permanent retention.

7. National Commission on Libraries and Information Science, Agency-wide (N1–220–04–13, 65 items, 51 temporary items). Agency program records, including such files as Commission meeting workbooks, records relating to arrangements for meetings, working files of individual commissioners, directors and staff, biographic resumes pertaining to commissioners and key staff members, calendars, administrative procedures manuals, and records relating to legislation tracked by the Commission. Also included are electronic copies of documents created using word processing and electronic mail. Proposed for permanent retention are recordkeeping copies of such records as Commission meeting minutes, press releases, correspondence accumulated by the chair, subject files, executive director reports, files on selected legislation, project files, and international program files.

Dated: November 23, 2004.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 04–26376 Filed 11–29–04; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

National Science Foundation.

Correction to Notice of Availability of a Final Environmental Impact Statement/Comprehensive Environmental Evaluation (FEIS/FCEE)

SUMMARY: On November 16, 2004, the **Federal Register** published a notice from the National Science Foundation (NSF) regarding availability of a Final Environmental Impact Statement/Comprehensive Environmental Evaluation (FEIS/FCEE) for proposed activities in Antarctica. The Notice incorrectly calculated the sixty days public notice period to fall on January 18, 2005 rather than the actual date of January 16, 2005.

DATES: The public notice period contemplated by 45 CFR 641.18(d) ends January 15, 2005.

ADDRESSES: Dr. Polly A. Penhale, Office of Polar Programs, Room 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. *ppenhale@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Polly A. Penhale, Office of Polar Programs, Room 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230, *ppenhale@nsf.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 16 U.S.C. 2403a and 45 CFR 641.18(d) notice of Availability of a Final Environmental Impact Statement/Comprehensive Environmental Evaluation for proposed activities in Antarctica was published in the **Federal Register** on November 16, 2004. That notice incorrectly calculated the sixty day public notice period contempalted by 45 CFR 641.18(d) to conclude on January 18, 2005. This notice corrects that date to the actual date when the sixty day public notice period ends, January 15, 2005.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 04–26405 Filed 11–29–04; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* DOE/NRC Form 741, Nuclear Material Transaction Report; DOE/NRC Form 740M, Concise Note; and NUREG/BR–0006, Instructions for Completing Nuclear Material Transaction Reports (DOE/NRC Forms 741 and 740M).

2. *Current OMB approval number:* DOE/NRC Form 741: 3150–0003 and DOE/NRC Form 740M: 3150–0057.

3. *How often the collection is required:* DOE/NRC Form 741: As occasioned by special nuclear material or source material transfers, receipts, or inventory changes that meet certain criteria. Licensees range from not submitting any forms to submitting over 5,000 forms annually.

DOE/NRC Form 740M: As necessary to inform the U.S. or the International Atomic Energy Agency (IAEA) of any qualifying statement or exception to any of the data contained in any of the other reporting forms required under the US/IAEA Safeguards Agreement. On average, 15 licensees submit about 10 forms each per year—150 forms annually.

4. *Who is required or asked to report:* Persons licensed to possess specified quantities of special nuclear material or source material, and licensees of facilities on the U.S. eligible list who have been notified in writing by the Commission that they are subject to Part 75.

5. *The estimate of the number of annual respondents:* DOE/NRC Form 741: 400. DOE/NRC Form 740M: 15.

6. *The number of hours needed annually to complete the requirement or request:* DOE/NRC Form 741: 45,813 hours for NRC and Agreement State licensees (or an average of 1.25 hours per response); DOE/NRC Form 740M: 113 hours (or an average of .75 hours per response).

7. *Abstract:* NRC and Agreement State licensees are required to make inventory and accounting reports on DOE/NRC Form 741 for certain source or special nuclear material, or for transfer or receipt of 1 kilogram or more of source material. Licensees affected by Part 75 and related sections of Parts 40, 50, 70, and 150 are required to submit DOE/NRC Form 740M to inform the U.S. or the IAEA of any qualifying statement or exception to any of the data contained in any of the other reporting forms required under the US/IAEA Safeguards Agreement. The use of Forms 740M and 741, together with NUREG/BR–0006 Revision 6, the instructions for completing the forms, enables NRC to collect, retrieve, analyze as necessary, and submit the data to IAEA to fulfill its reporting responsibilities.

Submit, by January 31, 2005, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 23rd day of November 2004.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 04–26357 Filed 11–29–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste Meeting on Planning and Procedures; Notice of Meeting

The ACNW will hold a Planning and Procedures meeting on December 13, 2004, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Monday, December 13, 2004—1 p.m.–2:15 p.m.

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Howard J. Larson (Telephone: 301/415–6805) between 7:30 a.m. and 4:15 p.m. (e.t.) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (e.t.). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: November 23, 2004.

John H. Flack,

Acting Branch Chief, ACRS/ACNW.

[FR Doc. 04–26358 Filed 11–29–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act; Meeting

DATES: Weeks of November 29, December 6, 13, 20, 27, January 3, 2004.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of November 29, 2004

There are no meetings scheduled for the week of November 29, 2004.

Week of December 6, 2004—Tentative

Tuesday, December 7, 2004

9:30 a.m. Briefing on Equal Employment Opportunity (EEO) Program (Public Meeting) (Contact: Corenthis Kelley, 301–415–7380.

This meeting will be webcast live at the Web Address—*http://www.nrc.gov.*

Wednesday, December 8, 2004

12:55 p.m. Affirmation Session (Public Meeting) (Tentative).

a. Motion to Quash Ol Subpoena (Tentative).

b. Duke Energy Corp. (Catawba Nuclear Station, Units 1 and 2); Intervenor's Motion for Reconsideration of CLI–04–29 (Tentative).

1 p.m. Briefing on Status of Davis Besse Lessons Learned Task Force Recommendations (Public Meeting) (Contact: John Jolicoeur, 301–415–1724).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Thursday, December 9, 2004

2 p.m. Briefing on Reactor Safety and Licensing Activities (Public Meeting) (Contact: Steve Koenick, 301–415–1239).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of December 13, 2004—Tentative

Tuesday, December 14, 2004

1 p.m. Briefing on Emergency Preparedness Program Initiatives (Public Meeting) (Contact: Nader Mamish, 301–415–1086).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of December 20, 2004—Tentative

There are no meetings scheduled for the week of December 20, 2004.

Week of December 27, 2004—Tentative

There are no meetings scheduled for the week of December 27, 2004.

Week of January 3, 2005—Tentative

There are no meetings scheduled for the week of January 3, 2005.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—301–415–1292.

Contact person for more information: Dave Gamberoni, 301–415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.*, braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at 301–415–7080, TDD: 301–415–2100, or by e-mail at *aks@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system, is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: November 24, 2004.

Dave Gamberoni,

Office of the Secretary.

[FR Doc. 04–26447 Filed 11–26–04; 9:23 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

[Docket No. MC2005–1; Order No. 1425]

Experimental Premium Forwarding Service

AGENCY: Postal Rate Commission.

ACTION: Notice and order.

SUMMARY: This document announces a case involving a proposed two-year experiment that will test demand for a new Premium Forwarding Service (PFS). This service entails periodic reshipment of a customer's mail from a permanent address to a temporary address. Additional fees are involved. Conducting an experiment will allow the Postal Service to determine whether PFS should be made available on a permanent basis.

DATES: See **SUPPLEMENTARY INFORMATION** for dates.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Hard copy submissions, when allowed, should be sent to the attention of Steven W. Williams, Secretary of the Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6818.

SUPPLEMENTARY INFORMATION:

Notice is hereby given that on November 19, 2004, the Postal Service filed a request with the Postal Rate Commission pursuant to section 3623 of the Postal Reorganization Act, 39 U.S.C. 101 *et seq.*, for a recommended decision on a proposed experimental PFS.[1] The Postal Service proposes to implement the requested experimental service through additions to the Domestic Mail Classification Schedule (DMCS) and associated new fees. The request includes attachments and is supported by the testimony of four witnesses and a library reference. It is on file in the Commission's docket room for inspection during regular business hours and is available on the Commission's Home page at *http://www.prc.gov*.

Description of the request. The proposed experiment would introduce a new PFS, under which the Postal Service would offer to reship periodically all of a customer's incoming mail from a permanent address to a temporary address to which the customer has moved. For this service, the Postal Service would charge a $10.00 enrollment fee plus a fixed per-shipment charge of $10.00. Such PFS shipments would be sent via Priority Mail service once a week to the customer's temporary address. The Postal Service anticipates that the experimental PFS service will be an attractive supplement to existing options for customers who relocate temporarily because it would satisfy demand for service features not currently available through those options.

Experimental designation. The Postal Service seeks consideration of its proposal under the Commission's expedited rules of practice and procedure applicable to experimental mail classification changes, 39 CFR 3001.67 through 3001.67d. In support of this approach, it cites the need to collect currently unavailable data to test its assumptions about the projected average weight and distance of PFS shipments, as well as its estimates of demand for the service. According to the Service, a two-year experimental trial of PFS service would enable it to collect, aggregate and analyze such data, so that a request for a permanent classification change can be prepared if the data support such a request. Further, the Service anticipates that a two-year experiment will allow customers sufficient time to determine whether PFS service meets their demands.

Compliance statement and conditional motion for waiver. In a pleading[2] filed contemporaneously with its Request, the Postal Service describes its approach to satisfying the filing requirements contained in pertinent provisions of the rules of practice, and asks the Commission to accept that approach for the purposes of this proceeding. Generally, the Postal Service states that it developed certain materials specifically for the PFS proposal, but also supplemented this information with documentation it submitted in the most recently concluded omnibus rate proceeding (Docket No. R2001–1), as well as with material it periodically submits to the Commission. The Service believes that incorporation of these supplemental materials meets most of the specific filing requirements of the rules of practice. Alternatively, if the Commission concludes that the incorporated materials are insufficient, the Postal Service moves for waiver of the pertinent provisions.

Proposed settlement procedures. The Postal Service's November 19, 2004, filing also included a request for establishment of settlement procedures in this proceeding.[3] The Service states that the proposed experimental PFS classification is simple, is supported by straightforward testimony, and would be of a limited scope and duration. The Service also opines that the proposal's benefits to customers, its minor financial impact, and the fact that all its costs are volume-variable may increase the likelihood of settlement. In view of this prospect, the Postal Service asks that the Commission facilitate a possible settlement by making its hearing room available for a settlement conference prior to the prehearing conference in this docket; appoint its lead counsel to serve as settlement coordinator; and thereby provide an opportunity for its

[1] Request of the United States Postal Service for a Recommended Decision on Experimental Premium Forwarding Service, November 19, 2004 (Request).

[2] Statement of the United States Postal Service Concerning Compliance with Filing Requirements and Conditional Motion for Waiver, November 19, 2004.

[3] United States Postal Request for Establishment of Settlement Procedures, November 19, 2004.

counsel to report on the likelihood of settlement during the prehearing conference.

Further procedures. Those wishing to be heard in this matter may choose from among the modes of participation specified in sections 20 through 20b of the Commission's rules of practice (39 CFR 3001.20, –20a and –20b). Notices of intervention under sections 20 and 20a will be due on December 20, 2004, and shall be filed using the Filing Online system at the Commission's Web site (*http://www.prc.gov*) unless a waiver is obtained for hardcopy filing. See sections 9(a) and 10(a) of the rules (39 CFR 3001.9a and 10a). Notices should indicate whether participation will be on a full or limited basis. Comments pursuant to section 20b may either be filed online as described in section 20b(a) or submitted as a hardcopy letter to the Secretary of the Commission, Steven W. Williams, 1333 H Street, NW., Suite 300, Washington, DC 20268–0001.

Experimental Status

At this stage of the proceeding, the Commission has docketed the instant filing as an experimental case for administrative purposes. Formal status as an experiment under Commission rules 67–67d, which the Service makes clear it seeks for this Request, is based on an evaluation of factors such as the proposal's novelty, magnitude, ease or difficulty of data collection, and duration. A final determination regarding the appropriateness of accepting the filing as an experimental case and application of Commission rules 67–67d will not be made until participants have had an adequate opportunity to comment. Participants are invited to file comments on this matter by December 20, 2004.

Section 67a of the rules specifies procedures for the limitation of issues in considering requests that involve classification changes that are properly designated as experimental. Pursuant to section 67a(b) [39 CFR 3001.67a(b)], participants are directed to submit statements in their notices of intervention indicating whether they seek a hearing and, if so, to identify with particularity any genuine issues of material facts believed to warrant such a hearing.

The Commission grants the Service's Request for Establishment of Settlement Procedures and appoints Postal Service lead counsel as settlement coordinator. In this capacity, counsel for the Service shall file periodic reports on the status of settlement discussions, with the first report to be submitted orally during the prehearing conference scheduled below. The Commission further authorizes the settlement coordinator to hold settlement and/or technical conferences, at the convenience of participants, anytime between January 3 and 6, 2005.

Prehearing conference. A prehearing conference will be held in this docket on January 7, 2005. Participants shall be prepared to address whether there are issues of material fact requiring a hearing in this matter, in order to inform the Commission's determination regarding the limitation of issues pursuant to section 67a(c) of the rules of practice [39 CFR 3001.67a(c)].

Public participation. In conformance with section 3624(a) of title 39, the Commission designates Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate (OCA), to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Dreifuss will direct the activities of Commission personnel assigned to assist her and, upon request, will supply their names for the record. Neither Ms. Dreifuss nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. MC2005–1, Experimental Premium Forwarding Service, to consider the Postal Service Request described in the body of this order.
2. The Commission will sit en banc in this proceeding.
3. The deadline for filing notices of intervention is December 20, 2004.
4. Notices of intervention shall indicate whether the participant seeks a hearing and identify with particularity any genuine issues of material fact that warrant a hearing.
5. The deadline for answers to the Statement of the United States Postal Service Concerning Compliance with Filing Requirements and Conditional Motion for Waiver, filed November 19, 2004, is December 20, 2004.
6. The Commission grants the United States Postal Service Request for Establishment of Settlement Procedures, November 19, 2004, under the terms described in the body of this ruling.
7. The Commission appoints Postal Service lead counsel to serve as settlement coordinator in this proceeding.
8. The deadline for comments on the Postal Service's request for treatment of its Request as experimental under Commission rules 67–67d is December 20, 2004.
9. The Commission will make its hearing room available for settlement and/or technical conferences during the period of January 3 through 6, 2005.
10. A prehearing conference will be held January 7, 2005 at 10 a.m. in the Commission's hearing room.
11. Shelley S. Dreifuss, Director of the Commission's Office of the Consumer Advocate, is designated to represent the interests of the general public in this proceeding.
12. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Steven W. Williams,

Secretary.

[FR Doc. 04–26354 Filed 11–29–04; 8:45 am]

BILLING CODE 7710–EW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27916]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

November 23, 2004.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 17, 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 17, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Northeast Utilities et al. (70–9541)

Northeast Utilities (''NU''), a public utility holding company registered under the Public Utility Holding Company Act of 1935, as amended (''Act''), the Connecticut Light and Power Company (''CL&P''), Public Service Company of New Hampshire (''PSNH'') and Western Massachusetts Electric Company (''WMECO''), each an electric utility subsidiary of NU, North Atlantic Energy Corporation (''NAEC''), formerly a public utility company under the Act, NU Enterprises, Inc. (''NUEI''), a sub-holding company over certain of NU's non-utility subsidiaries, Northeast Generation Company (''NGC''), Northeast Generation Services Company (''NGS''), Select Energy, Inc. (''SE''), HEC Inc., now known as Select Energy Services, Inc. (''SESI''), Select Energy Portland Pipeline, Inc. (''SEPPI''), Reeds Ferry Supply Co., Inc. (''Reeds''), Select Energy Contracting, Inc. (''SECI'') and HEC Energy Consulting Canada Inc. (''HEC Energy''), each a direct or indirect non-utility subsidiary of NU, and E.S. Boulos Company (''Boulos'') and Woods Electrical Contracting, Inc. (''Woods''), wholly-owned subsidiaries of NGS, Yankee Energy Service Company (''YESCO'') and Yankee Energy Financial Services Company (''Yankee Financial''), subsidiaries of Yankee Energy System, Inc., Select Energy New York, Inc. (''SENY''), a subsidiary of SE, (''Applicants''), have filed with the Commission a post-effective application/declaration (''Application'') under sections 6(a), 7, 9(a), 10 and 12(c) of the Act and rules 26(c)(3), 42, 43, 44, 46(a) and 54 under the Act.

On March 7, 2000, the Commission issued an order (HCAR No. 27147) (''Prior Order'') granting Applicants' previously-submitted application/declaration (''Original Application'') and authorizing (a) the payment of dividends to, and/or the repurchase of stock from, NU out of capital or unearned surplus by each of CL&P, PSNH, WMECO and NAEC, from certain restructuring proceeds, though, as a result of the issuance of Rate Reduction Bonds (as described herein) each of CL&P, WMECO and PSNH (''Utilities''), and NU, on a consolidated basis, would fall below the Commission's common equity-to-total capitalization threshold of 30% (the ''30% Threshold''), (b) the payment of dividends to, and/or the repurchase of stock from, NU out of capital or unearned surplus by NUEI, the payment of dividends, and/or the repurchase of stock out of capital or unearned surplus by each of NGC, NGS, SE, SESI, SEPPI, Reeds, SECI and HEC Energy, in each case from their respective parent company, (c) the payment of dividends and/or the repurchase of stock out of capital or unearned surplus by CL&P from certain restructuring proceeds in accordance with the provisions of CL&P's dividend covenant under its First Mortgage Indenture and Deed of Trust dated May 1, 1921 to the Bankers Trust Company as trustee all through December 31, 2004 (the ''Initial Authorization Period''), and (d) the issuance of additional shares by NU to the extent necessary to fulfill its obligations under one or more forward stock purchase contracts through June 30, 2001.

Applicants now seek a modification and extension through December 31, 2007 (''Authorization Period''), of the authorization for the payment of dividends to, and/or the repurchase of stock from, NU out of capital or unearned surplus by NUEI, the payment of dividends to, and/or the repurchase of stock from their respective parent company, out of capital or unearned surplus by each of NGC, NGS, SE, SESI and SECI, subject to the limitations set forth herein; (b) authorization for E.S. Boulos Company (''Boulos'') and Woods Electrical Contracting, Inc. (''Woods''), wholly-owned subsidiaries of NGS, Yankee Energy Service Company (''YESCO'') and Yankee Energy Financial Services Company (''Yankee Financial''), subsidiaries of Yankee Energy System, Inc., Select Energy New York, Inc. (''SENY''), a subsidiary of SE, and any other direct or indirect to-be-formed non-utility subsidiary of NU, to pay dividends to, and/or repurchase stock from their respective parent company out of capital or unearned surplus, (NUEI, NGC, NGS, SE, SENY, SESI, Reeds, SECI, Boulos, Woods, YESCO, Yankee Financial and any direct or indirect non-utility subsidiary of NU are collectively referred to as the ''Non-Utility Subsidiaries''),[1] and (c) an extension through the Authorization Period of the authorization granted in the Prior Order for CL&P and PSNH to remain below the 30% Threshold, as a result of the impact of the Rate Reduction Bonds. The Utilities are not seeking an extension of any other authorizations granted in the Prior Order.

In the Prior Order, the Commission noted that restructuring legislation in each state in which the utility subsidiaries of NU were located allowed for the issuance of Rate Reduction Bonds by each Utility to finance a portion of its cost incurred in the sale of its regulatory assets and/or renegotiation of its obligations under purchase power contracts. Rate Reduction Bonds are securities issued by a subsidiary of the Utility and are non-recourse to the Utility or the NU system. Because of the mandated divestiture of generating assets and issuance of Rate Reduction Bonds, the Utilities experienced a significant decrease in the amount of tangible assets that each owned and received a significant influx of cash.

The Original Application noted that as a result of increased debt from the issuance of the Rate Reduction Bonds, NU and the Utilities would fall below the Commission's benchmark 30% common equity-to-total capitalization ratio (''Common Equity Ratio''). After giving effect to various restructuring transactions, including the then-contemplated issuance of the Rate Reduction Bonds, CL&P's pro forma Common Equity Ratio, as reported in Exhibit K filed with the Original Application was projected to be 19.1%, WMECO's pro forma Common Equity Ratio was projected to be 16.6%, PSNH's pro forma Common Equity Ratio was projected to be 14.2%, and NU's pro forma Common Equity Ratio was projected to be 29.1%. In the Original Application, the Applicants stated that they expected NU's Common Equity Ratio to be above 30% by December 31, 2001 but that the Utilities expect that their Common Equity Ratios would remain below 30% throughout the duration of the Initial Authorization Period and thereafter. The Commission, in the Prior Order, noted that after the end of the Initial Authorization Period, further Commission authority would be required if the Common Equity Ratios of any of the Utilities would be below 30%. CL&P and PSNH seek authorization through the Authorization Period for their respective Common Equity Ratios to remain below the 30% Threshold when the impact of Rate Reduction Bonds is considered.

Applicants seek a modification and extension, through the Authorization Period, of the authorization contained in the Prior Order for the payment of dividends to, and/or the repurchase of stock from, the respective parent company of each such Non-Utility Subsidiary, in each case out of capital or unearned surplus, subject to the new limitations set forth in the Application to extend that authorization to Boulos, Woods, SENY, YESCO and Yankee Financial and to add the limitations on

[1] In the Prior Order, NAEC was listed as a utility; as a result of the sale of its utility assets, NAEC is no longer a utility for purposes of the Act. NAEC, along with SEPPI and HEC Energy, which are now inactive, do not seek an extension of the authorizations previously granted and are not applicants to the Application.

the payment of dividends as set forth below. There may be situations in which one or more of the Non-Utility Subsidiaries would have unrestricted cash available for distribution in excess of current and retained earnings resulting from a disposition of assets, a restructuring or other accounting charge that eliminated retained earnings or its normal operations (excluding debt financing). Consistent with these considerations, Applicants seek authorization for the payment of dividends to, and/or the repurchase of stock from, the respective parent company of each such Non-Utility Subsidiary, in each case out of capital or unearned surplus provided, however, that, without further approval of the Commission, no Non-Utility Subsidiary will declare or pay any dividend out of capital or unearned surplus if it derives any material part of its revenues from the sale of goods, services or electricity to an associate Utility (''Non-exempt Subsidiary''). In addition, no Non-Utility Subsidiary will declare or pay any dividend out of capital or unearned surplus unless it: (a) Has received excess cash as a result of the sale of its assets; (b) has engaged in a restructuring or reorganization; and/or (c) is returning capital to an associate company. NU further requests that the Commission reserve jurisdiction over the payment of dividends out of capital or unearned surplus by any Non-exempt Subsidiary.

Northeast Utilities (70–10256)

Northeast Utilities (''NU''), a public utility holding company registered under the Public Utility Holding Company Act of 1935, as amended (''Act'') has filed with the Commission a declaration under sections 6(a) and 7 of the Act and rule 54 under the Act.

NU requests authority to issue up to 275,000 Northeast Utilities Common Shares, $5.00 par value (''Common Shares'') from the date of the order granting the authorization requested through December 31, 2014, inclusive. This figure is based on a projected need of not more than 25,000 Common Shares per year from 2005 through 2014, plus the 25,000 shares currently needed to satisfy deferred shares obligations. NU expects to modify its trustee compensation program from time to time in the future as necessary or desirable to take into account trends in director compensation, regulatory and tax changes and business needs.

E.ON AG, et al. (70–10260)

E.ON AG (''E.ON''), E.ON US Holding GmbH (''E.ON Holding''), E.ON US Investments Corp. (''EUSIC''), and LG&E Energy LLC (''LG&E Energy'' and collectively with E.ON, E.ON Holding and EUSIC, the ''E.ON Holding Companies''), registered holding companies under the Act, Louisville Gas and Electric Company, a public utility subsidiary of LG&E Energy (''LG&E'' and together with the E.ON Holding Companies, the ''E.ON Applicants''), and American Electric Power Company, Inc. (''AEP'', together with the E.ON Applicants, the ''Applicants''), a registered holding company not affiliated with E.ON, have filed an application-declaration (''Application'') with the Commission under sections 8, 9(a), 10, 11(b) and 12(d) of the Act and rules 44 and 54 under the Act.

Applicants seek authorization for the proposed acquisition by LG&E from AEP of 730 shares of common stock, $100 par value (''Shares'') of Ohio Valley Electric Corporation (''OVEC''), an Ohio corporation and an electric utility company under the Act (the ''Transaction'').

E.ON, an entity incorporated under the laws of the Federal Republic of Germany, registered as a holding company under the Act on July 1, 2002, as a result of E.ON's acquisition of Powergen Limited, formerly known as Powergen plc (''Powergen''). The Commission approved the acquisition of Powergen in Holding Company Act Release No. 27539 (June 14, 2002) (the ''Acquisition Order''). E.ON owns LG&E Energy, which in turn owns two public utility companies, LG&E and Kentucky Utilities Company (''KU'' and together with LG&E, the ''E.ON Utility Subsidiaries''). E.ON's interest in LG&E Energy is held indirectly through E.ON Holding and EUSIC, as intermediate holding companies.

AEP, a New York corporation registered as a holding company under the Act, owns, directly, and indirectly through AEP Utilities, Inc. (formerly Central and South West Corporation), a Delaware corporation and registered holding company under the Act, numerous utility and non-utility subsidiaries, including the following public utility subsidiaries: AEP Generating Company, AEP Texas Central Company (formerly Central Power and Light Company), AEP Texas North Company (formerly West Texas Utilities Company), Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, and Wheeling Power Company (collectively, ''the AEP Utility Subsidiaries'').

OVEC and its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation (''IKEC''), own two generating stations located in Ohio and Indiana with a combined electric production capability of approximately 2,256 megawatts. OVEC and IKEC are both electric utility companies within the meaning of the Act. OVEC is currently owned by AEP (39.9%), Columbus Southern Power Company, a subsidiary of AEP (4.3%), LG&E (4.9%), KU (2.5%), Allegheny Energy, Inc. (12.5%), The Cincinnati Gas & Electric Company, a subsidiary of Cinergy Corp. (9.0%), The Dayton Power and Light Company, a subsidiary of DPL Inc. (4.9%), Ohio Edison Company, a subsidiary of FirstEnergy Corp. (16.5%), Southern Indiana Gas and Electric Company, a subsidiary of Vectren Corporation (1.5%), and the Toledo Edison Company, also a subsidiary of FirstEnergy Corp. (4.0%).

On April 8, 2004, LG&E and AEP entered into a stock purchase agreement (''Agreement''), under which the parties agreed, subject to certain conditions, including approval of the transaction by the Commission, that AEP would AEP to sell, assign and transfer to LG&E, and for LG&E to purchase from AEP, the Shares upon closing of the Transaction (the ''Closing''). LG&E agreed to pay $104,286 (''Purchase Price'') for the Shares upon the Closing, which is subject to customary conditions for a transaction of this size and magnitude, all as set forth in the Agreement. LG&E will finance the Transaction with cash on hand.

On April 30, 2004, irrespective of the consummation of the proposed Transaction and not conditioned upon its approval, OVEC and its shareholders, including AEP (and/or its affiliates), LG&E and KU, entered into an Amended and Restated Inter-Company Power Agreement (the ''Amended Power Agreement''), to be effective beginning March 2006, upon the expiration of the Power Agreement. In negotiation of the Amended Power Agreement, disputes arose between AEP and LG&E over a number of issues, including their respective ongoing rights to purchase power from OVEC. In order to avoid litigation, and the cost, delay and uncertainty relating thereto, AEP and LG&E settled these disputes. As part of the settlement, AEP agreed to sell, and LG&E agreed to purchase, the Shares, representing 0.73% of the outstanding common stock of OVEC, at the same price per share paid by AEP in 1990. Upon the effectiveness of the Amended Power Agreement, AEP (and/or its affiliates) and LG&E will receive allocations of marginal cost-based

power from OVEC in an amount proportional to their respective ownership interests in OVEC after giving effect to the Transaction.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50719; File No. SR–Amex–2004–55]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Listing and Trading of Notes Linked to the Performance of the CBOE S&P 500 BuyWrite Index℠

November 22, 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 American Stock Exchange LLC (''Amex'' 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 Exchange. On November 4, 2004, the Exchange submitted an amendment to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade notes, under Section 107A of the Amex Company Guide (''Company Guide''), the performance of which is linked to the Chicago Board Options Exchange (''CBOE'') S&P 500 BuyWrite Index(℠) (''BXM Index'' or ''Index''). The text of the proposed rule change is available at the principal offices of the Amex and from 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 Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item III below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Under section 107A of the Company Guide, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[4] The Amex proposes to list for trading under section 107A of the Company Guide notes linked to the performance of the BXM Index (''Notes''). The BXM Index is determined, calculated, and maintained solely by the CBOE.[5]

Morgan Stanley will issue the Notes under the name ''Strategic Total Return Securities.''[6]

The Notes will conform to the initial listing guidelines under section 107A[7] and continued listing guidelines under sections 1001–1003[8] of the Company Guide. The Notes are a series of medium-term debt securities of Morgan Stanley that provide for a cash payment at maturity, or upon earlier exchange at the holder's option or the earlier redemption of the issue, based on the performance of the BXM Index adjusted by the Adjustment Amount.[9] The principal amount of each Note is expected to be $10. The Notes will not have a minimum principal amount that will be repaid and, accordingly,

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[1] 15 U.S.C. 78s(b)(l).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Florence E. Harmon, Senior Special Counsel, Division of Market Regulation, Commission, dated November 3, 2004 (''Amendment No. 1''). Amendment No. 1 reflects certain changes regarding issuer redemptions of the Notes beginning in June 2007.

[4] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR–Amex–89–29).

[5] If the BXM Index is discontinued or suspended, the calculation agent, in its sole discretion, may substitute the BXM Index with an index substantially similar to the discontinued or suspended BXM Index (the ''Successor Index''). The Successor Index may be calculated and/or published by the CBOE or any other third party. If the calculation agent is unable to identify a Successor Index, then the Maturity Valuation Date will be accelerated to the last scheduled trading day prior to the expiration of the call option positions of the BXM Index (''Roll Date''). The calculation agent will accordingly determine the Entitlement Value on such date. Under certain circumstances, the calculation agent or an affiliate will calculate the Index value until a Successor Index is substituted. This may occur if adequate notice of the Index's discontinuance or suspension is not provided to the calculation agent. The calculation agent will then undertake to identify and designate, in its sole discretion, a Successor Index prior to the Roll Date that falls at least one (1) month following the discontinuance or suspension of the BXM Index. If the calculation agent is unable to identify a Successor Index five (5) days prior to the Roll Date that falls at least one (1) month following such discontinuance or suspension, the Maturity Valuation Date will be accelerated to the last scheduled trading day prior to the Roll Date following such discontinuance or suspension. In calculating the Index value, the calculation agent or affiliate will use the current method employed prior to the discontinuance or suspension. The Exchange agrees to delist the Notes (or seek Commission approval pursuant to Rule 19b–4 to list and trade a Note that reflects the Successor Index) in the event that CBOE stops calculating and disseminating the value of the BXM Index. Telephone conference between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Commission, on November 19, 2004.

[6] Morgan Stanley and Standard & Poor's (''S&P''), a division of the McGraw-Hill Companies, Inc., have entered into a non-exclusive license agreement providing for the use of the BXM Index by Morgan Stanley in connection with certain securities, including the Notes. S&P is not responsible for and will not participate in the issuance and creation of the Notes.

[7] The initial listing standards for the Notes require: (1) A minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least $4 million; and (4) a term of at least one year. In addition, the listing guidelines provide that the issuer has assets in excess of $100 million, stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer that is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, the Exchange pursuant to Section 107A of the Company Guide will require the issuer to have the following: (1) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

[8] The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Notes, the Exchange will rely, in part, on the guidelines for bonds in Section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than $400,000.

[9] The Adjustment Amount will equal the sum of the monthly adjustments. Each monthly adjustment will equal 0.168% (equivalent to approximately 2% per year) multiplied by the Net Entitlement Value on the trading day prior to the trading day the monthly SPX call option expires. SPX options generally expire on the third Friday on the month. *See infra* for a description of how the monthly rolling or successive SPX call options are taken into account in the BXM Index.

payment on the Notes prior to or at maturity may be less than the original issue price of the Notes. In fact, the value of the BXM Index must increase for the investor to receive at least the $10 principal amount per security at maturity or upon exchange or redemption. If the value of the BXM Index decreases or does not increase sufficiently, the investor will receive less, and possibly significantly less, than the $10 principal amount per security. The Notes will have a term of at least one (1) but no more than ten years.[10]

On a quarterly basis during the first ten (10) calendar days of March, June, September, and December, beginning in March 2005, holders of the Notes will have the right to exchange the Notes for a cash amount equal to the Net Entitlement Value on the valuation date for such exchange date. The minimum exchange amount is 10,000 Notes. Commencing in June 2007, Morgan Stanley will have the right to redeem the Notes for the Net Entitlement Value, upon at least ten (10) calendar days' but no more than thirty (30) calendar days' notice to holders, on any quarterly exchange date. The Notes will mature on December 17, 2009.[11]

The ''Net Entitlement Value'' as of any trading day equals (i) the ''Initial Net Entitlement Value'' multiplied by the ''BXM Index Performance'' on that trading day, minus (ii) the ''Adjustment Amount'' as of that trading day. The Initial Net Entitlement Value is equal to $9.88 (*e.g.*, 1.20% less than the original issue price of the Notes). The BXM Index Performance on any trading day is equal to the ''Index Value'' on that trading day divided by the ''Initial Index Value.'' The Index Value on any trading day is the closing value of the BXM Index on that trading day. The Initial Index Value is the closing value of the BXM Index on the date Morgan Stanley prices the Notes for initial sale to the public. The Adjustment Amount, by which the investor's return is also reduced, will equal approximately 2.00% per year.[12] For purposes of determining the amount payable in respect of any early redemption or at maturity of the Notes, the Net Entitlement Value will be determined on the fifth scheduled trading day immediately prior to the early redemption date, or the maturity date, as applicable. For the purposes of determining the amount payable with respect to any exchange of the Notes, the Net Entitlement Value will be determined on the last trading day of the exchange period for that exchange.

The Net Entitlement Value that a holder of a Note will receive upon exchange, early redemption, or at maturity will depend on the relation of the Index Value (the ''Final Index Value'') to the Initial Index Value of the BXM Index and will always be 1.20% less than the original issue price and include the Adjustment Amount. If there is a ''market disruption event'' [13] when determining the Final Index Value, the Final Index Value will be determined on the next available trading day during which no ''market disruption event'' occurs. Thus, the Net Entitlement Value per Note will equal:

$$\$9.88 \times \left(\frac{\text{Final Index Value}}{\text{Initial Index Value}}\right) - \text{Adjustment Amount}$$

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive any of the component securities, dividend payments, or any other ownership right or interest in the securities comprising the BXM Index. The Notes are designed for investors who want to participate in the exposure to the S&P 500 Index (the ''S&P 500'') that the BXM Index provides while limiting downside risk, and who are willing to forego principal protection and market interest payments on the Notes during their term.

The Commission has previously approved the listing on the Amex of securities with structures similar to that of the proposed Notes.[14]

Description of the Index

The BXM Index is a benchmark index designed to measure the performance of a hypothetical ''buy-write'' [15] strategy on the S&P 500. Developed by the CBOE in cooperation with S&P, the Index was initially announced in April 2002.[16] The

[10] The term of the Notes is expected to be five years and will be disclosed in the pricing supplement.

[11] *See infra* discussion of Net Entitlement Value.

[12] *See supra* note 9 (discussing the Adjustment Amount).

[13] A ''market disruption event'' is defined as (i) the occurrence of or existence of a suspension, absence or material limitation of trading of stocks then constituting 20% or more of the value of the S&P 500 Index on the Relevant Exchanges for such securities for the same period of trading longer than two hours or during the one-half hour period preceding the close of the principal trading session on such Relevant Exchange; (ii) a breakdown or failure in the price and trade reporting systems of any Relevant Exchange as a result of which the reported trading prices for stocks then constituting 20% or more of the value of the S&P 500 Index during the last one-half hour preceding the close of the principal trading session on such Relevant Exchange are materially inaccurate; (iii) the suspension, material limitation or absence of trading on any major U.S. securities market for trading in futures or options contracts or exchange traded funds related to the BXM Index or the S&P 500 Index for more than two hours of trading or during the one-half hour period preceding the close of the principal trading session on such market, and (iv) a determination by the calculation agent that any event described in clauses (i)–(iii) above materially interfered with the ability of Morgan Stanley or any of its affiliates to unwind or adjust all or a material portion of the hedge position with respect to the Notes.

[14] *See* Securities Exchange Act Release Nos. 49548 (April 9, 2004), 69 FR 20089 (April 15, 2004) (approving the listing and trading of non-principal protected notes linked to the Select Utility Index); 45639 (March 25, 2002), 67 FR 15258 (March 29, 2002) (approving the listing and trading of non-principal protected notes linked to the Oil and Natural Gas Index); 45305 (January 17, 2002), 67 FR 3753 (January 25, 2002) (approving the listing and trading of non-principal protected notes linked to the Biotech-Pharmaceutical Index); 45160 (December 17, 2001), 66 FR 66485 (December 26, 2001) (approving the listing and trading of non-principal protected notes linked to the Balanced Strategy Index); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (approving the listing and trading of non-principal protected notes linked to the Institutional Holdings Index); 44437 (June 18, 2001), 66 FR 33585 (June 22, 2001) (approving the listing and trading of non-principal protected notes linked to the Industrial 15 Index); and 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001) (approving the listing and trading of non-principal protected notes linked to the Select Ten Index).

[15] A ''buy-write'' is a conservative options strategy in which an investor buys a stock or portfolio and writes call options on the stock or portfolio. This strategy is also known as a ''covered call'' strategy. A buy-write strategy provides option premium income to cushion decreases in the value of an equity portfolio, but will underperform stocks in a rising market. A buy-write strategy tends to lessen overall volatility in a portfolio.

[16] The BXM Index consists of a long position in the component securities of the S&P 500 and options on the S&P 500 (*e.g.*, ''writing'' the near-term S&P 500 Index covered call option, generally on the third Friday of each month). The Commission has approved the listing of numerous securities linked to the performance of the S&P 500 as well as options on the S&P 500. *See, e.g.*, Securities Exchange Act Release Nos. 48486 (September 11, 2003), 68 FR 54758 (September 18, 2003) (approving the listing and trading of CSFB Contingent Principal Protected Notes on the S&P 500); 48152 (July 10, 2003), 68 FR 42435 (July 17, 2003) (approving the listing and trading of UBS Partial Principal Protected Notes linked to the S&P 500); 47983 (June 4, 2003), 68 FR 35032 (June 11, 2003) (approving the listing and trading of CSFB Accelerated Return Notes linked to the S&P 500); 47911 (May 22, 2003), 68 FR 32558 (May 30, 2003) (approving the listing and trading of notes (Wachovia TEES) linked to the S&P 500); and 19907

Continued

CBOE developed the BXM Index in response to several factors, including the repeated requests by options portfolio managers that the CBOE provide an objective benchmark for evaluating the performance of buy-write strategies, one of the most popular option trading strategies. Further, the CBOE developed the BXM Index to provide investors with a relatively straightforward indicator of the risk-reducing character of options which otherwise may seem complicated and inordinately risky.

The BXM Index is a passive total return index based on (1) buying a portfolio consisting of the component stocks of the S&P 500, and (2) ''writing'' (or selling) near-term S&P 500 call options (SPX), generally on the third Friday of each month. This strategy consists of a hypothetical portfolio consisting of a ''long'' position indexed to the S&P 500 on which are deemed sold a succession of one-month, at-the-money call options on the S&P 500 (SPX) listed on the CBOE. Dividends paid on the component stocks underlying the S&P 500 and the dollar value of option premium deemed received from the sold call options are functionally ''re-invested'' in the covered S&P 500 portfolio.

The value of the BXM Index on any given date will equal: the value of the BXM Index on the previous day, multiplied by the daily rate of return[17] on the covered S&P 500 portfolio on that date. Thus, the daily change in the BXM Index reflects the daily changes in value of the covered S&P 500 portfolio, which consists of the S&P 500 (including dividends) and the component S&P 500 option (SPX). The daily closing price of the BXM Index is calculated and disseminated by the CBOE on its Web site at *http://www.cboe.com* and via the Options Pricing and Reporting Authority (''OPRA'') at the end of each trading day.[18] The value of the S&P 500 Index is disseminated at least once every fifteen (15) seconds throughout the trading day. The Exchange believes that the dissemination of the S&P 500, along with the ability of investors to obtain S&P 500 call option pricing provides sufficient transparency regarding the BXM Index.[19] In addition, as indicated above, the value of the BXM Index is calculated once every trading day, thereby providing investors with a daily value of such ''hypothetical'' buy-write options strategy on the S&P 500.

The BXM Index value will be calculated and disseminated by the CBOE once every trading day after the close. The daily change in the BXM Index reflects the daily changes in the S&P 500 and related options positions. The Exchange states that Morgan Stanley represents that it will seek to arrange to have the BXM Index calculated and disseminated on a daily basis through a third party if the CBOE ceases to calculate and disseminate the Index.[20] If, however, Morgan Stanley is unable to arrange the calculation and dissemination of the BXM Index as indicated above, the Exchange will delist the Notes.[21]

In order to provide an updated value of the Net Entitlement Value for use by investors, the Exchange will disseminate over the Consolidated Tape Association's Network B, a daily indicative Net Entitlement Value equal to the Net Entitlement Value on the previous trading day multiplied by the percentage change in the BXM Index, adjusted on a monthly basis on each Roll Date by the Adjustment Amount (the ''Indicative Value''). The Indicative Value will be calculated by the Amex after the close of trading and after the CBOE calculates the BXM Index for use by investors the next trading day. It is designed to provide investors with a daily reference value of the adjusted Index. The Indicative Value may not reflect the precise value of the current Net Entitlement Value or amount payable upon repurchase or maturity. Therefore, the Indicative Value disseminated by the Amex during trading hours should not be viewed as a real time update of the BXM Index, which is calculated only once a day. While the Indicative Value that will be disseminated by the Amex is expected to be close to the current BXM Index value, the values of the Indicative Value and the BXM Index will diverge due to the application of the Adjustment Amount.

From June 30, 1988 through September 30, 2004, the annualized returns for the BXM Index and the S&P 500 were 11.53% and 11.98%, respectively, with a total deviation of the returns during the same time period of 39.62%. As the chart in attached Exhibit A of the Exchange's Form 19b–4 indicates, the BXM Index will closely track the S&P 500 except in those cases where the market is significantly rising or decreasing. In the case of a fast rising market, the BXM Index will trail the S&P 500 due to the limited upside potential of the Index because of the ''buy-write'' strategy. Due to the cushioning effect of the ''buy-write'' strategy, the BXM Index has in the past exhibited negative returns that are less than the S&P 500 during a down market. The Exchange expects the BXM Index to continue to display these characteristics.

The call options included in the value of the BXM Index have successive terms of approximately one month. Each day that an option expires, which day is referred to as a ''roll'' date, that option's value at expiration is taken into account in the value of the BXM Index. At expiration, the call option is settled

(June 24, 1983), 48 FR 30814 (July 5, 1983) (approving the listing and trading of options on the S&P 500). In addition, the Commission previously approved the listing and trading of a packaged buy-write option strategy known as ''BOUNDS.'' *See* Securities Exchange Act Release No. 36710 (January 11, 1996), 61 FR 1791 (January 23, 1996).

[17] The daily rate of return on the covered S&P 500 portfolio is based on (a) the change in the closing value of the stocks in the S&P 500 portfolio, (b) the value of ordinary cash dividends on the stocks underlying the S&P 500, and (c) the change in the market price of the call option. The daily rate of return will also include the value of ordinary cash dividends distributed on the stocks underlying the S&P 500 that are trading ''ex-dividend'' on that date (that is, when transactions in the stock on an organized securities exchange or trading system no longer carry the right to receive that dividend or distribution) as measured from the close in trading on the previous day.

[18] The Commission, in connection with Bond Index Term Notes and the Merrill Lynch EuroFund Market Index Target Term Securities, has previously approved the listing and trading of products where the dissemination of the value of the underlying index occurred once per trading day. *See* Securities Exchange Act Release Nos. 41334 (April 27, 1999), 64 FR 23883 (May 4, 1999) (approving the listing and trading of Bond Indexed Term Notes); and 40367 (August 26, 1998), 63 FR 47052 (September 3, 1998) (approving the listing and trading of Merrill Lynch EuroFund Market Index Target Term Securities).

[19] Call options on the S&P 500 (SPX) are traded on the CBOE, and both last sale and quotation information for the call options are disseminated in real time through OPRA. The value of the BXM can be readily approximated as a function of observable market prices throughout the trading day. In particular, such a calculation would require information on the current price of the S&P 500 index and specific nearest-to-expiration call and put options on that index. These components trade in highly liquid markets, and real-time prices are available continuously throughout the trading day from a number of sources including Bloomberg and CBOE. The ''Indicative Value'' (as discussed below) may be a more accurate indicator of the valuation of the Notes because it reflects the fees associated with the Notes (*e.g.*, on the initial principal amount and the Adjustment Amount); however, the ''Indicative Value'' is also not adjusted intraday. Telephone conference between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence E. Harmon, Senior Special Counsel, Commission, on November 22, 2004.

[20] Prior to such change in the manner in which the BXM Index is calculated, the Exchange will file a proposed rule change pursuant to Rule 19b–4, which must be approved by the Commission prior to continued listing and trading in the Notes. Telephone conference between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence E. Harmon, Senior Special Counsel, Commission, on November 22, 2004.

[21] *See supra* note 5.

against the ''Special Opening Quotation,'' a special calculation of the S&P 500. The final settlement price of the call option at expiration is equal to the difference between the Special Opening Quotation and the strike price of the expired call option, or zero, whichever is greater, and is removed from the value of the BXM Index. Subsequent to the settlement of the expired call option, a new, ''short'' or sold at-the-money call option is included in the value of the BXM Index.[22] The initial value of the new call option is calculated by the CBOE and is based on the volume-weighted average of all the transaction prices of the new call option during a designated time period on the day the strike price is determined.[23]

As of October 18, 2004, the market capitalization of the securities included in the S&P 500 Index ranged from a high of $351.4 billion to a low of $373 million. The average daily trading volume for these same securities for the last six (6) months ranged from a high of 63.8 million shares to a low of 140,500 shares.

The Exchange represents that it prohibits the initial and/or continued listing of any security that is not in compliance with Rule 10A–3 under the Act.[24]

Because the Notes are expected to be issued in $10 denominations, the Exchange's existing equity floor trading rules will apply to the trading of the Notes. First, pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes.[25] Second, the Notes will be subject to the equity margin rules of the Exchange.[26] Third, the Exchange will, prior to trading the Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes and highlighting the special risks and characteristics of the Notes. For example, the information circular will disclose that the Notes are suitable for investors pursuing a ''buy and hold'' strategy because the Notes are most appropriate for investors who want to be hedged against a full decline in the S&P 500 and are willing to forego full appreciation of the S&P 500.[27] With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes: (1) To determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction. In addition, Morgan Stanley will deliver a prospectus in connection with its sales of the Notes.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, the Amex will rely on its existing surveillance procedures governing equities and options that include additional monitoring on key pricing dates, which have been deemed adequate under the Act. In addition, the Exchange also has a general policy, which prohibits the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act[28] in general and furthers the objectives of section 6(b)(5)[29] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not solicit or receive any written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2004–55 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 SR–Amex–2004–55. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to SR–Amex–2004–55 and should be submitted on or before December 21, 2004.

[22] Like the expired call option, the new call option will expire approximately one month after the date of sale.

[23] For this purpose, the CBOE excludes from the calculation those call options identified as having been executed as part of a spread (*i.e.*, a position taken in two or more options in order to profit through changes in the relative prices of those options).

[24] *See* Rule 10A–3(c)(1).

[25] Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts, relative to every customer and to every order or account accepted.

[26] *See* Amex Rule 462 and Section 107B of the Company Guide.

[27] Telephone conference between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence E, Harmon, Senior Special Counsel, Commission, on November 22, 2004.

[28] 15 U.S.C. 78f.

[29] 15 U.S.C. 78f(b)(5).

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

Amex has asked the Commission to approve the proposal on an accelerated basis to accommodate the timetable for listing the Notes. After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b)(5) of the Act.[30] The Commission finds that this proposal is similar to several approved instruments currently listed and traded on the Amex.[31] Accordingly, the Commission finds that the listing and trading of the Notes based on the BXM Index is consistent with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities consistent with section 6(b)(5) of the Act.[32]

The Notes will provide investors who are willing to forego market interest payments during the term of the Notes with a means to gain exposure to the Index, subject to the Adjustment Amount. The Commission notes that the Notes will not have a minimum principal investment amount that will be repaid, and payment on the Notes prior to or at maturity may be less than the original issue price of the Notes.

As described more fully above, at maturity or upon earlier exchange or redemption during a designated period, the holder of a Note will receive an amount based upon the value of the BXM Index. The Commission notes that the Notes will be redeemable at the option of a holder thereof during a designated month each year, commencing in 2005, subject to certain minimum exchange amounts in the case of partial redemptions. The issuer, Morgan Stanley, will also be able to redeem the Notes on a quarterly basis beginning in June 2007.

The entitlement value of the Notes at maturity or upon earlier exchange or redemption will depend on the relation of the Final Index Value and Initial Index Value of the BXM Index, reduced by an Adjustment Amount. The Commission notes that the Initial Index Value will equal the closing value of the BXM Index on the date Morgan Stanley prices the Notes for initial sale to the public. The Initial Net Entitlement Value will be equal to $9.88 (*e.g.*, 1.20% less than the original issue price of the Notes). The BXM Index Performance on any trading day will be equal to the ''Index Value'' on that trading day divided by the ''Initial Index Value.'' The Index Value on any trading day will be the closing value of the BXM Index on that trading day. The Adjustment Amount, by which the investor's return is also reduced, will equal approximately 2.00% per year. For purposes of determining the amount payable in respect of any exchange or upon early redemption or at maturity of the Notes, the Net Entitlement Value will be determined on the fifth scheduled trading day immediately prior to the early redemption date, or the maturity date, as applicable. The Net Entitlement Value will be determined on the last trading day of that exchange period for any investor exchange of the Notes. The Net Entitlement Value that a holder of a Note will receive upon exchange, early redemption, or at maturity will depend on the relation of the Final Index Value to the Initial Index Value of the BXM Index and will always be 1.20% less than the original issue price and include the Adjustment Amount. In the case of a ''market disruption event''[33] when determining the Final Index Value, the Final Index Value will be determined on the next available trading day during which no market disruption event occurs.

The Commission notes that the Adjustment Amount will reduce a holder's participation in the BXM Index and will accordingly reduce the entitlement value upon maturity or earlier exchange or issuer redemption. Given the effect of the initial index value calculation combined with the Adjustment Amount, the Commission notes that if the BXM Index decreases or does not increase significantly, a holder would likely receive less than the initial $10 principal per note over the course of the term of the Notes.

The Commission notes the Exchange's rules that address the special concerns attendant to the trading of hybrid securities will be applicable to the Notes. Moreover, the Commission notes that the Exchange will distribute a circular to its membership calling attention to the specific risks associated with the Notes. The Commission also notes that Morgan Stanley will deliver a prospectus in connection with the initial sales of the Notes.

The Commission notes that the BXM Index is determined, calculated and maintained solely by the CBOE. As of October 18, 2004, the market capitalization of the securities included in the S&P 500 Index ranged from a high of $351.4 billion to a low of $373 million. The average daily trading volume for these same securities for the last six (6) months ranged from a high of 63.8 million shares to a low of 140,500 shares.

Given the large trading volume and capitalization of the compositions of the stocks underlying the S&P 500 Index, the Commission believes that the listing and trading of the Notes that are linked to the BXM Index should not unduly impact the market for the underlying securities comprising the S&P 500 Index or raise manipulative concerns.[34]

In addition, the Exchange's equity margin and trading rules will apply to the Notes.

Furthermore, the Commission notes that the Notes are dependant upon the individual credit of the issuer, Morgan Stanley. To some extent, this credit risk is minimized by the Exchange's listing standards in Section 107A of the Company Guide that provide that only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. In addition, the Amex's listing standards require that the Notes have a market value of at least

[30] 15 U.S.C. 78f(b)(5).

[31] *See, e.g.*, Securities Exchange Act Release Nos. 48486 (September 11, 2003), 68 FR 54758 (September 18, 2003) (approving the listing and trading of CSFB Contingent Principal Protected Notes on the S&P 500); 48152 (July 10, 2003), 68 FR 42435 (July 17, 2003) (approving the listing and trading of UBS Partial Principal Protected Notes linked to the S&P 500); 47983 (June 4, 2003), 68 FR 35032 (June 11, 2003) (approving the listing and trading of CSFB Accelerated Return Notes linked to S&P 500); 47911 (May 22, 2003), 68 FR 32558 (May 30, 2003) (approving the listing and trading of notes (Wachovia TEES) linked to the S&P 500); 45160 (December 17, 2001), 66 FR 66485 (December 26, 2001) (approving the listing and trading of non-principal protected notes linked to the Balanced Strategy Index); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (approving the listing and trading of non-principal protected notes linked to the Institutional Holdings Index); 44437 (June 18, 2001), 66 FR 33585 (June 22, 2001) (approving the listing and trading of non-principal protected notes linked to the Industrial 15 Index); 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001) (approving the listing and trading of non-principal protected notes linked to the Select Ten Index); and 36710 (January 11, 1996), 61 FR 1791 (January 23, 1996) (approving the listing and trading of BOUNDS).

[32] 15 U.S.C. 78f(b)(5). In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[33] *See supra* note 13 (defining ''market disruption event'').

[34] The issuer, Morgan Stanley, disclosed in the prospectus that the original issue price of the notes includes commissions and Morgan Stanley's costs of hedging its obligations under the Notes. The inclusion of these costs in the initial offering price of the Notes will likely adversely affect the secondary market price of the Notes. The Commission expects such hedging activity to be conducted in accordance with applicable regulatory requirements.

$4 million.[35] In any event, financial information regarding Morgan Stanley, in addition to the information on the component stocks comprising the Index, will be publicly available.[36]

Finally, the Commission notes that the value of the Index will be calculated and disseminated by the CBOE once every trading day after the close of trading. In addition, the Commission notes that the value of the S&P 500 Index will be disseminated at least once every fifteen seconds throughout the trading day and that investors are able to obtain call option pricing on the S&P 500 Index. Further, the Indicative Value, which will be calculated by the Amex after the close of trading and after the CBOE calculates the BXM Index for use by investors the next trading day, is designed to provide investors with a daily reference value of the adjusted Index. The Commission notes that Morgan Stanley has agreed to arrange to have the BXM Index calculated and disseminated on a daily basis through a third party in the event that the CBOE discontinues calculating and disseminating the Index. In such event, the Exchange agrees to obtain Commission approval, pursuant to filing the appropriate Form 19b–4, prior to the substitution of CBOE. Further, the Commission notes that the Exchange has agreed to undertake to delist the Notes in the event that CBOE ceases to calculate and disseminate the Index and Morgan Stanley is unable to arrange to have the BXM Index calculated and widely disseminated through a third party.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The Exchange has requested accelerated approval because this product is similar to several other instruments currently listed and traded on the Amex.[37] The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Notes promptly. Additionally, the Notes will be listed pursuant to Amex's hybrid security listing standards as described above. Based on the above, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act [38] to approve the proposal on an accelerated basis.

V. Conclusion

Is it therefore ordered, pursuant to section 19(b)(2) of the Act,[39] that the proposed rule change (SR–Amex–2004–55) is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[40]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3382 Filed 11–29–04; 8:45 am]

BILLING CODE 8010–01–P

[35] Section 107A(c) of the Company Guide.

[36] The Commission notes that the component stocks that comprise the Index are reporting companies under the Act, and the Notes will be registered under Section 12 of the Act.

[37] *See supra* note 31.

[38] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[39] 15 U.S.C. 78o–3(b)(6) and 78s(b)(2).

[40] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50716, File No. SR–Amex–2004–88]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC to Adopt a Per-Contract Licensing Fee for Options Transactions in SPDR O-Strips

November 22, 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 1, 2004, the American Stock Exchange LLC (''Amex'' 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 Amex. On November 18, 2004, Amex filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its options fee schedule by adopting a per-contract license fee in connection with specialist and registered options trader (''ROT'') transactions in options on the SPDR O-Strip (''O-Strip'').[4]

The text of the revised fee schedule is available at Amex's Office of the Secretary and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has entered into numerous agreements with issuers and owners of indexes for the purpose of trading options on certain ETFs. This requirement to pay an index license fee to third parties is a condition to the listing and trading of these ETF options. In many cases, the Exchange is required to pay a significant licensing fee to issuers or index owners that may not be reimbursed. In an effort to recoup the costs associated with index licenses, the Exchange has previously established a per-contract licensing fee for specialists and ROTs that is collected on every transaction in designated products in which a specialist or a ROT is a party. The licensing fee currently imposed on specialists and ROTs is as follows: (1) $0.15 per contract side for options on the Fidelity Nasdaq Composite Index Trading Stock (ONEQ); (2) $0.10 per contract side for options on the Nasdaq-100 Index Tracking Stock (QQQ), the Nasdaq-100 Index (NDX), the Mini-NDX (MNX), the iShares Goldman Sachs Corporate Bond Fund (LQD), the iShares Lehman 1–3 Year Treasury Bond Fund (SHY), iShares Lehman 7–10 Year Treasury Bond Fund (IEF), iShares Lehman 20+ Year Treasury Bond Fund

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Amendment No. 1 from Jeffrey P. Burns, Associate General Counsel, Amex, dated November 18, 2004 (''Amendment No. 1''). Amendment No. 1 replaced the original proposed rule change in its entirety.

[4] The O-Strip is an exchange-traded fund (''ETF'') share that seeks to provide investment results corresponding to the newly launched Standard & Poor's (''S&P'') 500 O-Strip Index. The S&P 500 O-Strip Index consists of all the individual S&P 500 component securities that are primarily traded in the over-the-counter market. The Index currently consists of approximately 75 securities, representing approximately 15% of the market capitalization of the S&P 500 Index.

(TLT), iShares Lehman U.S. Aggregate Bond Fund (AGG), and iShares Lehman U.S. Treasury Inflation Protected Secutities Fund (TIP); (3) $0.09 per contract side for options on the iShares Cohen & Steers Realty Majors Index Fund (ICF); and (4) $0.05 per contract side for options on the S&P 100 iShares (OEF).

The Exchange represents that the purpose of the proposed fee is for Amex to recoup its costs in connection with the index license fee for the trading of options on O-Strips. The proposed licensing fee will be collected on every option transaction of O-Strips in which a specialist or a ROT is a party. The Exchange proposes to charge $0.20 per contract side. The Exchange believes that requiring the payment of a per-contract licensing fee by those specialists units and ROTs that are the beneficiaries of the Exchange's index license agreements is justified and consistent with the rules of the Exchange and the Act. In addition, the Exchange believes that passing the license fee (on a per-contract basis) along to the specialist allocated to O-Strip options and the ROTs trading such products, is efficient and consistent with the intent of Amex to pass on its non-reimbursed costs to those market participants that are the beneficiaries.

The Exchange notes that Amex in recent years has increased a number of member fees to better align Exchange fees with the actual cost of delivering services and reduce Exchange subsidies of such services.[5] Therefore, the Exchange believes that implementation of this proposal is consistent with the reduction and/or elimination of these subsidies.

The Exchange submits that the proposed license fee will provide additional revenue and recoup its costs associated with the trading of O-Strip options. Further, the Exchange represents that it will monitor the revenue generated in connection with the O-Strip option license fee. In the event the revenue generated is greater than the Exchange's cost to the index provider, Amex represents that it will seek to rebate the difference back to the affected specialists and ROTs. Amex believes that this fee will help to allocate to those specialists and ROTs transacting in options on the O-Strip, a fair share of the related costs of offering such options. Accordingly, the Exchange believes that the proposed fee is reasonable.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with section 6(b) of the Act,[6] in general, and with section 6(b)(4) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission

The foregoing rule change, as amended, has become effective immediately pursuant to section 19(b)(3)(A)(ii) of the Act[8] and Rule 19b–4(f)(2) thereunder,[9] because it establishes or changes a due, fee or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary of appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2004–88 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Amex–2004–88. 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 offices of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2004–88 and should be submitted on or before December 21, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 50715; File No. SR–BSE–2004–24]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the Boston Stock Exchange, Inc. To Permit Remote Brokers

November 22, 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 June 28, 2004, the Boston Stock Exchange, Inc.

[5] *See* Securities Exchange Act Release Nos. 44286 (May 9, 2001), 66 FR 27187 (May 16, 2001) and 45360 (January 29, 2002), 67 FR 5626 (February 6, 2002).

[6] *See* 15 U.S.C. 78f(b).

[7] *See* 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in items I, II and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to include brokers in its remote trading rules. The text of the proposed rule change appears below. Proposed new language is in *italics;* proposed deletions are in [brackets].

Chapter XXXIII

BEACON Remote

Sec. 9. BEACON terminals and related equipment will be provided to remote member firm locations for [specialist] trading *and floor broker access.* The remote terminals will be linked to the BEACON Trading System and will provide the same functionality as is available to on-floor specialists *and floor brokers.* All orders directed to remote specialists *and orders input by brokers,* including ITS commitments and administrative messages, will be from the Woburn data center through BEACON as occurs with on-floor specialists *and floor brokers.* Floor broker orders (*including remote floor broker orders*) will be routed to remote specialists under the same criteria by which they are routed to on-floor specialists. [There will be no remote floor brokerage services]. The following shall apply to specialists *and, where applicable, brokers* participating in the BEACON Remote program:

(a)–(b) No changes.

(c) Any eligible firm may apply to the Market Performance Committee to participate in the program. All applicants must meet the current minimum requirements for specialists *or brokers* set forth in the Rules of the Exchange, including, but not limited to their background, experience, staffing, training procedures, adequacy of applicant's proposed confidentiality policy, adequacy of applicant's contingency plans for communication or technology failures, adequacy of applicant's offsite facilities, performance standards, and the minimum margin, capital and equity requirements as set forth in Chapters VIII and XXII of the Rules of the Exchange, and conform to all other performance requirements and standards set forth in the Rules of the Exchange.

(d) Unless the Market Performance Committee specifically authorizes otherwise, participating member firms shall be prohibited from trading remotely any securities which are currently being traded on-floor by that individual member firm. In evaluating a member firm's petition for changing the location of where a particular security is traded, the Market Performance Committee shall consider the application in light of the requirements set forth in paragraph (c) above. Individual securities, however, may not be traded by one [specialist] firm in more than one location under any circumstances.

(e)–(f) No changes.

(f) All layoff orders must be included in BEACON drop copy.

(g) All rule references pertaining to the trading floor of the Exchange, including:

Chapter I–B, Section 2 (''Dealings on Floor—Hours'');

Chapter I–B, Section 3 (''Dealings on Floor—Persons'');

Chapter II, Section 2 (''Recording of Sales'');

Chapter II, Section 6 (''Bids and Offers for Stocks'');

Chapter II, Section 9 (''Trading for Joint Account'');

Chapter II, Section 10 (''Discretionary Transactions'');

Chapter II, Section 13 (''Trading Against Privileges'');

Chapter II, Section 15 (''Record of Orders from Offices to Floor'');

Chapter II, Section 23 (''Dealing on Other Exchanges, or Publicly Outside the Exchange'');

Chapter II, Section 31 (''Offering Publicly on the Floor'');

Chapter VIII, Section 2 (''Member Organization Account'');

Chapter XIV, ''Floor Brokers;

Chapter XV, Section 1 (''Registration'');

Chapter XV, Section 2 (''Responsibilities'');

Chapter XV, Section 3 (''Code of Acceptable Business Practices for Specialists'');

Chapter XV, Section 5 (''Preference on Competitive Basis'');

Chapter XV, Section 6 (''The Specialist's Book'');

Chapter XV, Section 9 (''Opening Listed Stock'');

Chapter XV, Section 10 (''Hours'');

Chapter XV, Section 16 (''Status of Orders When Primary Market Closed'');

Chapter XV, Section 18 (''Procedures for Competing Specialists'');

Chapter XV (''Special Offerings'');

Chapter XVIII, Section 1 (''Penalties'');

Chapter XVIII, Section 4 (''Imposition of Fines for Minor Violation(s) of Rules and Floor Decorum Policies'');

Chapter XX, Section 6 (''Gratuities'');

Chapter XXII, Section 2 (''Capital and Equity Requirements'');

Chapter XXXI, Section 2 (''Intermarket Trading System'');

Chapter XXXI, Section 3 (''Pre-Opening Application'');

Chapter XXXI, Section 4 (''Trade-Throughs and Locked Markets'');

Clearing Corporation Rule 3, Section 2 (''Dual Member Broker/Dealer Accounts'');

Clearing Corporation Rule 3, Section 3 (''Boston Representative Broker/Dealer Accounts'');

Clearing Corporation Rule 3, Section 4 (''Specialist Member''); and Clearing Corporation Rule 4, Section 4 (''Bills Rendered'')

shall be deemed to include any trading done remotely through BEACON, and all such trades shall be deemed to be Boston executions on the Exchange.

(h) A written confidentiality policy regarding the location of equipment and access to information, terminals and equipment must be adopted by the firm and filed with and approved by the Exchange prior to the commencement of remote trading. Moreover, this policy must conform to all of the requirements set forth in the Rules of the Exchange, including, but not limited to Chapter XV, Section 6 (The Specialist Book), Chapter II, Section 36 (Specialist Member Organizations Affiliated with an Approved Person), and Section 37 (ITSFEA Procedures). In accordance therewith, reasonable principles must be applied to limit access by non-specialists to Remote Specialist facilities and information, and to limit Remote Specialists *and Brokers* access to and from other proprietary trading venues, including access from outcry or visible communication, intentional or otherwise.

(i) Floor policies regarding dress code, and smoking, identification and visitors shall not apply. Access to the area designated as that of the Remote Specialist's *or Remote Broker's* shall be restricted to the specialist *or broker,* backup specialist, clerks, designated management of the specialist *or broker,* and Exchange authorized personnel, consistent with the Rules of the Exchange, including, but not limited to, ''Chinese Wall'' procedures set forth in Chapter II, Section 36, (Specialist Member Organizations Affiliated with an Approved Person), and procedures set forth in Chapter XV, Section 6 (The Specialist's Book).

(j) All Exchange correspondence, memoranda, bulletins and other

publications shall be sent to BEACON Remote Specialists *and Brokers* via electronic mail through BEACON and via U.S. mail or overnight delivery.

(k) All BEACON Remote specialists *and brokers* will have stentofon, (or a similarly operational speakerphone), as well as dedicated telephone access, to the physical trading floor. Any regulatory requirements including trading halts, trading practices, policies, procedures or rules requiring floor official involvement will be coordinated by Exchange personnel with the remote specialists *and brokers* through the dedicated telephone line.

(l) No changes.

(m) The Exchange's examination program of non-DEA floor members would include the remote specialist *and broker* operations. Every firm must submit specific supervisory procedures relating to the Remote Specialist *and/or Broker* operations and appropriate identification of all individuals who will have access to the Remote Specialist *and/or Broker* operation, including all supervisory personnel.

(n) No changes.

(o) Each remote BEACON terminal assigned and registered by the Exchange will require an ETP, and will be subject to the following:

(1) Each approved Specialist unit may be authorized to trade up to 200 issues.

(2) Each Specialist *and/or Broker* unit must have at least one registered Exchange seat assigned to the approved specialist *or broker.*

(a) A specialist may be authorized to obtain additional ETP's for qualified registered clerks to access BEACON in support of the Specialist unit.

(b) All specialists, *brokers,* and registered clerk ETP holders must be approved by the Market Performance Committee and must meet the following:

(i) file an ETP application form with the BSE Surveillance Department;

(ii) completion of the required floor training program;

(iii) successful completion of the BSE floor examination within 90 days of application;

(iv) successful completion of the Series 63 (NASAA Uniform State Law Exam), and registration with the Commonwealth of Massachusetts, and;

(v) submission of fingerprint records to the BSE.

(3) Each Specialist unit identified by the member firm will be assigned an account (''give up'') and will be evaluated under the Exchange's Specialist Performance Evaluation Program (''SPEP'') which currently measures performance in several separate categories comprising a relative overall performance ranking.

Commentary

During the initial stages of this program (rollout), the Exchange will permit only current floor member firms to participate. The rationale for this is that current floor member firms have already been evaluated as to, among other things, their familiarity with the Rules of the Exchange, capital, equity and margin requirements, experience, staffing and training procedures, and performance standards. As soon as is practicable following the rollout of the program, the Market Performance Committee of the Exchange will consider other firm applicants based on a variety of criteria, as identified in Section 9(c), above, including, but not limited to, adequate off-site facilities to ensure compliance with the referenced portions of the Exchange's rules, and adequate capital to manage the risks associated with this program. For every applicant specialist *or broker* who is not an existing on-floor specialist *or broker,* a two week on-floor training period will be required, among the purposes of which will be to benefit the relationship between the Boston floor and the remote specialist *or broker.*

* * * * *

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 BSE 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 BSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules regarding remote trading to permit remote brokers. The BSE has been operating its remote specialist system since December 2000. At the time it was originally proposed, remote specialists were a novel concept, and the Exchange decided not to extend remote trading capabilities to its floor brokers until the remote specialist idea had been launched and tested. The Exchange is now seeking to open remote trading capabilities to its floor brokers.

The remote brokers would be governed by the same general rules that govern the remote specialists, including the various rules set forth throughout the BSE rules regarding informational barriers and other such safeguards. Additionally, the remote brokers would be governed by all of the rules that currently apply to floor brokers, including those set forth in Chapter XIV, ''Floor Brokers,'' of the BSE rules. The Exchange would also conduct periodic examinations of all remote brokerage operations, as it does under a compliance program developed for its remote specialists. The duties and obligations a BSE floor broker would not be altered in any way, with the only change being the ability of the floor brokers to conduct their business from locations other than the Exchange floor.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[3] in general, and furthers the objectives of section 6(b)(5),[4] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and the national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to 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

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

(ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

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–BSE–2004–24 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–BSE–2004–24. 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. Copies of such filing also will be available for inspection and copying at the principal office of the BSE. 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–BSE–2004–24 and should be submitted on or before December 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3381 Filed 11–29–04; 8:45 am]

BILLING CODE 8010–01–P

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50718; File No. SR–FICC–2004–09]

Self-Regulatory Organizations; Notice of a Proposed Rule Change by the Fixed Income Clearing Corporation Relating to Changes to Membership Requirements

November 22, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 14, 2004, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') and on November 16, 2004, amended the proposed rule change as 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 persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend FICC's Government Securities Division (''GSD'') and Mortgage Backed Securities Division (''MBSD'') rules to require applicants and members to submit two years of audited annual financial statements or less for newly formed entities, to permit applicants and members to submit audited consolidated statements in situations where audited financial statements are not prepared at the applicant or member level, to eliminate the rule that requires comparison-only members to be in compliance with the capital requirements of their examining authority, and to require non-US banks that wish to become an approved letter of credit issuer to have language in their opinion of counsel indicating that the head office is ''ultimately responsible'' for the credit obligation of the branch.

[1] 15 U.S.C. 78s(b)(1).

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 such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change would affect GSD's and MBSD's rules in the following areas:

1. Annual Audited Financial Statements

Currently, GSD's rules require U.S. applicants for membership to submit annual audited financial statements for the preceding year and non-U.S. applicants to submit annual audited financial statements for the preceding three years. MBSD's rules currently require U.S. and non-U.S. membership applicants to submit annual audited financial statements for the preceding year.

FICC proposes to amend both divisions' rules to require GSD netting applicants and MBSD clearing applicants to submit two years of annual audited financial statements. However, if an applicant or member has not been in business for two years (*i.e.*, a newly-formed applicant or member[3]), FICC would permit it to submit annual audited financial statements for a lesser period and/or annual audited financial statements of a predecessor firm in the case of an applicant or member formed by a corporate transaction. If audited financial statements cannot be obtained, newly-formed applicants will be permitted to submit unaudited pro forma financial statements.

Firms that submit less than two years of financial statements would also have to submit: (1) Annual audited financial statements of a predecessor firm, if applicable; (2) *pro forma* financial statements signed by a senior officer of the firm; (3) regulatory reports for the

[2] The Commission has modified the text of the summaries prepared by FICC.

[3] A newly formed applicant may include a company with no business history or a company formed as a result of a corporate transaction such as a merger.

period since inception;[4] and (4) evidence from a third party verifying the applicant's capital at the time of application.

FICC believes the proposed rule change permitting less than two years of annual audited financial statements or unaudited *pro forma* financial statements is necessary and appropriate in order to accommodate entities that are newly-formed and those that are created as a result of a merger of existing entities or other similar corporate transaction. First, firms that are newly-formed do not have audited financials and in some instances can only provide pro forma financial statements. Second, the GSD's rules already contemplate the admission of entities with little or no business history, which often are of equal or even greater credit quality than more established entities. For example, GSD's rules provide that a netting applicant must have an established, profitable business history of a minimum of six months or personnel with sufficient operational background and experience to ensure in the judgment of FICC's Membership and Risk Management Committee the ability of the firm to conduct its business.[5] Third, FICC believes that the foregoing information will provide sufficient evidence that the applicant meets FICC's membership standards. Upon approval for membership, such a firm will be required to submit interim financial data to FICC, which will be used to monitor adherence to FICC's established financial parameters. As of its fiscal year-end, the firm will be required to provide its annual audited financial statement. At that time, the applicable interim statement will be compared to the audited financial statement. If there are discrepancies, the firm will be required to supply FICC with an acceptable explanation.

2. Financial Statements Prepared at the Applicant or Member Level

The rules of both FICC divisions currently specify that all required audited financial statements be prepared at the applicant or member level. However, some entities do not prepare their own audited financial statements. Their financial status is included in audited consolidated financial statements of a parent company.[6] Accordingly, FICC proposes to amend both divisions' rules to permit the submission of audited consolidated financial statements in situations where audited financial statements are not prepared at the applicant or member level.

FICC believes that it is not appropriate for it to mandate that members prepare their own audited financial statements if it is not their practice to do so. First, many members are not required to prepare their own audited financial statements by their regulators and doing so would be very expensive. Second, FICC is comfortable in accepting audited consolidated financial statements because FICC is able to obtain information regarding an applicant's or member's financial status through interim financial data on the applicant or member itself. This interim data is on the applicant or member firm level and is obtained from regulatory reports filed by the applicant or member itself or unaudited financial reports prepared internally by the applicant or member. FICC staff compares data from the applicable interim statement to the audited financial statement or applicable audited consolidated financial statement, and if there are discrepancies, the firm would be required to supply FICC with an acceptable explanation. In addition, in instances where the member or applicant is unregulated and regulatory reports are thus not available, FICC may request consolidating financial statements from the member firm, which will show the financials of the entities that were included in the audited consolidated financial statement.

In addition to this change, FICC is proposing to make a technical change to the term ''financial statements'' in GSD Rule 2, Section 7, to update the current reference to ''shareholder's equity'' to ''owner's equity'' to encompass those entities that do not have shareholders.

3. Compliance With Certain Capital Requirements

The GSD's rules currently state that a comparison-only applicant must be in compliance with the capital requirements imposed by its designated examining authority, appropriate regulatory agency, or other examining authority or regulator, and any other self-regulatory organizations to which it is subject by statute, regulation, or agreement.

FICC proposes to eliminate this requirement because comparison-only membership does not present FICC with any credit or financial risk since FICC does not guarantee that service.

4. Letters of Credit

GSD's rules currently provide that if an approved letter of credit issuer is a non-US bank acting through a branch or agency in the US, it must provide FICC with a ''guarantee of performance'' of such branch or agency deemed sufficient by FICC. FICC believes that the current language needs to be clarified because it was never meant to require a financial guarantee. FICC believes that it is not appropriate to require the head office of an approved letter of credit issuer to provide a financial guarantee for its branch or agency, given that the latter is simply an ''arm'' of the head office itself and not a separate legal entity.

Accordingly, FICC proposes to change the current language to specify that non-US banks wishing to become approved letter of credit issuers must have language in their opinion of counsel indicating that the head office is ''ultimately responsible'' for the credit obligation of the branch or agency. This language is already contained in the pro forma legal opinions that are part of the FICC letter of credit issuer application.

FICC believes that the proposed rule change is consistent with the requirements of section 17A of the Act[7] and the rule thereunder because it will enhance FICC's risk management procedures thereby further safeguarding the funds and securities under FICC's control.

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.

[4] A regulated entity, such as a U.S. broker-dealer or domestic bank, will file regulatory reports (FOCUS reports for a broker-dealer and CALL reports for a bank) with its regulators in the required time period following its regulatory approval. Such firms' regulators would require them to include as much information in these reports as is normally required of all other entities except where certain information would be unavailable. For example, if a broker-dealer has not yet begun trading, it would not report any trading revenue.

Unregulated and non-U.S. entities would be required to produce specific information that FICC would need in order to develop a risk profile to evaluate creditworthiness. This information would be requested in a form provided to the firms by FICC and signed by a senior officer of the firm. (This form, which is the subject of a pending rule filing, SR–FICC–2004–14, would replace the current requirement for the submission of regulatory reports for non-U.S. entities only and that U.S.-regulated entities will still be required to submit regulatory reports). If necessary, and regardless of whether regulatory reports are available, FICC may seek evidence from a third party to prove that an applicant or newly approved member meets minimum standards. For example, FICC may request a bank statement to verify that cash has been deposited, thereby verifying that the applicant meets FICC's minimum capital requirement.

[5] FICC Rule 2, § 4 and Rule 3, § 2(c).

[6] References to a ''parent'' company can mean a direct parent, intermediate parent, or ultimate parent company.

[7] 15 U.S.C. 78q–1.

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 it receives.

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 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–2004–09 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–2004–09. 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://ficc.com/gov/gov.docs.jsp?NS-query=*. 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–2004–09 and should be submitted on or before December 21, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3384 Filed 11–29–04; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50724; File No. SR–NASD–2004–132]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Listing and Trading of Accelerated Return Notes Linked to the Russell 2000 Index

November 23, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 31, 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. On October 22, 2004, Nasdaq filed an amendment 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 and is approving the proposal, as amended, on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to list and trade accelerated return notes linked to the Russell 2000 Index (''Notes'') issued by Merrill Lynch & Co., Inc. (''Merrill Lynch'').

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 III 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

Nasdaq proposes to list and trade the Notes, which may provide for a return based upon the market performance of the Russell 2000 Index (''Index'').

The Index

The Index is a capitalization-weighted index maintained by Frank Russell Company (''FRC''). It is designed to track the performance of 2,000 common stocks of corporations with small market capitalizations relative to other stocks in the U.S. equity market. The companies represented in the Index are domiciled in the U.S. and its territories and cover a wide range of industries. All 2,000 stocks underlying the Index are traded on the New York Stock Exchange, Inc., the American Stock Exchange, LLC, or Nasdaq and form a part of the Russell 3000 Index. The Russell 3000 Index is comprised of the 3,000 largest U.S. companies based on market capitalization, and it represents

[3] *See* letter from Alex Kogan, Associate General Counsel, Office of General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated October 21, 2004 (''Amendment No. 1''). In Amendment No. 1, Nasdaq clarified the calculation of the Russell 2000 Index and the application of its continued listing standards to the Notes.

approximately 98% of the U.S. equity market.

The Index measures the price performance of the shares of common stock of the smallest 2,000 companies included in the Russell 3000 Index, which represented approximately 8% of the total market capitalization of the Russell 3000 Index as of August 31, 2004.[4] The Index is designed to track the performance of the small capitalization segment of the U.S. equity market. The Index is defined, assembled, and calculated by FRC without regard to the Notes.

Only companies domiciled in the U.S. and its territories are eligible for inclusion in the Index. Companies domiciled in other countries are excluded from the Index, even if their common stock shares are traded on U.S. markets. Preferred stock, convertible preferred stock, participating preferred stock, paired shares, warrants, and rights are also excluded. Trust receipts, Royalty Trusts, limited liability companies, OTC Bulletin Board and Pink Sheets' quoted stock, closed-end mutual funds, and limited partnerships that are traded on U.S. exchanges are also ineligible for inclusion in the Index. Real Estate Investment Trusts and Beneficial Trusts are eligible for inclusion, however. In general, only one class of shares of a company is allowed in the Russell 3000 Index, although exceptions to this general rule have been made where FRC has determined that each class of shares acts independently.

The primary criteria used to determine the initial list of securities eligible for the Russell 3000 Index is total market capitalization, which is defined as the price of the shares times the total number of shares outstanding. Based on closing values on May 31 of each year, FRC reconstitutes the composition of the Russell 3000 Index using the then existing market capitalizations of eligible companies to reflect changes in capitalization rankings and shares available. If a stock ceases to trade as a result of a merger or acquisition during the year, then the stock would be deleted from the Index immediately, but would not be replaced until the subsequent annual recapitalization. No interim replacements will be made. As of June 30 of each year, the Index is adjusted to reflect the reconstitution of the Russell 3000 Index for that year.

As of August 19, 2004, the market capitalization of the Index components ranged from approximately $70 million to approximately $3.92 billion. As of the same date, the Index's highest weighted component stock constituted approximately 0.195% of the Index's market capitalization, and the top five component stocks constituted approximately 0.956% of the Index's market capitalization. For a 30-day period prior to August 19, 2004, the average daily trading volume of an ''average'' Index component was approximately 195,000 shares.[5]

As a capitalization-weighted index, the Index reflects changes in the capitalization, or market value, of the component stocks relative to the capitalization on a base date. The current Index value is calculated by adding the market values of the Index's component stocks, which are derived by multiplying the price of each stock by the number of shares outstanding to arrive at the total market capitalization of the 2,000 stocks. The total market capitalization is then divided by a divisor, which represents the ''adjusted'' capitalization of the Index on the base date of December 31, 1986. To calculate the Index, last sale prices are used for exchange-traded and Nasdaq stocks. If a component stock is not open for trading, the most recently traded price for that security is used in calculating the Index. To provide continuity for the Index's value, the divisor is adjusted periodically to reflect certain events, including changes in the number of common shares outstanding for component stocks, company additions or deletions, corporate restructurings, and other capitalization changes. As of August 19, 2004, the divisor was 1,735,296.

The Index value is widely disseminated throughout the trading day because complete, ''real-time'' dissemination of the Index value, updated at least every 15 seconds, is available from numerous independent sources, such as vendors, including Bloomberg and Reuters. The value of the Index on a delayed basis can be accessed by individual investors at *http://finance.yahoo.com/q?s=^RUT&d=t.* The last sale information for the Notes is disseminated on a real time basis on Tape C and a variety of other sources.[6] In the event that the calculation and this type of dissemination of the Index is discontinued, Nasdaq will delist the Notes.[7]

Other Information

Under NASD Rule 4420(f) (''Other Securities''), Nasdaq may approve for listing and trading securities that cannot be categorized readily under traditional listing guidelines.[8] Nasdaq proposes to list the Notes for trading under the initial listing criteria of NASD Rule 4420(f). Specifically, under NASD Rule 4420(f)(1):

(A) The issuer shall have assets in excess of $100 million and stockholders' equity of at least $10 million.[9] In the case of an issuer that is unable to satisfy the income criteria set forth in paragraph (a)(1), Nasdaq generally will require the issuer to have the following: (i) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (ii) assets in excess of $100 million and stockholders' equity of at least $20 million;

(B) There must be a minimum of 400 holders of the security; provided, however, that if the instrument is traded in $1,000 denominations, there must be a minimum of 100 holders;

(C) For equity securities designated pursuant to this paragraph, there must be a minimum public distribution of 1,000,000 trading units; and

(D) The aggregate market value/principal amount of the security will be at least $4 million.

In addition, Merrill Lynch satisfies the listed marketplace requirement set forth in NASD Rule 4420(f)(2).[10] Pursuant to NASD Rule 4420(f)(3), prior to the commencement of trading of the Notes, Nasdaq will distribute a circular to members to provide guidance on compliance responsibilities and requirements, including suitability recommendations, and to highlight the special risks and characteristics of trading in the Notes. In particular, Nasdaq will advise members

[4] As of August 31, 2004, the total market capitalization of the Index was $953.34 billion.

[5] To obtain this average daily trading volume figure, the average daily trading volume of all of the Index's components was averaged over a 30-day period. Telephone conversation between Florence E. Harmon, Senior Special Counsel, Division of Market Regulation, Commission, and Alex Kogan, Associate General Counsel, Office of General Counsel, Nasdaq, on November 16, 2004.

[6] Telephone conversation between Florence E. Harmon, Senior Special Counsel, Division of Market Regulation, Commission, and Alex Kogan, Associate General Counsel, Office of General Counsel, Nasdaq, on November 16, 2004.

[7] Telephone conversation between Florence E. Harmon, Senior Special Counsel, Division of Market Regulation, Commission, and Alex Kogan, Associate General Counsel, Office of General Counsel, Nasdaq, on November 16, 2004.

[8] *See* Securities Exchange Act Release No. 32988 (Sept. 29, 1993), 58 FR 52124 (Oct. 6, 1993).

[9] Merrill Lynch satisfies this listing criterion.

[10] NASD Rule 4420(f)(2) requires issuers of securities designated pursuant to this paragraph to be listed on the Nasdaq National Market or the New York Stock Exchange, Inc., or be an affiliate of a company listed on the Nasdaq National Market or the New York Stock Exchange, Inc.; provided, however, that the provisions of NASD Rule 4450 will be applied to sovereign issuers of ''other'' securities on a case-by-case basis.

recommending a transaction in the Notes to customers to have reasonable grounds for believing that the recommendation is suitable for such customer based on the facts, if any, disclosed by such customer of his or her other security holdings and of his or her financial situation and needs. In addition, pursuant to NASD Rule 2310(b), before executing a transaction in the Notes that has been recommended to a non-institutional customer, a member shall make reasonable efforts to obtain information concerning: (1) The customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such member in making recommendations to the customer.

The Notes also will be subject to Nasdaq's continued listing criterion for other securities pursuant to NASD Rule 4450(c). Under this criterion, the aggregate market value or principal amount of publicly held units must be at least $1 million. The Notes also must have at least two registered and active market makers, which is a continued listing requirement under NASD Rule 4310(c)(1). In addition, the Notes will be subject to the NASD's existing trading halt rules.[11] Nasdaq will consider prohibiting the continued listing of the Notes if Merrill Lynch is not able to meet its obligations on the Notes.

Description of the Notes

The Notes are a series of senior non-convertible debt securities that will be issued by Merrill Lynch and will not be secured by collateral. The Notes will have a term to maturity of approximately fourteen months. The Notes will be issued in denominations of whole units (''Unit''), with each Unit representing a single Note. The initial public offering price will be $10 per Unit. The Notes will not pay interest and are not subject to redemption by Merrill Lynch or at the option of any beneficial owner before maturity.

At maturity, if the value of the Index has increased, a beneficial owner will be entitled to receive a payment on the Notes based on triple the amount of that percentage increase, not to exceed a maximum payment per Unit (the ''Capped Value'') that is expected to be $11.45. Thus, Nasdaq believes that the Notes provide investors the opportunity to obtain leveraged returns based on the Index subject to a cap that is expected to represent an appreciation of 14.5% over the original public offering price of the Notes. Unlike ordinary debt securities, the Notes do not guarantee any return of principal at maturity. However, the Notes are not leveraged on the downside; rather, the value of the Notes declines on a one-to-one basis with the Index. Therefore, if the value of the Index has declined at maturity, a beneficial owner will lose some, and possibly all, of the original public offering price of $10 per Unit.

The payment that a beneficial owner will be entitled to receive (the ''Redemption Amount'') depends entirely on the relation of the average of the values of the Index at the close of the market on five business days before the maturity of the Notes (the ''Ending Value'') and the closing value of the Index on the date the Notes are priced for initial sale to the public (the ''Starting Value'').

If the Ending Value is less than or equal to the Starting Value, the Redemption Amount per Unit will equal:

$$\$10 \times \left(\frac{\text{Ending Value}}{\text{Starting Value}} \right)$$

If the Ending Value is greater than the Starting Value, the Redemption Amount per Unit will equal:

$$\$10 + \left(\$30 \times \left(\frac{\text{Ending Value} - \text{Starting Value}}{\text{Starting Value}} \right) \right)$$

Provided, however, that the Redemption Amount cannot exceed the Capped Value.

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security, dividend payments, or any other ownership right or interest in the portfolio or index of securities comprising the Index. The Notes are designed for investors who want to participate or gain exposure to the Index, subject to a cap, and who are willing to forego market interest payments on the Notes during the term of the Notes. The Commission has previously approved the listing and trading of other securities in which the performance has been linked to the Index and to other Russell indexes.[12]

Since the Notes will be deemed equity securities for the purpose of NASD Rule 4420(f), the NASD and Nasdaq's existing equity trading rules will apply to the Notes. First, pursuant to NASD Rule 2310 and IM–2310–2, members must have reasonable grounds for believing that a recommendation to a customer regarding the purchase, sale, or exchange of any security is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.[13] In addition, as previously described, Nasdaq will distribute a circular to members providing guidance regarding compliance responsibilities and requirements, including suitability recommendations, and highlighting the special risks and characteristics of the Notes. Furthermore, the Notes will be subject to the equity margin rules. Lastly, the regular equity trading hours of 9:30 a.m. to 4 p.m. will apply to transactions in the Notes.

Pursuant to Rule 10A–3 of the Act[14] and section 3 of the Sarbanes-Oxley Act of 2002,[15] Nasdaq will prohibit the initial or continued listing of any security of an issuer that is not in compliance with the requirements set forth therein.

Nasdaq represents that NASD's surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, NASD will rely on its current surveillance procedures governing equity securities and will include additional monitoring on key pricing dates.

[11] *See* NASD Rule 4120.

[12] *See, e.g.*, Securities Exchange Act Release Nos. 49388 (Mar. 10, 2004), 69 FR 12720 (Mar. 17, 2004) (File No. SR–CBOE–2003–51) (approving the listing and trading of options on three Russell indexes; order contains the list of twelve additional Russell indexes that were approved by the Commission at various times in the past for option listing and trading); and 31382 (Oct. 30, 1992), 57 FR 52802 (Nov. 5, 1992) (File No. SR–CBOE–92–02) (approving the listing and trading of options on the Index).

[13] NASD Rule 2310(b) requires members to make reasonable efforts to obtain information concerning a customer's financial status, a customer's tax status, the customer's investment objectives, and such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

[14] 17 CFR 240.10A–3.

[15] Pub. L. 107–204, 116 Stat. 745 (2002).

Merrill Lynch will deliver a prospectus in connection with the initial purchase of the Notes. The procedure for the delivery of a prospectus will be the same as Merrill Lynch's current procedure involving primary offerings.[16]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[17] in general, and with section 15A(b)(6) of the Act,[18] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. Specifically, the proposed rule change will provide investors with another investment vehicle based on the Index.

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. 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–2004–132 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–2004–132. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of the 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–2004–132 and should be submitted on or before December 21, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

Nasdaq has asked the Commission to approve the proposal on an accelerated basis to accommodate the timetable for listing the Notes. After careful consideration, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered securities association, and, in particular, with the requirements of section 15A(b)(6) of the Act,[19] in that it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market, and, in general, to protect investors and the public interest.[20] The Commission believes that the Notes will provide investors with a means to participate in any percentage increase in the Index that exists at the maturity of the Notes, subject to the Capped Value. Specifically, as described more fully above, if the value of the Russell 2000 Index has increased, a beneficial owner will be entitled to receive at maturity a payment on the Notes based on triple the amount of any percentage increase in the Index, not to exceed the Capped Value. The Commission notes that the effect of the Capped Value limits an investor in the Notes to an appreciation of 14.5% over the original offering price of the Notes.

The Commission notes that the Notes are non-principal protected instruments and are not leveraged on the downside. The Notes are debt instruments, the price of which will be derived from, and based upon, the value of the Russell 2000 Index. The Notes will not have a minimum principal amount that will be repaid at maturity, and accordingly, payment on the Notes at maturity may be less than the original issue price of the Notes. Accordingly, the Commission believes that the level of risk involved in the purchase or sale of the Notes is similar to the risk involved in the purchase or sale of traditional common stock. Because the final rate of return of the Notes is derivatively priced and based on the performance of the 2,000 stocks underlying the Russell 2000 Index, the Notes are instruments that do not guarantee a return of principal, and the return on the Notes is limited by the maximum payment at maturity, there are several issues regarding the trading of this type of product. However, for the reasons discussed below, the Commission believes that Nasdaq's proposal adequately addresses those concerns.

First, the Commission notes that the protections of NASD Rule 4420(f) were designed to address the concerns attendant to the trading of hybrid securities like the Notes. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes that Nasdaq has addressed adequately the potential problems that could arise from the hybrid nature of the Notes. Nasdaq states that it will distribute a circular to its membership calling attention to the specific risks associated with the Notes. Specifically, among other things, the circular will note that the Notes do not guarantee a total return of principal at maturity, that they are subject to maximum total payment at maturity, that the Notes do not pay interest, and that the Notes will provide exposure to the Index. Distribution of the circular should help to ensure that only customers with an understanding of the

[16] Telephone conversation between Alex Kogan, Associate General Counsel, Office of General Counsel, Nasdaq, and Richard Holley III, Attorney, Division of Market Regulation, Commission, on November 1, 2004.

[17] 15 U.S.C. 78*o*–3.

[18] 15 U.S.C. 78*o*–3(b)(6).

[19] 15 U.S.C. 78*o*–3(b)(6).

[20] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

risks attendant to the trading of the Notes and who are able to bear the financial risks associated with transactions in the Notes will trade the Notes. Nasdaq also represents that Merrill Lynch will deliver a prospectus in connection with the initial sales of the Notes. In addition, Nasdaq has represented that it will incorporate and rely upon its existing surveillance procedures governing equity trading for the surveillance of the Notes, which includes surveillance on key pricing dates.

Second, the Commission believes that the listing and trading of the Notes should not unduly impact the market for the securities underlying the Index or raise manipulative concerns. In approving the product, the Commission recognizes that the Index is a capitalization-weighted stock index that is calculated, published, and disseminated by FRC that measures the composite price performance of the smallest 2,000 companies included in the Russell 3000 Index.[21] The Commission notes that the Index represents a broad cross-section of domestic small to mid-sized stocks, and no single industry group or stock dominates the Index. Only companies domiciled in the U.S. and its territories, which are listed and trade on the New York Stock Exchange, Inc., the American Stock Exchange, LLC, or Nasdaq, are eligible for inclusion in the Index. Changes in the composition of the Russell 2000 Index are made solely by FRC.

Nasdaq also represents that the primary criteria used to determine the initial list of securities eligible for the Russell 3000 Index is total market capitalization, and the Index is adjusted to reflect the reconstitution of the Russell 3000 Index for a given year. As of August 19, 2004, the market capitalization of the Index components ranged from approximately $70 million to approximately $3.92 billion. As of the same date, the Index's highest weighted component stock constituted approximately 0.195% of the Index's market capitalization, and the top five component stocks constituted approximately 0.956% of the Index's market capitalization. Nasdaq further states that the average daily trading volume of the average of Index components was approximately 195,000 shares. Given the composition of the stocks underlying the Russell 2000 Index, the Commission believes that the listing and trading of the Notes that are linked to the Russell 2000 Index should not unduly impact the market for the underlying securities comprising the Russell 2000 Index or raise manipulative concerns.[22]

Third, the Commission notes that the Notes are dependent upon the individual credit of the issuer, Merrill Lynch. To some extent, this credit risk is minimized by the NASD's listing standards in NASD Rule 4420(f), which provide that only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. In addition, the NASD's hybrid listing standards further require that the Notes have a market value of at least $4 million. In any event, financial information regarding Merrill Lynch, in addition to the information on the 2000 stocks comprising the Russell 2000 Index, will be publicly available.[23] The Commission also has a systemic concern, however, that a broker-dealer, such as Merrill Lynch, or a subsidiary providing a hedge for the issuer could incur position exposure. However, as the Commission has concluded in previous approval orders for other hybrid instruments issued by broker-dealers,[24] the Commission believes that this concern is minimal given the size of the issuance of the Notes in relation to the net worth of Merrill Lynch.

Finally, the Commission notes that the value of the Russell 2000 Index will be widely disseminated at least once every 15 seconds throughout the trading day. Nasdaq has stated that it will delist the Notes in the event that the calculation and dissemination of the Index from a source independent of the issuer and Nasdaq is discontinued. The Commission believes that the availability of this disclosure is sufficient and should benefit investors in the product.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register.** The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Notes promptly. In addition, the Commission notes that it has previously approved the listing and trading of other derivative securities based on the Index[25] and securities with a structure similar to that of the Notes.[26] Accordingly, the Commission believes that there is good cause, consistent with sections 15A(b)(6) and 19(b)(2) of the Act,[27] to approve the proposal, as amended, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[28] that the proposed rule change, as amended, (SR–NASD–2004–132) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3379 Filed 11–29–04; 8:45 am]

BILLING CODE 8010–01–P

[21] The Russell 3000 Index is composed of the 3,000 largest U.S. companies, based on market capitalization, and represents approximately 98% of the U.S. equity market. The Russell 2000 Index represented approximately 8% of the total market capitalization of the Russell 3000 Index as of August 31, 2004.

[22] *See also* Securities Exchange Act Release No. 31382 (Oct. 30, 1992), 57 FR 52802 (Nov. 5, 1992) (File No. SR–CBOE–92–02) (classifying the Index as broad-based).

[23] *See http://www.russell.com/US/Indexes/US/Membership/default.asp.*

[24] *See, e.g.,* Securities Exchange Act Release Nos. 50278 (Aug. 24, 2004), 69 FR 53751 (Sept. 2, 2004) (File No. SR–Amex–2004–64) (order approving the listing and trading of notes linked to the performance or the Standard & Poor's 500 Index); 49670 (May 7, 2004), 69 FR 27959 (May 17, 2004) (File No. SR–NASD–2001–68) (order approving the listing and trading of notes linked to the Nikkei 225 Index); 44913 (Oct. 9, 2001), 66 FR 52469 (Oct. 15, 2001) (File No. SR–NASD–2001–73) (order approving the listing and trading of notes whose return is based on the performance of the Nasdaq-100 Index); and 44483 (June 27, 2001), 66 FR 25677 (July 6, 2001) (File No. SR–Amex–2001–40) (order approving the listing and trading of notes whose return is based upon a portfolio of 20 securities selected from the Amex Institutional Index).

[25] *See* Securities Exchange Act Release Nos. 46306 (Aug. 2, 2002), 67 FR 51916 (Aug. 9, 2002) (File No. SR–NYSE–2002–28) (approving the listing and trading of an exchange traded fund based on the Index); 32694 (July 29, 1993), 58 FR 41814 (Aug. 5, 1993) (File No. SR–CBOE–93–16) (approving the listing and trading of Flexible Exchange Options on the Index); 32693 (July 29, 1993), 58 FR 41817 (Aug. 5, 1993) (File No. SR–CBOE–93–15) (approving the listing and trading of QIX options on the Index); and 31382 (Oct. 30, 1992), 57 FR 52802 (Nov. 5, 1992) (File No. SR–CBOE–92–02) (approving the listing and trading of options on the Index).

[26] *See* Securities Exchange Act Release Nos. 49670 (May 7, 2004), 69 FR 27959 (May 17, 2004) (File No. SR–NASD–2004–068) (approving the listing and trading of notes linked to the Nikkei 225 Index); 47464 (Mar. 7, 2003), 68 FR 12116 (Mar. 13, 2003) (File No. SR–NASD–2003–22) (approving the listing and trading of Market Recovery Notes Linked to the S&P 500 Index); 47009 (Dec. 16, 2002), 67 FR 78540 (Dec. 24, 2002) (File No. SR–NASD–2002–175) (approving the listing and trading of Market Recovery Notes linked to the Nasdaq-100 Index); and 46883 (Nov. 21, 2002), 67 FR 71216 (Nov. 29, 2002) (File No. SR–Amex–2002–68) (approving the listing and trading of Market Recovery Notes linked to the Dow Jones Industrial Average).

[27] 15 U.S.C. 78*o*–3(b)(6) and 78s(b)(2).

[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50731; File No. SR–PC–2004–104]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. To Extend for an Additional Six-Month Period a Pilot Rule Relating to Waiver of California Arbitrator Disclosure Standards

DATE: November 23, 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 25, 2004, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in items I, II and III below, which items have been prepared by the self-regulatory organization. The PCX filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX and its wholly owned subsidiary PCX Equities, Inc. (''PCXE'') are proposing to extend the pilot rule in PCX Rule 12.1(i) and PCXE Rule 12.2(h), which requires industry parties in arbitration to waive application of contested California arbitrator disclosure standards, upon the request of customers (and, in industry cases, upon the request of associated persons with claims of statutory employment discrimination), for an additional six-month pilot period, until May 25, 2005.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On November 21, 2002, the Commission approved, for a six-month pilot period, the Exchange's proposal to amend PCX and PCXE arbitration rules to require industry parties in arbitration to waive application of contested California arbitrator disclosure standards, upon the request of customers or, in employment discrimination cases, upon the request of associated persons.[5] The Commission approved an extension of the pilot on May 15, 2003,[6] November 19, 2003[7] and May 24, 2004.[8] The pilot period is currently set to expire on November 24, 2004.

On July 1, 2002, the Judicial Council of the State of California adopted new rules that mandated extensive disclosure requirements for arbitrators in California (the ''California Standards''). The California Standards are intended to address perceived conflicts of interest in certain commercial arbitration proceedings. As a result of the imposition of the California Standards on arbitrations conducted under the auspices of self-regulatory organizations (''SROs''), the National Association of Securities Dealers, Inc. (''NASD'') and the New York Stock Exchange (''NYSE'') suspended the appointment of arbitrators for cases pending in California and filed ajoint complaint in federal court for declaratory relief in which they contend that the California Standards cannot lawfully be applied to NASD and NYSE because the California Standards are preempted by federal law and are inapplicable to SROs under state law.[9] Subsequently, in the interest of continuing to provide investors with an arbitral forum in California pending the resolution of the applicability of the California Standards, the NASD and NYSE filed separate rule proposals with the Commission that would temporarily require their members to waive the California Standards if all non-member parties to arbitration have done so. The Commission approved the NASD's rule proposal on September 26, 2002[10] and the NYSE's rule proposal on November 12, 2002.[11] Both the NASD and the NYSE filed rule proposals to further extend the pilot period for additional six-month periods.[12]

Since the NASD's and NYSE's lawsuit relating to the application of the California Standards has not been resolved, PCX is now requesting an extension of the pilot for an additional six months (or until the pending litigation has resolved the question of whether or not the California Standards apply to SROs). PCX requests that the pilot be extended for six months beginning on November 25, 2004. The extension of time permits the Exchange to continue the arbitration process using PCX rules regarding a4rbitration disclosures and not the California Standards. No substantive changes are being made to the pilot program, other than extending the operation of the pilot program.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b)[13] of the Act, in general, and furthers the objectives of section

[1] 15 U.S.C. 78s(b)(1).

[2] CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Exchange Act Release No. 46881 (November 21, 2002), 67 FR 71224 (November 29, 2002) (Order approving SR–PCX–2002–71).

[6] *See* Exchange Act Release No. 47872 (May 15, 2003), 68 FR 28869 (May 27, 2003) (Order approving SR–PCX–2003–22).

[7] *See* Exchange Act Release No. 48806 (November 19, 2003), 68 FR 66521 (November 26, 2003) (Order approving SR–PCX–2003–61).

[8] *See* Exchange Act Release No. 49758 (May 24, 2004), 69 FR 30734 (May 28, 2004) (Order approving SR–PCX–2004–25).

[9] *See* Motion for Declaratory Judgment, *NASD Dispute Resolution, Inc. and New York Stock Exchange, Inc.*, v. *Judicial Council of California*, filed in the United States District Court for the Northern District of California, No. C 02 3486 SBA (July 22, 2002), available on the NASD Web site at: *www.nasdadr.com/pdf-text/072202_ca_complaint.pdf.*

[10] *See* Exchange Act Release No. 46562 (September 26, 2002), 67 FR 62085 (October 3, 2002) (Order approving SR–NASD–2002–126). Thereafter, the pilot period was extended to September 30, 2003. *See* Exchange Act Release No. 48187 (July 16, 2003), 68 FR 43553 (July 23, 2003) (Order approving SR–NASD–2003–106).

[11] *See* Exchange Act Release No. 46816 (November 12, 2002), 67 FR 69793 (November 19, 2002) (Order approving SR–NYSE–2002–56). Thereafter, the pilot period was extended to September 30, 2003. *See* Exchange Act Release No. 47836 (May 12, 2003), 68 FR 27608 (May 20, 2003) (Order approving SR–NYSE–2003–16).

[12] *See* Exchange Act Release No. 48553 (September 26, 2003), 68 FR 57494 (October 3, 2003) (Order approving SR–NASD–2003–144). Exchange Act Release No. 49452 (March 19, 2004), 69 FR 17010 (March 31, 2004) (Order approving SR–NASD–2004–40). Exchange Act Release No. 48552 (September 26, 2003), 68 FR 57496 (October 3, 2003) (Order approving SR–NYSE–2003–28). Exchange Act Release No. 49521 (April 2, 2004), 69 FR 18661 (April 8, 2004) (Order approving SR–NYSE–2004–18). Exchange Act Release No. 50447 (September 24, 2004), 69 FR 58567 (September 30, 2004) (Order approving SR–NASD–2004–126) and Exchange Act Release No. 50449 (September 24, 2004), 69 FR 58985 (October 1, 2004) (Order approving SR–NYSE–2004–50).

[13] 15 U.S.C. 78f(b).

6(b)(5),[14] in particular, in that it is designed to promote just and equitable principles of trade by ensuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

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

PCX has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. Therefore, the foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

Pursuant to Rule 19b–4(f)(6)(iii) under the Act,[17] the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the self-regulatory organization must file notice of intent to file the proposed rule change at least five business days beforehand. The PCX has requested that the Commission waive the five-day pre-filing requirements and the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.

The Commission believes that waiving the 30-day operative date is consistent with the protection of investors and the public interest.[18] Waiving the pre-filing requirement and accelerating the operative date will merely extend a pilot program that is designed to provide investors with a mechanism to resolve disputes with broker-dealers. During the period of this extension, the Commission and PCX will continue to monitor the status of the previously discussed litigation. For these reasons, the Commission designates that the proposed rule change has become effective and operative immediately.

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–PCX–2004–104 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–PCX–2004–104. 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 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 Number SR–PCX–2004–104 and should be submitted on or before December 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–26383 Filed 11–29–04; 8:45 am]

BILLING CODE 8010–01–M

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 4911]

30-Day Notice of Proposed Information Collection: Generic Clearance Information Collection for ECA Evaluation Program, OMB No. 1405–XXXX

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Generic Clearance Information Collection for ECA Evaluation Program.
- *OMB Control Number:* 1405–XXXX.
- *Type of Request:* New collection.
- *Originating Office:* Bureau of Educational and Cultural Affairs (ECA), Office of Policy and Evaluation (ECA/P).
- *Form Number:* None.
- *Respondents:* Respondents of program evaluation and/or program monitoring activities under the proposed information collection may include U.S. and foreign applicants, current grantee exchange visitor participants (J–1 visa holders) and alumni of the Bureau of Educational and Cultural Affairs (ECA) exchange programs, domestic grantee organizations and program administrators, foreign partner organizations, U.S. and foreign hosts of

exchange visitor participants, and other similar types of respondents associated with ECA exchange programs.

- *Estimated Number of Respondents:* 2,617.
- *Estimated Number of Responses:* 2,167.
- *Average Hours Per Response:* 45 minutes.
- *Total Estimated Burden:* 1,962.
- *Frequency:* Information may be collected annually, on occasion, and per evaluation project.
- *Obligation to Respond:* Voluntary.

DATES: Comments may be submitted to the Office of Management and Budget (OMB) for up to 30 days from November 30, 2004.

ADDRESSES: Comments and questions should be directed to Alex Hunt, the State Department Desk Officer in Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached on 202–395–7860. You may submit comments by any of the following methods:

- E-mail: *ahunt@omb.eop.gov*. You must include the DS form number (if applicable), information collection title, and OMB control number in the subject line of your message.
- Hand Delivery or Courier: OIRA State Department Desk Officer, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
- Fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Tamara L. Martin, U.S. Department of State, Bureau of Educational and Cultural Affairs, Office of Policy and Evaluation (ECA/P), 301 4th Street, SW., Room 336 (SA–44), Washington, DC 20547, who may be reached on (202) 205–1975, or via e-mail at *MartinTL1@state.gov*.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: The information collection will facilitate the Bureau of Educational and Cultural Affairs' (ECA) ability to regularly collect critical and timely feedback data from a defined universe of respondents (customer base). The evaluation and performance measurement data obtained through the information collection will allow ECA to better assess and improve ECA's exchange programs, learn more about the results and effectiveness of ECA programs, and comply with reporting requirements established by Congress and the Office of Management and Budget. ECA's exchange programs are critical to the Department of State's foreign policy mission and public diplomacy strategy as they are designed to help promote a balanced and accurate view of the United States and build partnerships around the world.

Methodology: Data collected through the information collection will be derived from customer/respondent paper, electronic and on-line surveys, personal interviews and/or focus groups. The customer/respondent base includes applicants, participants, alumni, program administrators, hosts and grantee organizations involved in ECA exchange programs.

Dated: November 8, 2004.

Cathy Chikes,

Executive Director, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 04–26408 Filed 11–29–04; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4912]

60-Day Notice of Proposed Information Collection: Evaluation of DOS-Sponsored Educational and Cultural Exchange Programs, OMB No. 1405–0118

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Evaluation of DOS-sponsored Educational and Cultural Exchange Programs.
- *OMB Control Number:* 1405–0118.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Educational and Cultural Affairs (ECA), Office of Policy and Evaluation (ECA/P).
- *Form Number:* SV–2001–0013-A.
- *Respondents:* U.S. and foreign applicants, current grantee exchange visitor participants (J–1 visa holders) and alumni of the Bureau of Educational and Cultural Affairs (ECA) exchange programs, domestic grantee organizations and program administrators, foreign partner organizations, domestic and foreign hosts of exchange visitor participants, and other similar types of respondents associated with ECA exchange programs.
- *Estimated Number of Respondents:* 6,000.
- *Estimated Number of Responses:* 6,000.
- *Average Hours Per Response:* 30 minutes.
- *Total Estimated Burden:* 3,000 hours.
- *Frequency:* Information may be collected annually, on occasion, and per evaluation project.
- *Obligation to Respond:* Voluntary.

DATES: The Department will accept comments from the public up to 60 days from November 30, 2004.

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

- E-mail: *MartinTL1@state.gov*. You must include the DS form number (if applicable), information collection title, and OMB control number in the subject line of your message.
- Mail (paper, disk, or CD–ROM submissions): Tamara L. Martin, U.S. Department of State, Bureau of Educational and Cultural Affairs, Office of Policy and Evaluation (ECA/P), 301 4th Street SW., Room 336 (SA–44), Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Tamara L. Martin, U.S. Department of State, Bureau of Educational and Cultural Affairs, Office of Policy and Evaluation (ECA/P), 301 4th Street SW., Room 336 (SA–44), Washington, DC 20547, who may be reached on (202) 205–1975.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed

collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: The information collection will facilitate the Bureau of Educational and Cultural Affairs' (ECA) ability to regularly collect critical and timely feedback data from a defined universe of respondents (customer base). The evaluation and performance measurement data obtained through the information collection will allow ECA to better assess and improve ECA's exchange programs, learn more about the results and effectiveness of ECA programs, and comply with reporting requirements established by Congress and the Office of Management and Budget. ECA's exchange programs are critical to the Department of State's foreign policy mission and public diplomacy strategy as they are designed to help promote a balanced and accurate view of the United States and build partnerships around the world.

Methodology: Data collected through the information collection will be derived from customer/ respondent paper and on-line surveys, personal interviews and/or focus groups. The customer/respondent base includes applicants, participants, alumni, program administrators, hosts and grantee organizations involved in ECA exchange programs.

Dated: October 19, 2004.

Cathy Chikes, ECA/EX,

Executive Director, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 04–26409 Filed 11–29–04; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4910]

Bureau of Diplomatic Security, Office of Foreign Missions, Diplomatic Motor Vehicles; 60-Day Notice of Proposed Information Collection: U.S. Department of State Driver's License and Tax Exemption Card Application; OMB Collection Number 1405–0105; Form DS–1972

ACTION: Notice.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995. The Department of State has made minor changes to the wording of the form, but the data collected is unchanged.

The following summarizes the information collection proposal to be submitted to OMB:

• *Title of Information Collection:* U.S. Department of State Driver's License and Tax Exemption Card Application.

• *OMB Control Number:* 1405–0105.

• *Type of Request:* Regular Submission to extend a currently approved collection.

• *Originating Office:* Bureau of Diplomatic Security, Office of Foreign Missions (DS/OFM).

• *Form Number:* DS–1972.

• *Respondents:* Foreign missions that have personnel assigned to the United States: diplomatic, consular, administrative and technical, specified official representatives of foreign governments to international organizations, and their dependents.

• *Estimated Number of Respondents:* 350 foreign missions.

• *Estimated Number of Responses:* 14,000.

• *Average Hours Per Response:* 0.5 hours (30 minutes).

• *Total Estimated Burden:* 7,000 hours.

• *Frequency:* On occasion. (As often as is necessary for foreign missions to obtain/renew driver's licenses and/or tax exemption cards for foreign mission personnel.)

• *Obligation to Respond:* Required to Obtain or Retain a driver's license and/ or tax exemption card.

The Department will accept comments from the public up to 60 days from date of publication in the **Federal Register**. You may submit comments by either of the following methods:

• *E-mail:* *OFMCustomerService@state.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.

• *Mail:* U.S. Department of State, Office of Foreign Missions, Attn: Diplomatic Motor Vehicle Director, 3507 International Place, NW., State Annex 33, Washington, DC 20522–3302

FOR FURTHER INFORMATION CONTACT: Requests for additional information regarding the collection listed in this notice should be directed to Attn: Jacqueline Robinson, Diplomatic Motor Vehicle Director, Office of Foreign Missions, 3507 International Place, NW., State Annex 33, Washington, DC 20522–3302, who may be reached on (202) 895–3528 or *RobinsonJD@state.gov.*

SUPPLEMENTARY INFORMATION: Your public comments are being solicited to permit the agency to:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

The U.S. Department of State Driver License and Tax Exemption Card Application form (DS 1972) is the means by which foreign missions in the United States request the issuance of a driver license and/or a sales tax exemption card for foreign mission personnel and their dependents. The exemption from sales taxes and the operation of a motor vehicle in the United States by foreign mission personnel are benefits under the Foreign Missions Act, 22 U.S.C. 4301 *et seq.*, which must be obtained by foreign missions through the U.S. Department of State, Office of Foreign Missions (DS/ OFM). The DS–1972 application form provides OFM with the necessary information required to administer the two benefits effectively and efficiently. Sales tax exemption is enjoyed under the provisions of international law but is granted on the basis of reciprocity. The administration of driver licenses at the national level helps the Federal Government identify operators who repeatedly receive citations. This also helps the Federal Government determine the necessary course of action that may be required against an individual's driving privilege. Accordingly, the Federal Government is able to provide consistency to the diplomatic community on a national level through a uniform program.

Dated: October 15, 2004.

Lynwood M. Dent,

Deputy Assistant Secretary, Bureau of Diplomatic Security, Office of Foreign Missions, Department of State.

[FR Doc. 04–26410 Filed 11–29–04; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF STATE

[Public Notice 4892]

Renewal of the Overseas Schools Advisory Council

The Department of State is renewing the Overseas Schools Advisory Council to provide a formal channel for regular consultation and advice from U.S. corporations and foundations regarding American-sponsored overseas schools. The Under Secretary for Management has determined that the committee is necessary and in the public interest.

The Assistant Secretary for Administration will appoint the members of the committee. The committee will follow the procedures prescribed by the Federal Advisory Committee Act (FACA). Meetings will be open to the public unless a determination is made in accordance with the FACA Section 10(d) and 5 U.S.C. 552b(c) (1) and (4) that a meeting or a portion of the meeting should be closed to the public. Notice of each meeting will be provided in the **Federal Register** at least 15 days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: Dr. Keith D. Miller, Executive Secretary of the committee at 202–261–8200.

Dated: November 15, 2004.

Keith D. Miller,

Executive Secretary, Overseas Schools Advisory Council, Department of State.

[FR Doc. 04–26294 Filed 11–29–04; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice 4873]

Meeting of Advisory Committee on International Communications and Information Policy

The Department of State announces the next meeting of its Advisory Committee on International Communications and Information Policy (ACICIP) to be held on Thursday, December 16, 2004, from 10 a.m. to 12:30 p.m., in Room 1107 of the Harry S. Truman Building of the U.S. Department of State. The Truman Building is located at 2201 C Street, NW., Washington, DC 20520.

The committee provides a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communications services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country issues.

The meeting will be led by ACICIP Chair Mr. Richard E. Wiley of Wiley Rein & Fielding LLP. Ambassador David A. Gross, Deputy Assistant Secretary and U.S. Coordinator for International Communications and Information Policy, will also address the meeting. The main focus of the event will be to solicit members' and others' views on US–EU cooperation on telecommunications and information technology issues, especially in the context of the Transatlantic Economic Stakeholders Dialogue between the U.S. and the EU. State Department and EU officials will discuss recent bilateral meetings with European Commission, Dutch and UK officials on telecommunications and information technology issues. Reports from member-organized subcommittees will be presented. Other current issues concerning the ACICIP that may be discussed include the October World Telecommunication Standardization Assembly, the November meeting of the United Nations Information and Communication Technologies Task Force, preparations for Phase II of the World Summit on the Information Society, and internet governance.

Members of the public may attend these meetings up to the seating capacity of the room. While the meeting is open to the public, admittance to the Department of State building is only by means of a pre-arranged clearance list. In order to be placed on the pre-clearance list, please provide your name, title, company, social security number, date of birth, and citizenship to Robert M. Watts at *wattsrm@state.gov* no later than 5 p.m. on Tuesday, December 14, 2004. All attendees for this meeting must use the 23rd Street entrance. One of the following valid ID's will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. government agency ID. Non-U.S. government attendees must be escorted by Department of State personnel at all times when in the building.

For further information, please contact Robert M. Watts, Executive Secretary of the Committee, at 202–647–4736 or by e-mail at *wattsrm@state.gov*.

Dated: November 19, 2004.

Robert M. Watts,

Executive Secretary, ACICIP, Department of State.

[FR Doc. 04–26411 Filed 11–29–04; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 24, 2004, page 52324.

DATES: Comments must be submitted on or before December 30, 2004. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Office of Dispute Resolution Procedures for Protests and Contact Disputes, 14 CFR 17.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0632.

Forms(s): NA.

Affected Public: A total of 40 respondents.

Abstract: 14 CFR part 17 sets forth procedures for filing solicitation protests and contract claims in the FAA's Office of Dispute Resolution for Acquisition. The regulations seek factual and legal information from protesters or claimants primarily through written submissions.

Estimated Annual Burden Hours: An estimated 820 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; 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 on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on November 19, 2004.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and Information Division, APF–100.

[FR Doc. 04–26347 Filed 11–29–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–86]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 20, 2004.

ADDRESSES: Send comments on the petition 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–2004–18657 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Annette K. Kovite (425–227–1262), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave SW., Renton, WA 98055–4056; or John Linsenmeyer (202–267–5174), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on November 22, 2004.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2004–17481.

Petitioner: Air Transport Association of America (ATA).

Section of 14 CFR Affected: 14 CFR 121.803(c)(4) and Appendix A.

Description of Relief Sought: To allow certain ATA-member airlines to use Automatic External Defibrillators (AEDs) aboard their aircraft that have power sources that do not meet FAA Technical Standard Order requirements.

[FR Doc. 04–26340 Filed 11–29–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 04–05–C–00–MDT To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Harrisburg International Airport, Pittsburgh, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Harrisburg International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 30, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Ms. Lori Ledebohm, PFC Contact, Harrisburg Airports District Office, 3905 Hartzdale Drive, Suite 508, Camp Hill, PA 17011. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Alfred Testa, Director of Aviation, of the Susquehanna Area Regional Airport Authority at the following address: Susquehanna Area Regional Airport Authority, One Terminal Drive, Harrisburg, Pennsylvania 17057

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Susquehanna Area Regional Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Lori Ledebohm, PFC Contact, Harrisburg Airports District Office, 3905 Hartzdale Dr. Suite 508, Camp Hill, Pennsylvania 17011, 717–730–2835. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Harrisburg International Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 3, 2004, the FAA determined that the application to impose and use the revenue from a PFC submitted by Susquehanna Area Regional Airport Authority was substantially complete within the requirements of section 1258.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 1, 2005.

The following is a brief overview of the application.

Proposed charge effective date: November 1, 2029.

Proposed charge expiration date: July 1, 2034.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $22,859.000.

Brief description of proposed project(s):

-Construct Terminal Apron
-PFC Application Development

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Non-scheduled, on-demand air carriers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Eastern Region, Airports Division, AEA–610, 1 Aviation Plaza, Jamaica, New York 11434.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Susquehanna Area Regional Airport Authority.

Issued in Camp Hill, PA on November 19, 2004.

Lori B.R. Ledebohm,

PFC Contact, Harrisburg Airports District Office, Eastern Region.

[FR Doc. 04–26346 Filed 11–29–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

[Docket No. FRA–2004–19604]

Applicant: Norfolk Southern Corporation, Mr. Brian L. Sykes, Chief Engineer, C&S Engineering, 99 Spring Street, SW., Atlanta, Georgia 30303.

Norfolk Southern Corporation seeks relief from the requirements of Part 236, Section 236.566, of the Rules, Standard and Instructions, to the extent that NS be permitted to operate non-equipped locomotives in automatic cab signal territory, on the single main track and controlled siding of the Morrisville Line, between CP-King, milepost MV–30.1, near Earnest, Pennsylvania, and CP-Plymouth, milepost MV–28.2, near Fort Hill, Pennsylvania, on the Harrisburg Division. The request is to permit two regularly scheduled local freight trains that originate at Abrams Yard, operations over the specified portion of the Morrisville Line in order to access the Dale Secondary, with train speed not to exceed ''Restricted Speed.''

Applicant's justification for relief: To improve and increase efficiency of operations, by permitting the use of non-equipped locomotives in local freight service within the stated specified limits on the Morrisville Line, for the purpose of obtaining headroom to allow train operations from Abrams Yard to the Dale Secondary and vice versa.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on November 22, 2004.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety.

[FR Doc. 04–26349 Filed 11–29–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No. FRA–2004–19603

Applicant: Norfolk Southern Corporation, Mr. Brian L. Sykes, Chief Engineer, C&S Engineering, 99 Spring Street, SW., Atlanta, Georgia 30303.

Norfolk Southern Corporation seeks approval of the proposed discontinuance and removal of the automatic block signal system, on the two main tracks, between ''CP Stell,'' milepost EP–68.2, Lemoyne, Pennsylvania, and ''CP Day,'' milepost EP–69.8, Enola, Pennsylvania, on the Harrisburg Division, Port Road Branch. The proposed changes include conversion of the method of operation to Industrial Track Rules (NORAC Rule 98), and reduction of the maximum authorized speed in the application area to Restricted Speed.

The reason given for the proposed changes is that Enola Yard was recently upgraded, increasing the number of switching moves; the approval requested in this application would provide greater operational efficiency.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are

available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility.

All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (volume 65, number 70; pages 19477–78), or you may visit *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on November 22, 2004.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety.

[FR Doc. 04–26350 Filed 11–29–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Docket No. FRA–2004–19602

Applicant: Union Pacific Railroad, Mr. T.T. Ogee, AVP Engineering Design, 1400 Douglas Street, Stop 0910, Omaha, Nebraska 68179.

The Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of the traffic control system, on the single main track between Irving, California, milepost 2.6 and Milpitas, California, milepost 8.5, on the Milpitas Subdivision, Roseville Area. The reason given for the proposed changes is that due to changes in operation and traffic, the signal system is no longer required.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on November 22, 2004.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety.

[FR Doc. 04–26348 Filed 11–29–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2004–19775]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before January 31, 2005.

FOR FURTHER INFORMATION CONTACT: Patricia Thomas, Maritime Administration, Office of Sealift Support, 400 Seventh St., SW., Washington, DC 20590. Telephone: 202–366–2646; FAX: 202–493–2180, or E–MAIL *patricia.thomas@marad.dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: *Title of Collection:* Regulations for Making Excess or Surplus Federal Property Available to the U.S. Merchant Marine Academy, State Maritime Academies and Non-Profit Maritime Training Facilities.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0504.

Form Numbers: None.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: The Maritime Administration requires approved maritime training institutions seeking excess or surplus government property to provide a statement of need/justification prior to acquiring the property.

Need and Use of the Information: This information is needed by MARAD to determine compliance with applicable statutory requirements regarding surplus government property.

Description of Respondents: Maritime training institutions such as the U.S. Merchant Marine Academy, State Maritime Academies and non-profit maritime institutions.

Annual Responses: 60 respondents.

Annual Burden: 60 hours.

Comments: Comments should refer to the docket number that appears at the

top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://dms.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.* (Authority: 49 CFR 1.66.)

By Order of the Maritime Administrator.

Dated: November 24, 2004.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–26391 Filed 11–29–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2004–19776]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before January 31, 2005.

FOR FURTHER INFORMATION CONTACT: Rita Jackson, Maritime Administration, MAR–410, 400 Seventh St., SW., Washington, DC 20590. Telephone: 202–366–0284; FAX: 202–366–7403, or E-MAIL: *rita.jackson@marad.dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: *Title of Collection:* Request for Waiver of Service Obligation, Request for Deferment of Service Obligation.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0510.

Form Numbers: MA–935, MA–936 and MA–937.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: This information collection is essential for determining if a student or graduate of the U.S. Merchant Marine Academy, or subsidized student or graduate of a State maritime academy, has a waivable situation preventing them from fulfilling the requirements of a service obligation contract.

Need and Use of the Information: The collected information is necessary for MARAD to determine if waivers and deferments of the service obligation may be granted.

Description of Respondents: Students and graduates of the U.S. Merchant Marine Academy and subsidized students or graduates of the State Maritime Academies who request waivers of service obligations.

Annual Responses: 25 respondents.

Annual Burden: 9 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://dms.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.* (Authority: 49 CFR 1.66.)

By Order of the Maritime Administrator.

Dated: November 24, 2004.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–26392 Filed 11–29–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2004–19772]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel KALLISTE.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–19772 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before December 30, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004 19772. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *KALLISTE is:*

Intended Use: ''Uninspected Passenger Vessel used for sailing charters.''

Geographic Region: ''New England,''

Dated: November 24, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–26389 Filed 11–29–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: 2004 19773]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel NOMAD.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–19773 *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before December 30, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004 19773. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel NOMAD is:

Intended Use: ''Recreational Charter''.

Geographic Region: ''Florida''.

Dated: November 24, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–26387 Filed 11–29–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD 2004 19774]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel RENEGADE.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–19774 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before December 30, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004–19774. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St. SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel RENEGADE is:

Intended Use: ''Interisland overnight cruises, dinner cruises, snorkeling & swimming, honeymoon getaways.''

Geographic Region: ''Hawaii.''

Dated: November 24, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–26390 Filed 11–29–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2004 19771]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SPECIAL K.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–19771 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments.

Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before December 30, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004 19771. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SPECIAL K is:

Intended Use: ''Charter Party Fishing Boat''.

Geographic Region: ''North Carolina and South Carolina''.

Dated: November 24, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–26388 Filed 11–29–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Innovative Grants to Support Increased Safety Belt Use Rates

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Announcement of grants to support innovative and effective projects designed to increase safety belt use rates.

SUMMARY: NHTSA announces the sixth year of a grant program under section 1403 of the Transportation Equity Act for the 21st Century (TEA–21), as extended, to provide funding to States for innovative projects to increase safety belt use rates. Consistent with prior years, the goal of this program is to increase safety belt use rates across the Nation in order to reduce the deaths, injuries, and societal costs that result from motor vehicle crashes. Award of funds will be based on criteria specified in this **Federal Register** Notice. This Notice solicits applications from the States, the District of Columbia and Puerto Rico, through their Governors' Representatives for Highway Safety, for funds to be made available in fiscal year (FY) 2005. Detailed application instructions are provided in the Application Procedure and the Application Contents and Grant Criteria sections of this Notice.

DATES: Applications must be received by the appropriate NHTSA Regional Office on or before close of business on January 10, 2005.

ADDRESSES: Each State must submit its application to the appropriate NHTSA Regional Office, to the attention of the Regional Administrator, on or before close of business on January 10, 2005. Addresses of the ten Regional Offices are listed in Appendix A.

FOR FURTHER INFORMATION CONTACT: Questions relating to this grant program should be directed to Janice Hartwill-Miller, Occupant Protection Division (NTI–112), Office of Program Development and Delivery, NHTSA, 400 Seventh Street, SW., Room 5118, Washington, DC 20590, by e-mail at *Janice.hartwill-miller@nhtsa.dot.gov*, or by phone at (202) 366–2684. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

SUPPLEMENTARY INFORMATION:

Background

The Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, was signed into law on June 9, 1998. Section 1403 of TEA–21 contains a safety incentive grant program based on safety belt usage rates in the States. Under this program, funds are allocated each fiscal year to States that exceed the national average safety belt use rate or that improve their State safety belt use rate, based on certain required determinations and findings. Section 1403 provides that any funds remaining unallocated in a fiscal year after determinations and findings related to safety belt use rates have been made are to be used to ''make allocations to States to carry out innovative projects to promote increased safety belt use rates.'' Pursuant to subsequent extensions of TEA–21, this program currently is authorized through May 31, 2005. Today's Notice solicits applications for funds that may become available in FY 2005 under this extension provision.

Awards will be contingent on the availability of funds in FY 2005 and on the continued authorization of this grant program.

TEA–21 imposes several requirements under the innovative projects funding provision. Specifically, to be eligible to receive an allocation, a State must develop a plan for innovative projects to promote increased safety belt use rates statewide and submit the plan to the Secretary of Transportation (by delegation, to NHTSA). NHTSA was directed to establish criteria governing the selection of State plans for allocation of grant funds and was further directed to ''ensure, to the maximum extent practicable, demographic and geographic diversity and a diversity of safety belt use rates among the States selected for allocations.'' Finally, subject to the availability of funds, TEA–21 provides that the amount of each grant under a State plan should not be less than $100,000. However, based on past experience and to maximize the program's impact, NHTSA has determined that, subject to the availability of funds, no State will receive a grant award of less than $250,000.

In the following sections, the agency describes the application and award procedures for receipt of funds under this program for FY 2005. This description includes the requirements for content of a State proposal and the elements, procedures and criteria the agency will use to determine which proposals are eligible for award and the amount of each award. Applicants should note that awards are subject to the availability of funds, and Congress has to date, appropriated minimal funds for this program, through an FY 2005 Continuing Resolution.

These application and award procedures are built upon the experience of the past several years. They are designed to make the process as streamlined as possible and, at the same time, to ensure that the States use strategies proven to be effective in increasing safety belt usage. The award criteria have been designed to support States proposing to carry out intensified, statewide programs of high-visibility enforcement of their safety belt laws, with a paid media program supporting the enforcement activities. Experience from many States and over several years has shown that such programs can substantially increase safety belt use rates in a very short period of time and such gains can be sustained.

Objective of This Grant Program

The objective of this grant program is to increase statewide safety belt use rates by supporting strategies and activities with the greatest potential for impact.

To be considered for an award under this program in FY 2005, the State must conduct a program of high-visibility enforcement of its safety belt law. Further, the proposed program must focus on the national Click It or Ticket (CIOT) mobilization, spanning the period from Monday, May 9 through Sunday, June 5, 2005. The State's participation in that 4-week mobilization must include *all* of the following elements:

□ Earned media (press events, news conferences, etc.) spanning the entire 4-week period;

□ A paid media campaign, from Monday, May 16 through Sunday, May 29, featuring broadcast advertisements delivering the Click It or Ticket message, as its primary focused message or incorporating Click It or Ticket as a secondary theme, unless this is prohibited by law or Executive Order. Including the CIOT message in all communication pieces extends the benefit of national and state advertising funds and ensures nationwide branding of the CIOT message during the May Mobilization.

All media messaging, creative scripts, and ads must be approved by NHTSA. States using CIOT as a secondary theme must include prominent voice and/or print reference to the National CIOT message in all communication pieces (TV, radio, and print). This can be accomplished in a visual advertisement by inserting the text, Click It or Ticket, immediately following that of the State's primary message, or in the case of an audio advertisement, by including voice reference immediately following that of the State's primary message. Simply attaching the Click It or Ticket logo to a visual advertisement may not be sufficiently prominent to meet these requirements. We encourage States to submit media messaging plans to NHTSA as early as possible to ensure that time is available for any required modifications. (Puerto Rico may elect to utilize Spanish-language themes in its advertisements, rather than CIOT. Nevertheless, all of the Commonwealth's media messaging must be approved by NHTSA.)

□ Intensified enforcement activities (*e.g.*, safety belt checkpoints, enforcement zones, saturation patrols) spanning the period from Monday, May 23 through Sunday, June 5, and involving the participation of law enforcement agencies serving at least 85 percent of the State's population.

□ Pre- and post-mobilization observational *surveys* of safety belt use.

The purpose of the pre-mobilization survey is to establish the current baseline for statewide safety belt use and to reflect any changes in usage since the last post-mobilization survey. The pre-mobilization observational survey may be either a full statewide survey or a sub-sample survey derived from the full survey design. Data collection for the pre-mobilization observational survey must begin no earlier than April 1 and conclude no later than May 8, 2005.

The post-mobilization observational survey must be a full statewide survey conforming to NHTSA's Uniform Criteria for State Observational Surveys of Seat Belt Use, (23 CFR Part 1340) (the ''Uniform Criteria''), for which data collection must begin on or shortly after Monday, June 6 and must conclude no later than July 10, 2005.

After consultation with State representatives NHTSA has determined that one mobilization per year would be appropriate. Therefore, States applying for FY 2005 Innovative grant funding must use all FY 2005 Section 157 Innovative Grants to fund their participation in the May, 2005 national mobilization detailed above.

In addition, if States are planning a second high visibility enforcement period, or a program of sustained enforcement in addition to the May 9–June 5 mobilization, States may propose to use some of their carry-over Section 157 Innovative funds from prior years, along with any other available funds for those purposes (*See* Appendix D.) It should be noted that any subsequent safety belt enforcement mobilization should not be conducted during the Labor Day holiday, ''You Drink and Drive. You Lose.'' Crackdown to be conducted August 19–September 5, 2005.

Apart from the required pre- and post-mobilization observational surveys of safety belt use (preceding and following the May 9–June 5 mobilization), no evaluation activities are required of the States for the FY 2005 Section 157 Innovative grants. However, NHTSA will consider funding additional evaluation activities (*e.g.*, telephone or Motor Vehicle Department surveys of public attitudes and awareness), should States propose them.

The following types of proposals will *not* be considered:

- A proposal designed to increase safety belt use in only a limited number of jurisdictions within the State;

- A proposal that lacks a commitment to the May 9–June 5, 2005 mobilization;
- A proposal that lacks a plan for paid media support for the mobilization;
- A proposal to employ a message other than Click It or Ticket (during the May mobilization), as its first or secondary theme, unless use of the Click It or Ticket message is prohibited by law or executive order;
- A proposal that lacks a commitment to conducting a full, statewide, Uniform-Criteria-compliant observational survey of safety belt use following the May 9–June 5, 2005 mobilization; or
- A proposal that lacks a commitment to conducting either a full statewide observational survey or a sub-sample survey derived from the full survey design prior to that mobilization.

As a condition of award, States must agree to provide the results of their own pre- and post-mobilization observational surveys to NHTSA, within the prescribed deadlines, to facilitate NHTSA's overall evaluation of the effectiveness of the FY 2005 grant program. NHTSA will share the results of its telephone surveys with the States. These data will provide information regarding the extent to which the public was aware of the enforcement, public information and education (PI&E), and outreach efforts in each State, thus assisting statewide evaluation efforts. States may also propose to conduct additional evaluation activities (*e.g.*, conducting motorist surveys at DMVs or licensing centers). NHTSA will aid the States in such efforts wherever possible, such as by tabulating and analyzing the results of motorist/DMV surveys.

Award of Funds and Funding Levels

In FY 2005, the decision to award a Section 157 Innovative Grant to a State will be based on the determination that the activities planned have potential to make a significant impact in increasing safety belt use.

To maximize the potential for impact, it is anticipated that, subject to the availability of funds, no State will receive a grant award of less than $250,000. This $250,000 minimum was derived based on experience gained by the agency over the past 5 years of this Innovative Grant program. It reflects the agency's estimate of the minimum resources needed, in smaller or less populated States, to implement an effective statewide safety belt program that includes intensive enforcement, paid media and earned media, appropriate outreach, and pre- and post-mobilization observational surveys.

We expect that some States will receive more than this minimum amount. When developing their proposals for FY 2005, States are encouraged to consider their level of effort and budget for the May 2004 Click It or Ticket mobilization.

To the extent that the agency determines that activities proposed in a State's plan do not have substantial impact potential, these activities will not be funded.

Allowable Uses of Federal Funds

In FY 2005, the Section 157 Innovative Grants funds will be tracked in a fashion similar to other highway safety grants through the Grant Tracking System. Funds provided to a State under this grant program shall be used to carry out the approved activities described in the State's application for which the grant is awarded. In addition, allowable uses of Federal funds shall be governed by 49 CFR Part 18—Department of Transportation Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and the cost principles contained in OMB Circular A–87 or other Federal regulation or OMB Circular setting forth cost principles applicable to Federal grant funds, as appropriate.

Eligibility Requirements

Only the 50 States, the District of Columbia and Puerto Rico, through their Governors' Representatives for Highway Safety, will be eligible to receive funding under this grant program.

Application Procedures

Each applicant must submit one original and two copies of its application to the appropriate NHTSA Regional Office (*see* Appendix A), to the attention of the Regional Administrator. States may choose to submit their applications electronically (*see* Appendix A). Applications must be typed on one side of the page only and adhere to the requirements of the Application Contents and Grant Criteria Section below. Appendix B provides checklists to facilitate the preparation of the proposals. Only applications submitted by a State's Governor's Representative for Highway Safety *and received* in the appropriate NHTSA Regional Office on or before close of business on January 10, 2005 will be considered.

Application Options

In order to streamline this year's application and award process, simplified application options are available to most States.

Application Option A (Continued Program Strategies): Any State that received a Section 157 Innovative grant in 2004 *and* that converted at least ten percent of its 2003 non-belt users into belt users in 2004 (based upon observational surveys conforming to NHTSA's Uniform Criteria) or that has a 2004 safety belt use rate of at least 90 percent may submit in lieu of a full application, the information required under the Application Contents and Grant Criteria section, Application Option A—Continued Program Strategies. Option A is available to 24 States, the District of Columbia and Puerto Rico as listed in Appendix C.

Application Option B (Revised Program Strategies): Any State that received a Section 157 Innovative grant in FY 2004 and did not achieve either a 10 percent conversion of their safety belt use rate or reach 90 percent safety belt use, may elect to submit an application under the Application Contents and Grant Criteria section, Application Option B—Revised Program Strategies or a complete application under Application Option C—New Program Strategies. All other States that received a Section 157 Innovative grant in FY 2004, who wish to revise their application are eligible to submit Option B, as well. Option B is available to 47 States, the District of Columbia and Puerto Rico as listed in Appendix C.

Application Option C (New Program Strategies): Any State may submit a completely new application, including an Introduction, a detailed Program Plan, and all required checklists, certifications and budgetary information, as specified under the Application Contents and Grant Criteria section, Application Option C—New Program Strategies. Please note that any State that *did not* receive a Section 157 Innovative grant in FY 2004 *must* follow Option C.

Application Contents and Grant Criteria

1. Application Option A—Continued Program Strategies

A State that applies for a Section 157 Innovative grant in FY 2005 under Application Option A shall submit an application consisting of the following:

☐ The completed Application Option A checklist, (in Appendix B), with a checkmark in the ''check if included'' column for every item. (Additional High-Visibility Enforcement Program subsequent to May 9–June 5 mobilization is optional.)

☐ The Appendix C certifications, signed by the Governor's Representative for Highway Safety, with a checkmark on item (A) and on each of the items (i) through (v), and (vii) and (viii).

☐ Any evaluation activities the State proposes to carry out, beyond the observational surveys pre- and post- the May, 2005 mobilization.

☐ The proposed budget for the State's FY 2005 Section 157 Innovative grant, using the Appendix D format.

2. Application Option B ''Revised Program Strategies

A State that applies for a Section 157 Innovative grant in FY 2005 under Application Option B shall submit an application consisting of the following:

☐ The completed Application Option B checklist, (in Appendix B), with a checkmark in the ''check if included'' column for every item. (Additional High-Visibility Enforcement Program subsequent to May 9–June 5 mobilization is optional.)

☐ The Appendix C certifications, signed by the Governor's Representative for Highway Safety, with a checkmark on item (B) and on each of the items (i) through (v) and (vii) and (viii).

☐ A brief description of what the State plans to do differently from the State's May, 2004 mobilization activities during the May, 2005 mobilization to increase its observed usage beyond the level achieved in FY 2004. Examples of additional effort might include: (1) Participation in a region-wide demonstration program; (2) shifting enforcement and/or media to a different geographic or demographic audience where safety belt use is lower; (3) better coordination of media and enforcement; and, (4) adoption of the CIOT message.

☐ Any evaluation activities the State proposes to carry out, beyond the observational surveys pre- and post- the May, 2005 mobilization.

☐ The proposed budget for the State's FY 2005 Section 157 Innovative grant, using the Appendix D format.

3. Application Option C—New Program Strategies

A State that applies for a Section 157 Innovative grant in FY 2005 under Application Option C shall submit a New Program Strategies application, consisting of:

☐ The completed Application Option C checklist, (in Appendix B), with a checkmark in the ''check if included'' column for every item. (Additional High-Visibility Enforcement Program subsequent to May 9–June 5 mobilization is optional.)

☐ The Appendix C certifications, signed by the Governor's Representative for Highway Safety, with a checkmark on item (C) and on each of the items (i) through (v) and (vii) and (viii).

☐ An Introduction, discussing the State's current safety belt use rate and recent trends; the goal for increasing use rate in 2005; the State's geographic and demographic population distribution and any other unique characteristics relevant to the State's plans to increase belt use (*e.g.*, ethnic sub-populations, variations in use rate by vehicle type); and, any available information pertinent to recent progress or lack of progress in increasing belt use.

☐ A detailed Program Plan for the May, 2005 mobilization, describing how the State intends to recruit law enforcement participation in the mobilization and how much of the State's population (at least 85 percent) will be served by participating law enforcement agencies; how the mobilization will be publicized; the target audience and preliminary media buy strategy; the messaging (*e.g.*, Click It or Ticket) the State intends to employ in the publicity; and the kinds of enforcement activities (*e.g.*, checkpoints, saturation patrols) it plans to employ for the mobilization.

☐ Any evaluation activities the State proposes to carry out, beyond the observational surveys pre- and post- the May, 2005 mobilization.

☐ The proposed budget for the State's FY 2005 Section 157 Innovative grant, using the Appendix D format.

4. *Budget:* Under all three options, the Budget section of the State's application must include information on Section 157 Innovative grant funds remaining from prior fiscal years, and how much of those prior year funds will be allocated to support the May FY 2005 program. States are reminded that all remaining FY 2002 Section 157 Innovative funds must be expended by the end of FY 2005 (September 30, 2005).

Reporting Requirements and Deliverables: Each grant recipient will be responsible for providing the following reports:

1. *Quarterly Reports*—The quarterly reports should include a summary of enforcement and other activities and accomplishments for the preceding period, significant problems encountered or anticipated, a brief itemization of expenditures made during the 3-month reporting period, and proposed activities for the upcoming reporting period. Many States will continue to spend funds awarded during prior years of this Section 157 Innovative grant program, as well as funds awarded in FY 2005. NHTSA does not intend that States submit separate Quarterly Reports for the various funding years. Activities carried out during a reporting period under all four years of funding should be documented in the same report. However, the State should include a tabulation of the amount of funds expended during the reporting period from each year and any decisions and actions required in the upcoming program period should be included in the report.

2. *Final Report*—A Final Report that includes a summary of the impact of the FY 2005 program. It should include a complete description of the innovative projects conducted, including partners, overall program implementation, evaluation methodology and findings from the program evaluation, if any. In terms of information transfer, it is important to know what worked and what did not work, under what circumstances, and what can be done to avoid potential problems in future projects. The grantee shall submit three copies of the Final Report to the Regional Office within fifteen months following grant award.

Application Review Procedures

All applications will be reviewed by an Evaluation Committee to ensure that the application meets all of the requirements contained in this notice, including the requirements contained in the Application Contents and Grant Criteria section of the Notice. This evaluation process may include submission of technical or program questions from the evaluation committee to the applicants. In addition, the Evaluation Committee will determine whether the activities and identified resources included in the proposals have potential to make a significant impact on safety belt use. To the extent that the Evaluation Committee determines that proposed activities will not have substantial impact potential, such activities will not be recommended for funding.

More specifically, the Evaluation Committee's review will assess: (a) The comprehensiveness, intensity, feasibility, and potential impact of the proposed approach, (where Application Option A or B is elected, the Committee may rely on documentation from the previous year for assessment); (b) the extent to which adequate funding (from a variety of sources) has been identified to carry out the proposed program elements; and (c) the extent to which the funds requested in the grant proposal are allocated to the required program elements and not to activities with less potential for impact. Activities within any proposal that are determined by the evaluation team not to have significant potential for increasing safety belt usage in the State will not be approved for funding. Subject to the availability of funds, it is anticipated

that awards will be made in February 2005.

Issued on: November 22, 2004.

Marilena Amoni,

Associate Administrator for Program Development and Delivery.

APPENDIX A: NHTSA REGIONAL OFFICES

New England Region (CT, MA, ME, NH, RI, VT), Volpe National Transportation Systems Center, 55 Broadway, Kendall Square, Code 903, Cambridge, MA 02142, *region1@nhtsa.dot.gov*.

Eastern Region (NJ, NY, PR), 222 Mamaroneck Avenue, Suite 204, White Plains, NY 10605, *region2@nhtsa.dot.gov*.

Mid-Atlantic Region (DE, DC, MD, PA, VA, WV), 10 South Howard Street, Suite 6700, Baltimore, MD 21201, *region3@nhtsa.dot.gov*.

Southeast Region (AL, FL, GA, KY, MS, NC, SC, TN), Atlanta Federal Center, 61 Forsyth Street, SW, Suite 17T30, Atlanta, GA 30303, *region4@nhtsa.dot.gov*.

Great Lakes Region (IL, IN, MI, MN, OH, WI), 19900 Governors Drive, Suite 201, Olympia Fields, IL 60461, *region5@nhtsa.dot.gov*.

South Central Region (AR, LA, NM, OK, TX), 819 Taylor Street, Room 8A38, Fort Worth, TX 76102–6177, *region6@nhtsa.dot.gov*.

Central Region (IA, KS, MO, NE), 901 Locust Street, Room 466, Kansas City, MO 64106, *region7@nhtsa.dot.gov*.

Rocky Mountain Region (CO, MT, ND, SD, UT, WY), 12300 West Dakota Avenue, Suite 140, Lakewood, CO 80228, *region8@nhtsa.dot.gov*.

Western Region (AZ, CA, HI, NV), 201 Mission Street, Suite 2230, San Francisco, CA 94105, *region9@nhtsa.dot.gov*.

Northwest Region (AK, ID, OR, WA), 3140 Jackson Federal Building, 915 Second Avenue, Seattle, WA 98174, *region10@nhtsa.dot.gov*.

APPENDIX B.—APPLICATION CHECKLIST FOR APPLICATION OPTION A—CONTINUED PROGRAM STRATEGIES

[State: ___]

Element	Check if included	Description
1. Appendix C Certifications		Place a checkmark on application Option A. Place a checkmark on all items appropriate, (i) through (viii). Signature from Governor's Highway Safety Representative for certification of all checked items.
2. Additional High-Visibility Enforcement Program subsequent to May 9–June 5 Mobilization (Optional).		Describe a credible plan for carrying out a Subsequent Stepped Up Enforcement program supported by (at least) earned media.
3. Appendix D Budget		Detail all cost elements and the total proposed cost, following the format in Appendix D.
4. Appendix D Budget		Include information on remaining grant funds from Section 157 Innovative, and how they will be applied to the May and/or subsequent mobilization in FY 2005.
5. Appendix D Budget		Identify the share of the total proposed cost that will be allocated to the May, 2005 Mobilization and each of its major sub-elements (earned media, paid media, intensified enforcement and safety belt observational surveys).

APPENDIX B.—APPLICATION CHECKLIST FOR APPLICATION OPTION B—REVISED PROGRAM STRATEGIES

[State: ___]

Element	Check if included	Description
1. May Mobilization Enhancements		Describe a credible plan for enhancing the State's May 2004 Mobilization activities in May 2005.
2. Appendix C Certifications		Place a checkmark on application option B. Place a checkmark on all items appropriate, (i) through (viii). Signature from Governor's Highway Safety Representative for certification of all checked items.
3. Additional High-Visibility Enforcement Program subsequent to May 9–June 5 Mobilization (Optional).		Describe a credible plan for carrying out a Subsequent Stepped Up Enforcement program supported by (at least) earned media.
4. Appendix D Budget		Detail all cost elements and the total proposed cost, following the format in Appendix D.
5. Appendix D Budget		Include information on remaining grant funds from Section 157 Innovative, and how they will be applied to May and/or subsequent mobilization in FY 2005.
6. Appendix D Budget		Identify the share of the total proposed cost that will be allocated to the May, 2005 Mobilization and each of its major sub-elements (earned media, paid media, intensified enforcement and safety belt observational surveys).

APPENDIX B.—APPLICATION CHECKLIST FOR APPLICATION OPTION C—NEW PROGRAM STRATEGIES

[State:___]

Element	Check if included	Description
1a. Introduction		Describe the State's geographic and demographic population distribution and other unique characteristics relevant to State's plan.
1b. Introduction		Describe the State's current use rate and recent trends, and discuss factors contributing to recent progress or lack of progress.
1c. Introduction		Specify a realistic goal for increasing safety belt use in 2005.
2. Appendix C Certifications		Place a checkmark on application option C. Place a checkmark on all items appropriate, (i) through (viii). Signature from Governor's Highway Safety Representative for certification of all checked items.

APPENDIX B.—APPLICATION CHECKLIST FOR APPLICATION OPTION C—NEW PROGRAM STRATEGIES—Continued

[State:__]

Element	Check if included	Description
3. Additional High-Visibility Enforcement Program subsequent to May 9–June 5 Mobilization (Optional).		Describe a credible plan for carrying out a Subsequent Stepped Up Enforcement program supported by (at least) earned media.
4. May Mobilization Program Plan		Describe a credible plan for carrying out the May 9–June 5 Mobilization, including enforcement, earned and paid media and observational surveys.
5. Appendix D Budget		Detail all cost elements and the total proposed cost, following the format in Appendix D.
6. Appendix D Budget		Include information on remaining grant funds from Section 157 Innovative, and how they will be applied to the May and/or subsequent mobilization in FY 2005.
7. Appendix D Budget		Identify the share of the total proposed cost that will be allocated to the May, 2005 Mobilization and each of its major sub-elements (earned media, paid media, intensified enforcement and safety belt observational surveys).

APPENDIX C: CERTIFICATIONS

The State must select only one Application Option:

Application Option

(A) __State is submitting a Continued Program Strategies Application and plans to replicate its May 2004 Mobilization in May 2005.

Only the States of Alabama, Arizona, California, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Illinois, Kansas, Maine, Michigan, Minnesota, Missouri, North Dakota, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Tennessee, Virginia, and Washington may choose this option, as their May, 2004 Mobilization converted at least ten (10) percent of the 2003 non-belt users into users or they have a FY2004 safety belt use rate of at least 90 percent.

Application Option

(B) __State is submitting a Revised Program Strategies Application and will include a brief description of its plans to revise or enhance the May 2005 Mobilization, over its approach to the May, 2004 Mobilization.

Any State listed in item (A) above may choose Option (B). Also the States of Alaska, Arkansas, Colorado, Iowa, Idaho, Indiana, Kentucky, Louisiana, Massachusetts, Maryland, Mississippi, Montana, North Carolina, New Jersey, New York, Ohio, Rhode Island, South Carolina, Texas, Utah, Vermont, Wisconsin and West Virginia may choose to submit an application under Option B—Revised Program Strategies, because these States *did not* convert at least ten percent of the 2003 non-belt users into users or reach 90 percent safety belt use.

Application Option

(C) __State is submitting a New Program Strategies Application in FY 2005.

Any State may elect to submit a complete application. New Hampshire, South Dakota and Wyoming *must* submit a New Program Strategies Application because those States did not receive a Section 157 Innovative grant in FY 2004.

The State must certify to the following items (i) through (v) and (vii) and (viii). The State may certify to item (vi).

(i) __The State will use the funds awarded under this grant program exclusively to implement a statewide safety belt program in accordance with the requirements of Section 157(b) of P.L. 105–178 (TEA–21), as extended.

(ii) __The State will administer the funds in accordance with 49 CFR Part 18 and OMB Circular A–87.

(iii) __The State will conduct a statewide Mobilization of high-visibility enforcement of its safety belt law from Monday, May 9 through Sunday, June 5, 2004. The Mobilization will include earned media (press events, news conferences, etc.) spanning the entire 4-week period; a paid advertising campaign, from Monday, May 16 through Sunday, May 29, featuring broadcast advertisements delivering the Click It or Ticket message, or other enforcement focused message that incorporates CIOT as a secondary theme. (All media, creative scripts, and ads require explicit NHTSA approval; intensified enforcement activities (*e.g.*, safety belt checkpoints, enforcement zones, saturation patrols) spanning the period from Monday, May 23 through Sunday, June 5, and involving the participation of local law enforcement agencies serving at least 85 percent of the State's population.

(iv) __The State will conduct pre- and post-mobilization observational surveys of safety belt use. The post-mobilization observational survey will be a full statewide survey conforming to NHTSA's Uniform Criteria, for which data collection will begin on or shortly after Monday, June 6 and will conclude no later than July 10, 2005. The pre-mobilization observational survey will be either a full statewide survey or a sub-sample survey derived from the full survey design; data collection for the pre-observational survey will begin no earlier than Friday, April 1, and conclude no later than Sunday, May 8.

(v) __The State will provide pre- and post-mobilization observational survey data on safety belt use for the May, 2005 Mobilization within one month following the collection of the data.

(vi) __(Optional) The State will conduct an additional program of high-visibility enforcement of its safety belt law at one or more time periods during 2005, subsequent to the May 9–June 5 mobilization.

(vii) __The State will provide to the NHTSA Regional Administrator, no later than 15 months after the grant award, a report of activities carried out with grant funds and accomplishments to date.

(viii) __The State will comply with all applicable laws and regulations, financial and programmatic requirements.

Governor's Highway Safety Representative

Date

BILLING CODE 4910–59–P

APPENDIX D – BUDGET TABLE 1 FOR MAY 2005 MOBILIZATION

	FY 2005 157 INNOVATIVE REQUEST *	REMAINING FY 2004 157 INNOVATIVE GRANT	REMAINING FY 2003 157 INNOVATIVE GRANT	REMAINING FY 2002 157 INNOVATIVE GRANT **	Other Funding Sources *** Specify sources and amounts to be applied.
1. TOTAL	$	$	$	$	**$**
2. Program Management/ Coordination: • Personnel • Other	$	$	$	$	$
3. Enforcement	$	$	$	$	$
4. PI & E: • Paid Media • Other	$	$	$	$	$
5. Outreach	$	$	$	$	$
6. Evaluation	$	$	$	$	$
7. SUBSEQUENT ENFORCEMENT PERIOD	XXXXXXXXX XXXXXXXXX XXXXXXXXX XXXXXXXXX XXXXXXXXX XXXXXXXXX	$	$	$	**$**

* States must use all FY05 Section 157 Innovative Grant to fund their participation in the May 2005 Mobilization.

** Remember all remaining FY2002 Section 157 Innovative Grant funds must be obligated by September 30, 2005.

*** Other funding sources include: other Federal grants, private funds, State and local funds, etc.

[FR Doc. 04–26351 Filed 11–29–04; 8:45 am]
BILLING CODE 4910–59–C

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–00–7096 (PD–27(R))]

Louisiana Requirements for Hazardous Materials Incident Notification

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Notice of administrative determination of preemption by RSPA's Associate Administrator for Hazardous Materials Safety.

Local Laws Affected: Louisiana Revised Statutes (La. R.S.) 32:1510.

Applicable Federal Requirements: Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, and the Hazardous Materials Regulations (HMR), 49 CFR Parts 171–180.

Modes Affected: Rail and highway.

SUMMARY: Federal hazardous material transportation law: (1) Does not preempt Louisiana's immediate telephone notification requirement in La. R.S. 32:1510A, and (2) preempts Louisiana's written incident reporting requirements in La. R.S. 32:1510B & C.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001 (Tel. No. (202)–366–4400).

SUPPLEMENTARY INFORMATION:

I. Background

ATOFINA Chemicals, Inc. (ATOFINA) has applied for an administrative determination whether Federal hazardous material transportation law preempts the incident reporting requirements in La. R.S. 32:1510. Subsections A and B of La. R.S. 32:1510 require ''[e]ach person involved'' in a hazardous materials incident, accident, or the clean up of an incident or accident that has certain consequences to: (1) Make an immediate telephone report to the Louisiana Department of Public Safety and Corrections (DPSC), and (2) submit a follow-up written report ''on an approved form'' to DPSC. With respect to a hazardous materials transportation incident or accident that is not subject to the reporting requirements in subsections A and B, but must be reported to DOT, La. R.S. 32:1510C requires the carrier to submit a copy of the written report it files with DOT in accordance with 49 CFR 171.16. Other subsections of La. R.S. 32:1510, concerning the issuance or implementation of an emergency response system and exceptions from these reporting requirements for incidents that must be reported under another statute, do not appear to be relevant to ATOFINA's application.

In its application, ATOFINA explained that it had received a notice of violation from the Louisiana State Police for failing to provide immediate notification of an incident when it ''believed that the carrier would make any necessary notification since it was directly present on the scene.'' Additional background on this incident and ATOFINA's application is contained in DPSC's comments and ATOFINA's rebuttal comments, submitted in response to RSPA's October 17, 2000 notice in the **Federal Register** inviting interested persons to comment on ATOFINA's application. 65 FR 61370.

According to those comments, approximately a year before ATOFINA's application, employees of the New Orleans Public Belt Railroad discovered that ethyl acrylate (a hazardous material) was leaking from a tank car. ATOFINA stated that it had manufactured this material and (through its agent, StanTrans) shipped it on the Burlington Northern Santa Fe Railway (BNSF). ATOFINA explained that, when it learned of the incident several hours after it occurred, it sent a representative to the scene. At that time, according to ATOFINA, the New Orleans Fire Department and the Louisiana State Police were already present, and the Fire Department ''had assumed control of the situation and, in fact, refused to permit the contractors who were called in by ATOFINA to assist with the repairs to the railcar.'' ATOFINA stated that the Louisiana State Police received notice of the incident from both StanTrans and BNSF although apparently that notice ''was not considered to be timely.''

DPSC acknowledged that ATOFINA's representative arrived at the scene of the incident ''within five hours of its being made aware of the situation,'' but stated that ''the ATOFINA employee took no action whatsoever,'' and ''neither Burlington, the carrier, nor ATOFINA, the manufacturer/shipper, notified the Louisiana State Police of the incident.'' DPSC stated that notices of violation were issued to both ATOFINA and BNSF ''for failure to make the required telephonic notification.''

DPSC also referred to Inconsistency Ruling (IR) No. 31, Louisiana Statutes and Regulations on Hazardous Materials Transportation, 55 FR 25572, (June 21, 1990), appeal dismissed as moot, 57 FR 41165, 41167 (Sept. 9, 1992). In that decision, RSPA previously considered the incident reporting requirements in 32:1510A–C and found that ''the State's requirements for telephonic notification concerning hazardous materials incidents/accidents are consistent with the HMTA and the HMR,'' but that ''the provisions of State law which require the submission of written accident/incident reports, are redundant with Federal requirements (particularly 49 CFR 171.16), tend to undercut compliance with the HMR requirements, and thus are inconsistent.'' 55 FR at 25582. In IR–31, RSPA also found that provisions in La. R.S. 32:1502 are

> inconsistent with the HMTA and the HMR insofar as they authorize the State's Secretary of the Department of Public Safety and Corrections to designate as ''hazardous materials'' any materials, including hazardous wastes, other than those designated as such in the HMR. It follows that the State's section 32:1502(b) definition of ''explosives'' is inconsistent with the HMR to the extent that it defines ''explosives'' any materials other than those defined as such in the HMR.

55 FR at 25581.

National Tank Truck Carriers, Inc. (NTTC) and the Institute of Makers of Explosives (IME) also submitted comments on ATOFINA's application, in response to RSPA's October 17, 2000 notice in the **Federal Register.**

II. Federal Preemption

As discussed in the October 17, 2000 notice, 49 U.S.C. 5125 contains express preemption provisions that are relevant to this proceeding. 65 FR at 61371–72. As amended by Section 1711(b) of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2320), 49 U.S.C. 5125(a) provides that—in the absence of a waiver of preemption by DOT under section 5125(e) or specific authority in another Federal law—a requirement of a State, political subdivision of a State, or Indian tribe is preempted if

> (1) Complying with a requirement of the State, political subdivision, or tribe and a requirement of this chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security is not possible; or
>
> (2) The requirement of the State, political subdivision, or tribe, as applied or enforced, is an obstacle to accomplishing and carrying out this chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive

issued by the Secretary of Homeland Security.

These two paragraphs set forth the ''dual compliance'' and ''obstacle'' criteria that RSPA had applied in issuing inconsistency rulings prior to 1990, under the original preemption provision in the Hazardous Materials Transportation Act (HMTA). Public Law 93–633 section 112(a), 88 Stat. 2161 (1975). The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz,* 312 U.S. 52 (1941); *Florida Lime* & *Avocado Growers, Inc.* v. *Paul,* 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.,* 435 U.S. 151 (1978).

Subsection (b)(1) of 49 U.S.C. 5125 provides that a non-Federal requirement concerning any of the following subjects is preempted—unless authorized by another Federal law or DOT grants a waiver of preemption—when the non-Federal requirement is not ''substantively the same as'' a provision of Federal hazardous material transportation law, a regulation prescribed under that law, or a hazardous materials security regulation or directive issued by the Secretary of Homeland Security:

(A) The designation, description, and classification of hazardous material.

(B) The packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(C) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(D) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(E) The design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

To be ''substantively the same,'' the non-Federal requirement must conform ''in every significant respect to the Federal requirement. Editorial and other similar *de minimis* changes are permitted.'' 49 CFR 107.202(d).

The November 2002 amendments to the preemption provisions in 49 U.S.C. 5125 reaffirmed Congress' long-standing view that a single body of uniform Federal regulations promotes safety (including security) in the transportation of hazardous materials. Thirty years ago, when it was considering the HMTA, the Senate Commerce Committee ''endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation.'' S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). When it expanded the preemption provisions in 1990, Congress specifically found that:

(3) Many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements,

(4) Because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable,

(5) In order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

Public Law 101–615 section 2, 104 Stat. 3244. (In 1994, Congress revised, codified and enacted the HMTA ''without substantive change,'' at 49 U.S.C. Chapter 51. Public Law 103–272, 108 Stat. 745.) A United States Court of Appeals has found that uniformity was the ''linchpin'' in the design of the Federal laws governing the transportation of hazardous materials. *Colorado Pub. Util. Comm'n* v. *Harmon,* 951 F.2d 1571, 1575 (10th Cir. 1991).

Under 49 U.S.C. 5125(d)(1), any person (including a State, political subdivision of a State, or Indian tribe) directly affected by a requirement of a State, political subdivision or tribe may apply to the Secretary of Transportation for a determination whether the requirement is preempted. The Secretary of Transportation has delegated authority to RSPA to make determinations of preemption, except for those that concern highway routing (which have been delegated to the Federal Motor Carrier Safety Administration). 49 CFR 1.53(b).

Section 5125(d)(1) requires that notice of an application for a preemption determination must be published in the **Federal Register.** Following the receipt and consideration of written comments, RSPA will publish its determination in the **Federal Register.** *See* 49 CFR 107.209. A short period of time is allowed for filing of petitions for reconsideration. 49 CFR 107.211. Any party to the proceeding may seek judicial review in a Federal district court. 49 U.S.C. 5125(f).

Preemption determinations do not address issues of preemption arising under the Commerce Clause, the Fifth Amendment or other provisions of the Constitution or under statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law, or whether a fee is ''fair'' within the meaning of 49 U.S.C. 5125(g)(1). A State, local or Indian tribe requirement is not authorized by another Federal law merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n* v. *Harmon,* above, 951 F.2d at 1581 n.10.

In making preemption determinations under 49 U.S.C. 5125(d), RSPA is guided by the principles and policies set forth in Executive Order No. 13132, entitled ''Federalism.'' 64 FR 43255 (Aug. 10, 1999). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other clear evidence that Congress intended to preempt State law, or the exercise of State authority directly conflicts with the exercise of Federal authority. Section 5125 contains express preemption provisions, which RSPA has implemented through its regulations.

III. Discussion

A. Reporting Incidents and Accidents Involving Hazardous Materials in Transportation

Louisiana's hazardous material incident reporting requirements in La. R.S. 32:1510A–C provide as follows:

A. Each person involved in an incident, accident, or the cleanup of an incident or accident during the transportation, loading, unloading, or related storage in any place of a hazardous material subject to this Chapter shall report immediately by telephone to the department if that incident, accident, or cleanup of an incident or accident involves:

(1) A fatality due to fire, explosion, or exposure to any hazardous material.

(2) The hospitalization of any person due to fire, explosion, or exposure to any hazardous material.

(3) A continuing danger to life, health, or property at the place of the incident or accident.

(4) An estimated property damage of more than ten thousand dollars.

B. A written report shall be submitted to the department on an approved form. Each report submitted shall contain the time and date of the incident or accident, a description of any injuries to persons or property, any continuing danger to life at the place of the accident or incident, the identify and classification of the material, and any other pertinent details.

C. In the case of an incident or accident involving hazardous materials which is not subject to this Chapter but which is subject to Title 49 and Title 46 of the Code of Federal Regulations, the carrier shall send a copy of the report filed with the United States Department of Transportation to the department.

B. Summary of Comments

In its application, ATOFINA asserted that the Louisiana statute ''is much broader'' than the incident reporting requirements in the HMR and is preempted because it ''is a non-federal requirement relating to the written notification and reporting of an unintentional release in transportation of hazardous materials that is not ''substantively the same as'' the federal regulations in 49 CFR 171.15 and 171.16. However, ATOFINA's application and the other comments focused on the immediate telephone notification required by La. R.S. 32:1510A, rather than the follow-up written reports required by La. R.S. 32:1510B and C.

ATOFINA argued that, ''to the extent that Louisiana believes that immediate notification is necessary for emergency response purposes, that concern is satisfied by imposing the immediate notification obligation on the carrier rather than on each person involved in the incident, some of whom may not be present at the scene.'' It stated that ''[t]here can be many persons involved in an accident, such as the carrier, the owner of the goods, or agents of each of them,'' and ''duplicate reporting * * * could be confusing to those who may have to respond to an incident.'' ATOFINA also stated that Louisiana's immediate reporting requirement is impractical for ''the manufacturer of the goods'' that has made arrangements with the carrier ''to make the immediate notification required under the federal regulations,'' and that it is

impractical and a burden on interstate commerce to require a large national company to comply with a multitude of different reporting requirements in the different state jurisdictions, particularly those like Louisiana which impose the same duty on multiple parties. Procedures would become so cumbersome that ultimately they would not be useful at all.

In its rebuttal comments, ATOFINA urged that Louisiana's immediate reporting requirement in La. R.S. 32:1510A is preempted ''as applied to persons other than carriers,'' under the ''obstacle'' test in 49 U.S.C. 5125(a)(2). ATOFINA acknowledged that ''states are permitted to impose some notification requirements for emergency response purposes,'' but these requirements ''should not apply to persons other than the person who has possession or control of the leaking vehicle or container (*i.e.*, the carrier).'' It stated that ''it is unclear how Louisiana defines 'each person involved' in a hazardous materials incident,'' and concluded that, if it had not sent a representative to the incident scene and ''attempted to assist in the response effort, it would not have been fined.'' ATOFINA stated that, in this manner, the immediate reporting requirement in La. R.S. 32:1510A ''discourage[s] persons from responding to an incident involving the release of a hazardous substance.''

ATOFINA also noted that the Louisiana State Police is ''a non-911 number and is not specified in the regulations.'' It supported the position advanced by IME that requirements for telephone notification should be limited to ''911'' calls. IME stated that ''notifications to locally-specified telephone numbers is unacceptable in a transportation setting, and is a burden that is exacerbated for motor carriers that operate over irregular routes.'' IME referred to the decision in *Colorado Pub. Util. Comm'n* v. *Harmon*, above, 951 F.2d at 1578, that Federal hazardous material transportation law preempts a State requirement for a carrier of hazardous materials to carry the telephone number of the State Patrol in the vehicle because that requirement is not substantively the same as the shipping paper requirements in the HER. ATOFINA stated that it would be a ''tremendous burden * * * to maintain and continuously update a directory of emergency numbers for more than 30,000 or so local jurisdictions,'' and, without such a directory, ''the carrier (and other entities, if required) would be forced to divert valuable resources away from responding to an incident in order to ensure compliance with local notification requirements.''

In its comments, DISC stated that RSPA has previously stated that the immediate notification requirement in La. R.S. 32:1510A is not one of the subjects in 49 U.S.C. 5125(b)(1) where non-Federal requirements must be ''substantively the same as'' requirements in the HMR. It referred to a brief filed by the United States (on behalf of DOT) in *Union Pacific RR* v. *California Pub. Util. Comm'n*, No. C–97–3660–THE (N.D. Cal.), which stated that ''DOT interprets [the 'substantively the same as' test in] 49 U.S.C. 5125(b)(1)(D), to preempt only state and local requirements to provide notification or reports in writing.'' From the same brief, DPSC also quoted language in a 1990 report of the House Committee on Energy and Commerce concerning the nature of the provision in 49 U.S.C. 5125(b)(1)(D) that non-Federal requirements on the ''[w]ritten notification, recording, and reporting of the unintentional release in transportation of hazardous materials'' must be ''substantively the same as'' requirements in the HMR:

The oral notification and reporting of unintentional releases has specifically been excluded from this paragraph in order to permit State and local jurisdictions to develop the full range of possible alternatives in emergency response capabilities (such as requiring carriers to telephone local emergency responders).

In their comments, IME and NTTC raised questions about the definitions of ''hazardous materials'' and ''explosives'' in La. R.S. 32:1502(5). As already discussed, IME argued that requirements to make immediate telephone notifications should be limited to ''911'' numbers, and that additional ''locally-specified telephone numbers'' constitute such a burden that RSPA should find that they are preempted under the ''obstacle'' test. IME commented that ATOFINA ''overreached in suggesting that'' the ''substantively the same as'' standard in 49 U.S.C. 5125(b)(1)(D) applies to immediate telephone reports of hazardous materials incidents in transportation, in contrast to Louisiana's written follow-up reporting requirements in La. R.S. 32:1510B & C, to which the ''substantively the same as'' standard applies. IME also stated that the exceptions in La. R.S. 32:1510E for incidents at fixed facilities involving certain materials have ''no bearing on 'transportation-related releases' '' which are covered under La. R.S. 32:1510A–C.

NTTC argued that both the immediate telephonic and follow-up written reporting requirements are not ''substantively the same as'' the requirements in the HMR because ''the monetary thresholds for property damage(s) differ'' Louisiana has exceptions for incidents involving certain materials that occur at a fixed facility; and the HMR require reports for incidents involving ''etiologic agents, marine pollutants and transportation by aircraft not found within Louisiana's rules.''

C. Decision

There does not appear to have been any change to the Louisiana incident reporting requirements that were previously considered in IR–31. 55 FR at 25582. In that decision (*id.*), RSPA carefully differentiated between immediate telephonic notification and follow-up written reports, as follows:

Requirements for immediate telephonic hazardous materials transportation accident/incident reports for emergency response purposes are generally consistent with the HMTA and the HMR. IR–2, IR–3, IR–28, all *supra; National Tank Truck Carriers, Inc.* v. *Burke,* 535 F. Supp. 509 (D.R.I. 1982), *aff'd,* 698 F.2d 559 (1st Cir. 1983).

* * * * *

Therefore, the State's requirements for telephonic notification concerning hazardous materials incidents/accidents are consistent with the HMTA and the HMR.

Furthermore, the provisions of State law which require the submission of written accident/incident reports, are redundant with Federal requirements (particularly 49 CFR 171.16), tend to undercut compliance with the HMR requirements, and thus are inconsistent. IR–2, IR–3 (Decision on Appeal), all *supra;* IR–30, 55 FR 9676 (Mar. 14, 1990), correction, 55 FR 12111 (Mar. 30, 1990). This rationale also applies to requirements to provide copies of the incident reports filed with [RSPA]; as indicated in IR–3, *supra,* such a requirement is inconsistent but [RSPA] is prepared to routinely send copies of those reports to a designated state agency on request.

Additional explanation of RSPA's decision in IR–31 is contained in the prior decisions cited in the above quotations. In IR–2, Rhode Island Rules and Regulations Governing the Transportation of Liquefied Natural Gas, etc., 44 FR 75566 (Dec. 20, 1979), RSPA stated that ''when an accident does occur, response is, of necessity, a local responsibility'' (*id.* at 75568), and that a State's ''requirement for immediate notification in certain situations furthers the State's activity in protecting persons and property through emergency response measures.'' *Id.* at 75572. RSPA's findings in IR–2 were upheld in Federal court, which stated that, while ''[t]he need for uniform written report standards is imperative,'' immediate ''emergency notice to the State Police * * * promotes the public safety by facilitating a prompt emergency response. * * * It is neither inconsistent nor in conflict with nor contrary to the purpose of Congressional policy.'' *National Tank Truck Carriers, Inc.* v. *Burke,* 535 F. Supp. 509, 519 (D.R.I. 1982), aff'd, 698 F.2d 559 (1st Cir. 1983).

Similarly, in IR–3, City of Boston Rules Governing Transportation of Certain Hazardous Materials, etc., 46 FR 18918 (Mar. 26, 1981), decision on administrative appeal, 47 FR 18457 (Apr. 29, 1982), RSPA stated that:

For an incident that requires the City to undertake emergency response, we reiterate our agreement that the City must be able to require the carrier to notify it immediately. If the City wishes to conduct a thorough investigation of the events at the scene, it may do so then * * * For data the City thinks it must have immediately from the carrier, the appropriate time to acquire it is in the emergency response phase.

47 FR at 18462. On the other hand, ''[w]ritten incident reports * * * do not provide time-sensitive data,'' and a State or local government is able to ''directly access the computer data base where all of the information from written incident reports [to RSPA] is kept.'' *Id.* RSPA concluded that:

If the City in fact intends to make serious use of the information in DOT incident reports, the effort to obtain it from [RSPA] should not be significant. Accordingly, we reaffirm our previous conclusion that Boston's requirement that carrier submit written incident reports is redundant, unnecessary and inconsistent with the HMTA and the HMR. *Id.*

The different nature of immediate telephonic notification and follow-up written reports was specifically recognized in the amendments to the HMTA enacted in the Hazardous Materials Transportation Uniform Safety Act (HMTUSA) of 1990 (Pub. L. 101–615, 104 Stat. 3244, Nov. 16, 1990). Section 4 of HMTUSA amended the preemption provisions in the HMTA to provide that a State requirement on the ''written notification, recording, and reporting of the unintentional release in transportation of hazardous materials'' is preempted unless it is ''substantively the same as'' the Federal requirements in the HMR. 49 U.S.C. 5125(b)(1)(D). However, ''oral notification and reporting of unintentional releases'' was ''specifically excluded'' from Federal preemption ''to permit State and local jurisdictions to develop the full range of possible alternative in emergency response capabilities.'' H.R. Report No. 101–444, Part 1, at 35 (Apr. 3, 1990).

In the *Union Pacific RR* case, above, the court noted that ''DOT has long construed the HMTA to preempt only state laws pertaining to written reports, and not those that require oral notice to local emergency response teams.'' Order on Motion for Reconsideration, pp. 6–7 (slip op., Dec. 14, 1998). The court found that the ''notification and reporting' subject area delineated in 49 U.S.C. 5125(b)(1)(D) does not include the subject area of providing immediate verbal reports to local entities so that emergency personnel can effectively respond to a release or other incident involving the transportation of hazardous materials.'' *Id.,* p. 8. Accordingly, State requirements for immediate telephone notification of an accident or incident need not be ''substantively the same as'' Federal requirements in the HMR, and these requirements are not ''preempted as an 'obstacle' since they do not interfere with the federal government's ability to obtain prompt reports of serious accidents or to otherwise investigate those accidents and compile data for transportation planning.'' *Id.*

There is no evidence that it is impossible for persons that are ''involved'' in an incident (or its cleanup) in Louisiana, in addition to the carrier or other person who had physical possession of the hazardous material at the time of the incident, to immediately notify DPSC. Nor is there evidence that requiring immediate notification by each person ''involved in an incident, accident, or the cleanup of an incident or accident'' will interfere with either the specific notification requirements in the HMR or the safe transportation of hazardous materials overall. In a recent rulemaking, RSPA recognized that other persons who are not carriers (such as operators of transportation facilities) may have ''physical control of a hazardous material when an incident occurs during transportation [and] should be responsible for reporting that incident.'' *See* the preamble to the final rule in Docket No. RSPA–99–5013 (HM–229), Revisions to Incident Reporting Requirements, etc., 68 FR 67746, 67750 (Dec. 3, 2003), corrections, 69 FR 30114 (May 26, 2004). Effective January 1, 2005, the incident reporting requirements in 49 CFR 171.15 and 171.16 will apply to the ''person in physical possession of the hazardous material'' at the time of the incident. 68 FR at 67759.

ATOFINA's claim that Louisiana's requirement is a ''burden on interstate commerce'' does not meet the preemption criteria in 49 U.S.C. 5125, for RSPA's administrative determinations do not address issues of preemption arising under the Commerce Clause, except in the limited situations discussed in Part II (Federal Preemption), above. Additional issues raised by ATOFINA concerning the proper interpretation of the immediate reporting requirement in La. R.S. 32:1510A are for State administrative or judicial bodies to resolve, such as:

—Whether ATOFINA was considered to be ''involved'' in the incident or its cleanup as the shipper of the ethyl acrylate, or only when its representative arrived at the incident scene about five hours after learning of the incident;
—whether timely telephone notification by the carrier (BNSF) or ATOFINA's agent (StanTrans), on behalf of ATOFINA, would satisfy an obligation for ATOFINA to ''immediately'' telephone DPSC;
—whether notification within five hours of learning of the incident satisfies the requirement to ''immediately'' notify DPSC of the accident, and whether telephonic notification is still required once the State Police have arrived at the scene of the incident; and
—whether there is sufficient notice of the ''non-911'' telephone number to satisfy substantive due process requirements.

It is the role of the State, not RSPA, to interpret and apply its own requirements and, moreover, ''isolated instances of improper enforcement (*e.g.,* misinterpretation of regulations) do not render such provisions inconsistent.'' IR–31, above, 55 FR at 25584. Thus, ''[a]s a general matter, an inconsistent or erroneous interpretation of a non-Federal [statute or] regulation should be addressed to the appropriate State or local forum.'' PD–14(R), Houston, Texas, Fire Code Requirements, etc., 63 FR 67506, 67510 n.4 (Dec. 7, 1998), decision on petition for reconsideration, 64 FR 33949 (June 24, 1999). In making administrative determinations of

preemption, RSPA's role to is to interpret and clarify the Federal-State relationship in the regulation of hazardous materials transportation, ''within the rule-making process lying at the center of the responsibilities of federal executive agencies,'' and not to ''adjudicate'' specific cases as a substitute for (or reviewing the decision of) the cognizant State or local forum. *Tennessee* v. *U.S. Department of Transportation,* 326 F3d 729, 736 (6th Cir.), *cert. denied,* ____ U.S., _____, 124 S.Ct. 464 (2003). There is also no basis for finding that Louisiana's interpretation of ''immediately'' in La. R.S. 32:1510A must be the same as the standard of ''no later than 12 hours after the occurrence'' adopted in the revisions to 49 CFR 171.15(a) in HM–229. 68 FR at 67759.

In the HM–229 rulemaking, RSPA considered, and declined to adopt, the recommendation of the American Trucking Associations, Inc. ''to incorporate one-call notification for both local and national requirements'' for immediate notification of an incident involving hazardous material in transportation. In the preamble to the final rule, RSPA stated that, ''In the case of any incident involving hazardous materials that requires immediate emergency response, the local authorities should be immediately notified.'' *Id.* at 67750. While ''contacting emergency response entities may be of primary concern immediately following an incident * * * notification of federal authorities through the NRC [National Response Center] is also essential.'' *Id.* at 67752. RSPA also noted that it ''has a system for identifying duplicative reporting,'' *id.* at 67751, and we must assume that DPSC is able to deal with the possibility of duplicate reports without being confused, as ATOFINA seems to fear. In any event, that potential concern does not create an ''obstacle'' to accomplishing and carrying out Federal hazardous material transportation law or the HMR.

There is also insufficient information to find it is impossible to comply with a State or local requirement to call a ''non-911'' number for emergency response, or that this requirement will frustrate the Federal law or regulations. In its comments to the docket in HM–229, Norfolk Southern Railway Company asked RSPA to confirm that it is not ''the specific individual in physical control of the hazardous materials (who could be the engineer or conductor)'' who must make the telephone call. ''In other words, carriers can continue their existing practice of designating persons within the company to make such calls (such as the Chief Dispatcher or the Control Center) and file the follow-up written reports.'' In this circumstance, it would not be practicable to limit immediate telephone reporting to ''911'' numbers because, whenever the designated company representative (such as the Chief Dispatcher or Control Center, as suggested by Norfolk Southern) is located at a distance from the scene of the incident, its call to a local ''911'' number would not reach the appropriate emergency response personnel. In the absence of information to the contrary, it must be assumed that a designated company representative is able to obtain and contact the required emergency response telephone number within a brief period of time after learning of an incident involving hazardous materials in transportation, without diverting resources from responding to the incident. It must also be assumed that a call to the local ''911'' number in the vicinity of the incident would yield the appropriate ''non-911'' telephone number of the State Police or other agency required to be notified.

In sum, RSPA's prior decisions make it clear that a State's immediate notification requirement need not be ''substantively the same as'' 49 CFR 171.15, as the *Union Pacific* case recognized. ATOFINA's application and the other comments submitted in this proceeding do not show that it is impossible for persons that are ''involved'' in an incident (or its clean-up) in Louisiana to immediately notify DPSC, in addition to (and perhaps before) making the required telephonic notification to the National Response Center under 49 CFR 171.15. There is also insufficient information to find that La. R.S. 32:1510A as enforced and applied, to require another person besides the carrier to provide immediate telephonic notification of an incident, is an ''obstacle'' to accomplishing and carrying out Federal hazardous material transportation law, the HMR, or a DHS security regulation or directive.

IV. Ruling

For all the reasons set forth above and in IR–31, Federal hazardous material transportation law: (1) Does not preempt Louisiana's immediate telephone notification requirement in La. R.S. 32:1510A, and (2) preempts Louisiana's written incident reporting requirement in La. R.S. 32:1510B & C.

V. Petition for Reconsideration/Judicial Review

In accordance with 49 CFR 107.211(a), any person aggrieved by this decision may file a petition for reconsideration within 20 days of publication of this decision in the **Federal Register**. Any party to this proceeding may seek review of RSPA's decision ''in an appropriate district court of the United States * * * not later than 60 days after the decision becomes final.'' 49 U.S.C. 5125(f).

This decision will become RSPA's final decision 20 days after publication in the **Federal Register** if no petition for reconsideration is filed within that time. The filing of a petition for reconsideration is not a prerequisite to seeking judicial review of this decision under 49 U.S.C. 5125(f).

If a petition for reconsideration of this decision is filed within 20 days of publication in the **Federal Register**, the action by RSPA's Associate Administrator for Hazardous Materials Safety on the petition for reconsideration will be RSPA's final decision. 49 CFR 107.211(d).

Issued in Washington, DC on November 22, 2004.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 04–26352 Filed 11–29–04; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34531] [1]

The Indiana Rail Road Company—Acquisition Exemption—Line of Monon Rail Preservation Corporation

The Indiana Rail Road Company (INRD), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from Monon Rail Preservation Corporation (Monon), approximately 3.98 miles of rail line between milepost Q217.67 at Hunters, IN, and milepost Q213.69 at Ellettsville, IN, in Monroe County, IN. In 2001, INRD entered into an operating agreement with Monon, whereby INRD became the operator of the line.[2]

INRD certifies that its projected annual revenues as a result of this transaction will not result in the creation of a Class I or Class II rail carrier.

INRD indicates that the parties would like to consummate the transaction on or shortly after December 6, 2004.

If the 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. 34531, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on John Broadley, 1054 31st Street, NW., Suite 200, Washington, DC 20007.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: November 22, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–26301 Filed 11–29–04; 8:45 am]

BILLING CODE 4910–01–P

[1] In a decision in this proceeding served on November 22, 2004, the Board granted a request by INRD for waiver of the 60-day advance labor notice requirement of 49 CFR 1150.42(e).

[2] *See The Indiana Rail Road Company—Operation Exemption—Monon Rail Preservation Corporation,* STB Finance Docket No. 33670 (STB served Feb. 21, 2001).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub-No. 258X)]

Norfolk Southern Railway Company—Discontinuance of Service Exemption—in Norfolk and Virginia Beach, VA

Norfolk Southern Railway Company (NSR) has filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over a 13.71-mile rail line between milepost VB 1.75 at Tidewater Junction in the City of Norfolk and milepost VB 15.46 at Oldfield in the City of Virginia Beach, VA. The line traverses United States Postal Service ZIP Codes 23502, 23504, 23451, 23452, 23454 and 23462.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 30, 2004,[1] unless stayed pending reconsideration. Petitions to stay and formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] must be filed by December 10, 2004. Petitions to reopen must be filed by December 20, 2004, with: Surface Transportation Board, 1925 K Street NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's representative: James R. Paschall, General Attorney, Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: November 23, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–26377 Filed 11–29–04; 8:45 am]

BILLING CODE 4915–01–P

[1] Because this is a discontinuance of service proceeding and not an abandonment, there is no need to provide an opportunity for trail use/rail banking or public use condition requests. Likewise, no environmental or historic documentation is required under 49 CFR 1105.6(c)(6) and 1105.8.

[2] Effective October 31, 2004, the filing fee for an OFA increased to $1,200. *See Regulations Governing Fees and Services Performed in Connection with Licensing and Related Services—2004 Update*, STB Ex Parte No. 542 (Sub-No. 11) (STB served Oct. 1, 2004).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub-No. 250X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Champaign County, IL

Norfolk Southern Railway Company (NSR) has filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon an approximately 0.18-mile line of railroad extending between approximately milepost UM 28.50 and milepost UM 28.68 in Urbana, Champaign County, IL. The line traverses United States Postal Service ZIP Codes 61801, 61802, and 61803.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 30, 2004, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 10, 2004.

Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 20, 2004, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's representative: James R. Paschall, Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

NSR has filed an environmental report which addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by December 3, 2004. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.) Comments on environmental and historic preservation matters must be filed within 15 days

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Effective October 31, 2004, the filing fee for an OFA increased to $1,200. *See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2004 Update*, STB Ex Parte No. 542 (Sub-No. 11) (STB served Oct. 1, 2004).

after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by November 30, 2005, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: November 18, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–26145 Filed 11–29–04; 8:45 am]

BILLING CODE 4915–01–P

Federal Register

Tuesday,
November 30, 2004

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 484

Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2005; Correction; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 484

[CMS–1265–CN2]

RIN 0938–AM93

Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2005; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of final rule.

SUMMARY: This document corrects technical errors that appeared in the final rule published in the **Federal Register** on October 22, 2004 entitled ''Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2005.''

EFFECTIVE DATE: January 1, 2005.

FOR FURTHER INFORMATION CONTACT: Randy Throndset, (410) 786–0131.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 04–23440 of October 22, 2004 (69 FR 62124), there were a number of technical errors that are identified and corrected in the Correction of Errors section below. We have determined that technical errors occurred in the hospital wage index calculation process for fiscal year 2005, necessitating adjustments to the hospital wage index. CMS and the fiscal intermediaries made errors in handling the data used to calculate certain average hourly wages, and wage indexes. The corrections are effective January 1, 2005.

II. Correction of Errors

In FR Doc. 04–23440 of October 22, 2004 (69 FR 62124), replace the tables for Addenda A, B, and C on pages 62139–62162 with the following:

BILLING CODE 4120–01–P

ADDENDUM A.- WAGE INDEX FOR RURAL AREAS-APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX

[CY 2005]

Nonurban Area	Wage Index
Alabama	0.7637
Alaska	1.1637
Arizona	0.9140
Arkansas	0.7703
California	1.0297
Colorado	0.9368
Connecticut	1.1917
Delaware	0.9503
Florida	0.8721
Georgia	0.8247
Guam	0.9611
Hawaii	1.0522
Idaho	0.8826

Nonurban Area	Wage Index
Illinois	0.8340
Indiana	0.8736
Iowa	0.8550
Kansas	0.8087
Kentucky	0.7844
Louisiana	0.7290
Maine	0.9039
Maryland	0.9179
Massachusetts	1.0216
Michigan	0.8740
Minnesota	0.9339
Mississippi	0.7583
Missouri	0.7829
Montana	0.8701
Nebraska	0.9035
Nevada	0.9832
New Hampshire	0.9940
New Jersey [1/]	.....
New Mexico	0.8529
New York	0.8403
North Carolina	0.8500
North Dakota	0.7743
Ohio	0.8759
Oklahoma	0.7537
Oregon	1.0049
Pennsylvania	0.8348
Puerto Rico	0.4047
Rhode Island [1/]	.....

Nonurban Area	Wage Index
South Carolina	0.8640
South Dakota	0.8393
Tennessee	0.7876
Texas	0.7910
Utah	0.8843
Vermont	0.9375
Virginia	0.8479
Virgin Islands	0.7456
Washington	1.0072
West Virginia	0.8083
Wisconsin	0.9498
Wyoming	0.9182

1/ All counties within the State are classified urban.

ADDENDUM B.- CY 2005 WAGE INDEX FOR URBAN AREAS

PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX

MSA	Urban Area (Constituent Counties or County Equivalents)	Wage Index
0040	Abilene, TX Taylor, TX	0.8009
0060	Aguadilla, PR Aguada, PR Aguadilla, PR Moca, PR	0.4294
0080	Akron, OH Portage, OH Summit, OH	0.9055
0120	Albany, GA Dougherty, GA Lee, GA	1.1266

MSA	Urban Area (Constituent Counties or County Equivalents)	Wage Index
0160	Albany-Schenectady-Troy, NY Albany, NY Montgomery, NY Rensselaer, NY Saratoga, NY Schenectady, NY Schoharie, NY	0.8570
0200	Albuquerque, NM Bernalillo, NM Sandoval, NM Valencia, NM	1.0485
0220	Alexandria, LA Rapides, LA	0.8171
0240	Allentown-Bethlehem-Easton, PA Carbon, PA Lehigh, PA Northampton, PA	0.9536
0280	Altoona, PA Blair, PA	0.8462
0320	Amarillo, TX Potter, TX Randall, TX	0.9178
0380	Anchorage, AK Anchorage, AK	1.2109
0440	Ann Arbor, MI Lenawee, MI Livingston, MI Washtenaw, MI	1.0816
0450	Anniston,AL Calhoun, AL	0.7881
0460	Appleton-Oshkosh-Neenah, WI Calumet, WI Outagamie, WI Winnebago, WI	0.9115
0470	Arecibo, PR Arecibo, PR Camuy, PR Hatillo, PR	0.3757
0480	Asheville, NC Buncombe, NC Madison, NC	0.9501
0500	Athens, GA Clarke, GA Madison, GA Oconee, GA	1.0202

MSA	Urban Area (Constituent Counties or County Equivalents)	Wage Index
0520	Atlanta, GA Barrow, GA Bartow, GA Carroll, GA Cherokee, GA Clayton, GA Cobb, GA Coweta, GA De Kalb, GA Douglas, GA Fayette, GA Forsyth, GA Fulton, GA Gwinnett, GA Henry, GA Newton, GA Paulding, GA Pickens, GA Rockdale, GA Spalding, GA Walton, GA	0.9971
0560	Atlantic City-Cape May, NJ Atlantic City, NJ Cape May, NJ	1.0907
0580	Auburn-Opelika, AL Lee, AL	0.8215
0600	Augusta-Aiken, GA-SC Columbia, GA McDuffie, GA Richmond, GA Aiken, SC Edgefield, SC	0.9208
0640	Austin-San Marcos, TX Bastrop, TX Caldwell, TX Hays, TX Travis, TX Williamson, TX	0.9595
0680	Bakersfield, CA Kern, CA	1.0036

MSA	Urban Area (Constituent Counties or County Equivalents)	Wage Index
0720	Baltimore, MD Anne Arundel, MD Baltimore, MD Baltimore City, MD Carroll, MD Harford, MD Howard, MD Queen Annes, MD	0.9907
0733	Bangor, ME Penobscot, ME	0.9955
0743	Barnstable-Yarmouth, MA Barnstable, MA	1.2335
0760	Baton Rouge, LA Ascension, LA East Baton Rouge Livingston, LA West Baton Rouge, LA	0.8354
0840	Beaumont-Port Arthur, TX Hardin, TX Jefferson, TX Orange, TX	0.8616
0860	Bellingham, WA Whatcom, WA	1.1642
0870	Benton Harbor, MI Berrien, MI	0.8847
0875	Bergen-Passaic, NJ Bergen, NJ Passaic, NJ	1.1967
0880	Billings, MT Yellowstone, MT	0.8961
0920	Biloxi-Gulfport-Pascagoula, MS Hancock, MS Harrison, MS Jackson, MS	0.8649
0960	Binghamton, NY Broome, NY Tioga, NY	0.8447
1000	Birmingham, AL Blount, AL Jefferson, AL St. Clair, AL Shelby, AL	0.9198
1010	Bismarck, ND Burleigh, ND Morton, ND	0.7505

MSA	Urban Area (Constituent Counties or County Equivalents)	Wage Index
1020	Bloomington, IN Monroe, IN	0.8587
1040	Bloomington-Normal, IL McLean, IL	0.9111
1080	Boise City, ID Ada, ID Canyon, ID	0.9352
1123	Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH Bristol, MA Essex, MA Middlesex, MA Norfolk, MA Plymouth, MA Suffolk, MA Worcester, MA Hillsborough, NH Merrimack, NH Rockingham, NH Strafford, NH	1.1290
1125	Boulder-Longmont, CO Boulder, CO	1.0046
1145	Brazoria, TX Brazoria, TX	0.8524
1150	Bremerton, WA Kitsap, WA	1.0614
1240	Brownsville-Harlingen-San Benito, TX Cameron, TX	1.0125
1260	Bryan-College Station, TX Brazos, TX	0.9243
1280	Buffalo-Niagara Falls, NY Erie, NY Niagara, NY	0.9339
1303	Burlington, VT Chittenden, VT Franklin, VT Grand Isle, VT	0.9322
1310	Caguas, PR Caguas, PR Cayey, PR Cidra, PR Gurabo, PR San Lorenzo, PR	0.4061

MSA	Urban Area (Constituent Counties or County Equivalents)	Wage Index
1320	Canton-Massillon, OH Carroll, OH Stark, OH	0.8895
1350	Casper, WY Natrona, WY	0.9243
1360	Cedar Rapids, IA Linn, IA	0.8975
1400	Champaign-Urbana, IL Champaign, IL	0.9527
1440	Charleston-North Charleston, SC Berkeley, SC Charleston, SC Dorchester, SC	0.9420
1480	Charleston, WV Kanawha, WV Putnam, WV	0.8876
1520	Charlotte-Gastonia-Rock Hill, NC-SC Cabarrus, NC Gaston, NC Lincoln, NC Mecklenburg, NC Rowan, NC Union, NC York, SC	0.9711
1540	Charlottesville, VA Albemarle, VA Charlottesville City, VA Fluvanna, VA Greene, VA	1.0294
1560	Chattanooga, TN-GA Catoosa, GA Dade, GA Walker, GA Hamilton, TN Marion, TN	0.9207
1580	Cheyenne, WY Laramie, WY	0.8980

MSA	Urban Area (Constituent Counties or County Equivalents)	Wage Index
1600	Chicago, IL Cook, IL De Kalb, IL Du Page, IL Grundy, IL Kane, IL Kendall, IL Lake, IL McHenry, IL Will, IL	1.0851
1620	Chico-Paradise, CA Butte, CA	1.0542
1640	Cincinnati, OH-KY-IN Dearborn, IN Ohio, IN Boone, KY Campbell, KY Gallatin, KY Grant, KY Kenton, KY Pendleton, KY Brown, OH Clermont, OH Hamilton, OH Warren, OH	0.9595
1660	Clarksville-Hopkinsville, TN-KY Christian, KY Montgomery, TN	0.8022
1680	Cleveland-Lorain-Elyria, OH Ashtabula, OH Geauga, OH Cuyahoga, OH Lake, OH Lorain, OH Medina, OH	0.9626
1720	Colorado Springs, CO El Paso, CO	0.9792
1740	Columbia MO Boone, MO	0.8396
1760	Columbia, SC Lexington, SC Richland, SC	0.9450

MSA	Urban Area (Constituent Counties or County Equivalents)	Wage Index
1800	Columbus, GA-AL Russell,AL Chattanoochee, GA Harris, GA Muscogee, GA	0.8690
1840	Columbus, OH Delaware, OH Fairfield, OH Franklin, OH Licking, OH Madison, OH Pickaway, OH	0.9753
1880	Corpus Christi, TX Nueces, TX San Patricio, TX	0.8647
1890	Corvallis, OR Benton, OR	1.0545
1900	Cumberland, MD-WV Allegany MD Mineral WV	0.8662
1920	Dallas, TX Collin, TX Dallas, TX Denton, TX Ellis, TX Henderson, TX Hunt, TX Kaufman, TX Rockwall, TX	1.0054
1950	Danville, VA Danville City, VA Pittsylvania, VA	0.8643
1960	Davenport-Moline-Rock Island, IA-IL Scott, IA Henry, IL Rock Island, IL	0.8773
2000	Dayton-Springfield, OH Clark, OH Greene, OH Miami, OH Montgomery, OH	0.9231
2020	Daytona Beach, FL Flagler, FL Volusia, FL	0.8900

MSA	Urban Area (Constituent Counties or County Equivalents)	Wage Index
2030	Decatur, AL Lawrence, AL Morgan, AL	0.8894
2040	Decatur, IL Macon, IL	0.8122
2080	Denver, CO Adams, CO Arapahoe, CO Broomfield, CO Denver, CO Douglas, CO Jefferson, CO	1.0904
2120	Des Moines, IA Dallas, IA Polk, IA Warren, IA	0.9266
2160	Detroit, MI Lapeer, MI Macomb, MI Monroe, MI Oakland, MI St. Clair, MI Wayne, MI	1.0227
2180	Dothan, AL Dale, AL Houston, AL	0.7596
2190	Dover, DE Kent, DE	0.9825
2200	Dubuque, IA Dubuque, IA	0.8748
2240	Duluth-Superior, MN-WI St. Louis, MN Douglas, WI	1.0356
2281	Dutchess County, NY Dutchess, NY	1.1657
2290	Eau Claire, WI Chippewa, WI Eau Claire, WI	0.9139
2320	El Paso, TX El Paso, TX	0.9181
2330	Elkhart-Goshen, IN Elkhart, IN	0.9278
2335	Elmira, NY Chemung, NY	0.8445

MSA	Urban Area (Constituent Counties or County Equivalents)	Wage Index
2340	Enid, OK Garfield, OK	0.9001
2360	Erie, PA Erie, PA	0.8699
2400	Eugene-Springfield, OR Lane, OR	1.0940
2440	Evansville-Henderson, IN-KY Posey, IN Vanderburgh, IN Warrick, IN Henderson, KY	0.8395
2520	Fargo-Moorhead, ND-MN Clay, MN Cass, ND	0.9114
2560	Fayetteville, NC Cumberland, NC	0.9363
2580	Fayetteville-Springdale-Rogers, AR Benton, AR Washington, AR	0.8636
2620	Flagstaff, AZ-UT Coconino, AZ Kane, UT	1.0611
2640	Flint, MI Genesee, MI	1.1178
2650	Florence, AL Colbert, AL Lauderdale, AL	0.7883
2655	Florence, SC Florence, SC	0.8960
2670	Fort Collins-Loveland, CO Larimer, CO	1.0218
2680	Ft. Lauderdale, FL Broward, FL	1.0165
2700	Fort Myers-Cape Coral, FL Lee, FL	0.9371
2710	Fort Pierce-Port St. Lucie, FL Martin, FL St. Lucie, FL	1.0046
2720	Fort Smith, AR-OK Crawford, AR Sebastian, AR Sequoyah, OK	0.8303
2750	Fort Walton Beach, FL Okaloosa, FL	0.8786

MSA	Urban Area (Constituent Counties or County Equivalents)	Wage Index
2760	Fort Wayne, IN Adams, IN Allen, IN De Kalb, IN Huntington, IN Wells, IN Whitley, IN	0.9737
2800	Forth Worth-Arlington, TX Hood, TX Johnson, TX Parker, TX Tarrant, TX	0.9520
2840	Fresno, CA Fresno, CA Madera, CA	1.0407
2880	Gadsden, AL Etowah, AL	0.8049
2900	Gainesville, FL Alachua, FL	0.9459
2920	Galveston-Texas City, TX Galveston, TX	0.9403
2960	Gary, IN Lake, IN Porter, IN	0.9342
2975	Glens Falls, NY Warren, NY Washington, NY	0.8467
2980	Goldsboro, NC Wayne, NC	0.8778
2985	Grand Forks, ND-MN Polk, MN Grand Forks, ND	0.9091
2995	Grand Junction, CO Mesa, CO	0.9900
3000	Grand Rapids-Muskegon-Holland, MI Allegan, MI Kent, MI Muskegon, MI Ottawa, MI	0.9519
3040	Great Falls, MT Cascade, MT	0.8810
3060	Greeley, CO Weld, CO	0.9444
3080	Green Bay, WI Brown, WI	0.9586

MSA	Urban Area (Constituent Counties or County Equivalents)	Wage Index
3120	Greensboro-Winston-Salem-High Point, NC Alamance, NC Davidson, NC Davie, NC Forsyth, NC Guilford, NC Randolph, NC Stokes, NC Yadkin, NC	0.9312
3150	Greenville, NC Pitt, NC	0.9183
3160	Greenville-Spartanburg-Anderson, SC Anderson, SC Cherokee, SC Greenville, SC Pickens, SC Spartanburg, SC	0.9400
3180	Hagerstown, MD Washington, MD	0.9940
3200	Hamilton-Middletown, OH Butler, OH	0.9066
3240	Harrisburg-Lebanon-Carlisle, PA Cumberland, PA Dauphin, PA Lebanon, PA Perry, PA	0.9286
3283	Hartford, CT Hartford, CT Litchfield, CT Middlesex, CT Tolland, CT	1.1054
3285	Hattiesburg, MS Forrest, MS Lamar, MS	0.7362
3290	Hickory-Morganton-Lenoir, NC Alexander, NC Burke, NC Caldwell, NC Catawba, NC	0.9502
3320	Honolulu, HI Honolulu, HI	1.1013
3350	Houma, LA Lafourche, LA Terrebonne, LA	0.7721

MSA	Urban Area (Constituent Counties or County Equivalents)	Wage Index
3360	Houston, TX Chambers, TX Fort Bend, TX Harris, TX Liberty, TX Montgomery, TX Waller, TX	1.0117
3400	Huntington-Ashland, WV-KY-OH Boyd, KY Carter, KY Greenup, KY Lawrence, OH Cabell, WV Wayne, WV	0.9564
3440	Huntsville, AL Limestone, AL Madison, AL	0.8851
3480	Indianapolis, IN Boone, IN Hamilton, IN Hancock, IN Hendricks, IN Johnson, IN Madison, IN Marion, IN Morgan, IN Shelby, IN	1.0039
3500	Iowa City, IA Johnson, IA	0.9654
3520	Jackson, MI Jackson, MI	0.9146
3560	Jackson, MS Hinds, MS Madison, MS Rankin, MS	0.8406
3580	Jackson, TN Chester, TN Madison, TN	0.8900
3600	Jacksonville, FL Clay, FL Duval, FL Nassau, FL St. Johns, FL	0.9548
3605	Jacksonville, NC Onslow, NC	0.8401

MSA	Urban Area (Constituent Counties or County Equivalents)	Wage Index
3610	Jamestown, NY Chautaqua, NY	0.7589
3620	Janesville-Beloit, WI Rock, WI	0.9583
3640	Jersey City, NJ Hudson, NJ	1.0923
3660	Johnson City-Kingsport-Bristol, TN-VA Carter, TN Hawkins, TN Sullivan, TN Unicoi, TN Washington, TN Bristol City, VA Scott, VA Washington, VA	0.8202
3680	Johnstown, PA Cambria, PA Somerset, PA	0.7980
3700	Jonesboro, AR Craighead, AR	0.8144
3710	Joplin, MO Jasper, MO Newton, MO	0.8721
3720	Kalamazoo-Battlecreek, MI Calhoun, MI Kalamazoo, MI Van Buren, MI	1.0350
3740	Kankakee, IL Kankakee, IL	1.0603
3760	Kansas City, KS-MO Johnson, KS Leavenworth, KS Miami, KS Wyandotte, KS Cass, MO Clay, MO Clinton, MO Jackson, MO Lafayette, MO Platte, MO Ray, MO	0.9641
3800	Kenosha, WI Kenosha, WI	0.9772

MSA	Urban Area (Constituent Counties or County Equivalents)	Wage Index
3810	Killeen-Temple, TX Bell, TX Coryell, TX	0.9242
3840	Knoxville, TN Anderson, TN Blount, TN Knox, TN Loudon, TN Sevier, TN Union, TN	0.8508
3850	Kokomo, IN Howard, IN Tipton, IN	0.8986
3870	La Crosse, WI-MN Houston, MN La Crosse, WI	0.9289
3880	Lafayette, LA Acadia, LA Lafayette, LA St. Landry, LA St. Martin, LA	0.8105
3920	Lafayette, IN Clinton, IN Tippecanoe, IN	0.9067
3960	Lake Charles, LA Calcasieu, LA	0.7972
3980	Lakeland-Winter Haven, FL Polk, FL	0.8930
4000	Lancaster, PA Lancaster, PA	0.9883
4040	Lansing-East Lansing, MI Clinton, MI Eaton, MI Ingham, MI	0.9658
4080	Laredo, TX Webb, TX	0.8747
4100	Las Cruces, NM Dona Ana, NM	0.8784
4120	Las Vegas, NV-AZ Mohave, AZ Clark, NV Nye, NV	1.1121
4150	Lawrence, KS Douglas, KS	0.8644

MSA	Urban Area (Constituent Counties or County Equivalents)	Wage Index
4200	Lawton, OK Comanche, OK	0.8212
4243	Lewiston-Auburn, ME Androscoggin, ME	0.9562
4280	Lexington, KY Bourbon, KY Clark, KY Fayette, KY Jessamine, KY Madison, KY Scott, KY Woodford, KY	0.9219
4320	Lima, OH Allen, OH Auglaize, OH	0.9258
4360	Lincoln, NE Lancaster, NE	1.0208
4400	Little Rock-North Little, AR Faulkner, AR Lonoke, AR Pulaski, AR Saline, AR	0.8826
4420	Longview-Marshall, TX Gregg, TX Harrison, TX Upshur, TX	0.8739
4480	Los Angeles-Long Beach, CA Los Angeles, CA	1.1732
4520	Louisville, KY-IN Clark, IN Floyd, IN Harrison, IN Scott, IN Bullitt, KY Jefferson, KY Oldham, KY	0.9162
4600	Lubbock, TX Lubbock, TX	0.8777
4640	Lynchburg, VA Amherst, VA Bedford City, VA Bedford, VA Campbell, VA Lynchburg City, VA	0.9017

MSA	Urban Area (Constituent Counties or County Equivalents)	Wage Index
4680	Macon, GA Bibb, GA Houston, GA Jones, GA Peach, GA Twiggs, GA	0.9596
4720	Madison, WI Dane, WI	1.0395
4800	Mansfield, OH Crawford, OH Richland, OH	0.9105
4840	Mayaguez, PR Anasco, PR Cabo Rojo, PR Hormigueros, PR Mayaguez, PR Sabana Grande, PR San German, PR	0.4769
4880	McAllen-Edinburg-Mission, TX Hidalgo, TX	0.8602
4890	Medford-Ashland, OR Jackson, OR	1.0534
4900	Melbourne-Titusville-Palm Bay, FL Brevard, FL	0.9633
4920	Memphis, TN-AR-MS Crittenden, AR De Soto, MS Fayette, TN Shelby, TN Tipton, TN	0.9234
4940	Merced, CA Merced, CA	1.0575
5000	Miami, FL Dade, FL	0.9870
5015	Middlesex-Somerset-Hunterdon, NJ Hunterdon, NJ Middlesex, NJ Somerset, NJ	1.1360
5080	Milwaukee-Waukesha, WI Milwaukee, WI Ozaukee, WI Washington, WI Waukesha, WI	1.0076

MSA	Urban Area (Constituent Counties or County Equivalents)	Wage Index
5120	Minneapolis-St. Paul, MN-WI Anoka, MN Carver, MN Chisago, MN Dakota, MN Hennepin, MN Isanti, MN Ramsey, MN Scott, MN Sherburne, MN Washington, MN Wright, MN Pierce, WI St. Croix, WI	1.1066
5140	Missoula, MT Missoula, MT	0.9618
5160	Mobile, AL Baldwin, AL Mobile, AL	0.7932
5170	Modesto, CA Stanislaus, CA	1.1966
5190	Monmouth-Ocean, NJ Monmouth, NJ Ocean, NJ	1.0888
5200	Monroe, LA Ouachita, LA	0.7913
5240	Montgomery, AL Autauga, AL Elmore, AL Montgomery, AL	0.8300
5280	Muncie, IN Delaware, IN	0.8580
5330	Myrtle Beach, SC Horry, SC	0.9022
5345	Naples, FL Collier, FL	1.0558
5360	Nashville, TN Cheatham, TN Davidson, TN Dickson, TN Robertson, TN Rutherford, TN Sumner, TN Williamson, TN Wilson, TN	1.0108

MSA	Urban Area (Constituent Counties or County Equivalents)	Wage Index
5380	Nassau-Suffolk, NY Nassau, NY Suffolk, NY	1.2907
5483	New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT Fairfield, CT New Haven, CT	1.2254
5523	New London-Norwich, CT New London, CT	1.1596
5560	New Orleans, LA Jefferson, LA Orleans, LA Plaquemines, LA St. Bernard, LA St. Charles, LA St. James, LA St. John The Baptist, LA St. Tammany, LA	0.9103
5600	New York, NY Bronx, NY Kings, NY New York, NY Putnam, NY Queens, NY Richmond, NY Rockland, NY Westchester, NY	1.3586
5640	Newark, NJ Essex, NJ Morris, NJ Sussex, NJ Union, NJ Warren, NJ	1.1625
5660	Newburgh, NY-PA Orange, NY Pike, PA	1.1170

MSA	Urban Area (Constituent Counties or County Equivalents)	Wage Index
5720	Norfolk-Virginia Beach-Newport News, VA-NC Currituck, NC Chesapeake City, VA Gloucester, VA Hampton City, VA Isle of Wight, VA James City, VA Mathews, VA Newport News City, VA Norfolk City, VA Poquoson City,VA Portsmouth City, VA Suffolk City, VA Virginia Beach City, VA Williamsburg City, VA York, VA	0.8894
5775	Oakland, CA Alameda, CA Contra Costa, CA	1.5220
5790	Ocala, FL Marion, FL	0.9153
5800	Odessa-Midland, TX Ector, TX Midland, TX	0.9632
5880	Oklahoma City, OK Canadian, OK Cleveland, OK Logan, OK McClain, OK Oklahoma, OK Pottawatomie, OK	0.8966
5910	Olympia, WA Thurston, WA	1.1006
5920	Omaha, NE-IA Pottawattamie, IA Cass, NE Douglas, NE Sarpy, NE Washington, NE	0.9754
5945	Orange County, CA Orange, CA	1.1611

MSA	Urban Area (Constituent Counties or County Equivalents)	Wage Index
5960	Orlando, FL Lake, FL Orange, FL Osceola, FL Seminole, FL	0.9742
5990	Owensboro, KY Daviess, KY	0.8434
6015	Panama City, FL Bay, FL	0.8124
6020	Parkersburg-Marietta, WV-OH Washington, OH Wood, WV	0.8288
6080	Pensacola, FL Escambia, FL Santa Rosa, FL	0.8306
6120	Peoria-Pekin, IL Peoria, IL Tazewell, IL Woodford, IL	0.8886
6160	Philadelphia, PA-NJ Burlington, NJ Camden, NJ Gloucester, NJ Salem, NJ Bucks, PA Chester, PA Delaware, PA Montgomery, PA Philadelphia, PA	1.0824
6200	Phoenix-Mesa, AZ Maricopa, AZ Pinal, AZ	0.9982
6240	Pine Bluff, AR Jefferson, AR	0.8673
6280	Pittsburgh, PA Allegheny, PA Beaver, PA Butler, PA Fayette, PA Washington, PA Westmoreland, PA	0.8756
6323	Pittsfield, MA Berkshire, MA	1.0439
6340	Pocatello, ID Bannock, ID	0.9601

MSA	Urban Area (Constituent Counties or County Equivalents)	Wage Index
6360	Ponce, PR Guayanilla, PR Juana Diaz, PR Penuelas, PR Ponce, PR Villalba, PR Yauco, PR	0.4954
6403	Portland, ME Cumberland, ME Sagadahoc, ME York, ME	1.0112
6440	Portland-Vancouver, OR-WA Clackamas, OR Columbia, OR Multnomah, OR Washington, OR Yamhill, OR Clark, WA	1.1403
6483	Providence-Warwick-Pawtucket, RI Bristol, RI Kent, RI Newport, RI Providence, RI Washington, RI	1.1061
6520	Provo-Orem, UT Utah, UT	0.9613
6560	Pueblo, CO Pueblo, CO	0.8752
6580	Punta Gorda, FL Charlotte, FL	0.9441
6600	Racine, WI Racine, WI	0.9045
6640	Raleigh-Durham-Chapel Hill, NC Chatham, NC Durham, NC Franklin, NC Johnston, NC Orange, NC Wake, NC	1.0258
6660	Rapid City, SD Pennington, SD	0.8912
6680	Reading, PA Berks, PA	0.9215
6690	Redding, CA Shasta, CA	1.1835

MSA	Urban Area (Constituent Counties or County Equivalents)	Wage Index
6720	Reno, NV Washoe, NV	1.0456
6740	Richland-Kennewick-Pasco, WA Benton, WA Franklin, WA	1.0520
6760	Richmond-Petersburg, VA Charles City County, VA Chesterfield, VA Colonial Heights City, VA Dinwiddie, VA Goochland, VA Hanover, VA Henrico, VA Hopewell City, VA New Kent, VA Petersburg City, VA Powhatan, VA Prince George, VA Richmond City, VA	0.9397
6780	Riverside-San Bernardino, CA Riverside, CA San Bernardino, CA	1.0970
6800	Roanoke, VA Botetourt, VA Roanoke, VA Roanoke City, VA Salem City, VA	0.8428
6820	Rochester, MN Olmsted, MN	1.1504
6840	Rochester, NY Genesee, NY Livingston, NY Monroe, NY Ontario, NY Orleans, NY Wayne, NY	0.9196
6880	Rockford, IL Boone, IL Ogle, IL Winnebago, IL	0.9626
6895	Rocky Mount, NC Edgecombe, NC Nash, NC	0.8998

MSA	Urban Area (Constituent Counties or County Equivalents)	Wage Index
6920	Sacramento, CA El Dorado, CA Placer, CA Sacramento, CA	1.1848
6960	Saginaw-Bay City-Midland, MI Bay, MI Midland, MI Saginaw, MI	0.9696
6980	St. Cloud, MN Benton, MN Stearns, MN	1.0215
7000	St. Joseph, MO Andrews, MO Buchanan, MO	1.0013
7040	St. Louis, MO-IL Clinton, IL Jersey, IL Madison, IL Monroe, IL St. Clair, IL Franklin, MO Jefferson, MO Lincoln, MO St. Charles, MO St. Louis, MO St. Louis City, MO Warren, MO Sullivan City, MO	0.9081
7080	Salem, OR Marion, OR Polk, OR	1.0556
7120	Salinas, CA Monterey, CA	1.3823
7160	Salt Lake City-Ogden, UT Davis, UT Salt Lake, UT Weber, UT	0.9487
7200	San Angelo, TX Tom Green, TX	0.8167
7240	San Antonio, TX Bexar, TX Comal, TX Guadalupe, TX Wilson, TX	0.9023

MSA	Urban Area (Constituent Counties or County Equivalents)	Wage Index
7320	San Diego, CA San Diego, CA	1.1267
7360	San Francisco, CA Marin, CA San Francisco, CA San Mateo, CA	1.4712
7400	San Jose, CA Santa Clara, CA	1.4744
7440	San Juan-Bayamon, PR Aguas Buenas, PR Barceloneta, PR Bayamon, PR Canovanas, PR Carolina, PR Catano, PR Ceiba, PR Comerio, PR Corozal, PR Dorado, PR Fajardo, PR Florida, PR Guaynabo, PR Humacao, PR Juncos, PR Los Piedras, PR Loiza, PR Luguillo, PR Manati, PR Morovis, PR Naguabo, PR Naranjito, PR Rio Grande, PR San Juan, PR Toa Alta, PR Toa Baja, PR Trujillo Alto, PR Vega Alta, PR Vega Baja, PR Yabucoa, PR	0.4802
7460	San Luis Obispo-Atascadero-Paso Robles, CA San Luis Obispo, CA	1.1118
7480	Santa Barbara-Santa Maria-Lompoc, CA Santa Barbara, CA	1.0771
7485	Santa Cruz-Watsonville, CA Santa Cruz, CA	1.4779

MSA	Urban Area (Constituent Counties or County Equivalents)	Wage Index
7490	Santa Fe, NM Los Alamos, NM Santa Fe, NM	1.0590
7500	Santa Rosa, CA Sonoma, CA	1.2961
7510	Sarasota-Bradenton, FL Manatee, FL Sarasota, FL	0.9629
7520	Savannah, GA Bryan, GA Chatham, GA Effingham, GA	0.9460
7560	Scranton--Wilkes-Barre--Hazleton, PA Columbia, PA Lackawanna, PA Luzerne, PA Wyoming, PA	0.8522
7600	Seattle-Bellevue-Everett, WA Island, WA King, WA Snohomish, WA	1.1479
7610	Sharon, PA Mercer, PA	0.7881
7620	Sheboygan, WI Sheboygan, WI	0.8948
7640	Sherman-Denison, TX Grayson, TX	0.9617
7680	Shreveport-Bossier City, LA Bossier, LA Caddo, LA Webster, LA	0.9111
7720	Sioux City, IA-NE Woodbury, IA Dakota, NE	0.9094
7760	Sioux Falls, SD Lincoln, SD Minnehaha, SD	0.9441
7800	South Bend, IN St. Joseph, IN	0.9447
7840	Spokane, WA Spokane, WA	1.0660
7880	Springfield, IL Menard, IL Sangamon, IL	0.8738

MSA	Urban Area (Constituent Counties or County Equivalents)	Wage Index
7920	Springfield, MO Christian, MO Greene, MO Webster, MO	0.8597
8003	Springfield, MA Hampden, MA Hampshire, MA	1.0173
8050	State College, PA Centre, PA	0.8461
8080	Steubenville-Weirton, OH-WV Jefferson, OH Brooke, WV Hancock, WV	0.8280
8120	Stockton-Lodi, CA San Joaquin, CA	1.0564
8140	Sumter, SC Sumter, SC	0.8520
8160	Syracuse, NY Cayuga, NY Madison, NY Onondaga, NY Oswego, NY	0.9394
8200	Tacoma, WA Pierce, WA	1.1078
8240	Tallahassee, FL Gadsden, FL Leon, FL	0.8655
8280	Tampa-St. Petersburg-Clearwater, FL Hernando, FL Hillsborough, FL Pasco, FL Pinellas, FL	0.9024
8320	Terre Haute, IN Clay, IN Vermillion, IN Vigo, IN	0.8582
8360	Texarkana, AR-Texarkana, TX Miller, AR Bowie, TX	0.8413
8400	Toledo, OH Fulton, OH Lucas, OH Wood, OH	0.9524
8440	Topeka, KS Shawnee, KS	0.8904

MSA	Urban Area (Constituent Counties or County Equivalents)	Wage Index
8480	Trenton, NJ Mercer, NJ	1.0276
8520	Tucson, AZ Pima, AZ	0.8926
8560	Tulsa, OK Creek, OK Osage, OK Rogers, OK Tulsa, OK Wagoner, OK	0.8729
8600	Tuscaloosa, AL Tuscaloosa, AL	0.8440
8640	Tyler, TX Smith, TX	0.9502
8680	Utica-Rome, NY Herkimer, NY Oneida, NY	0.8295
8720	Vallejo-Fairfield-Napa, CA Napa, CA Solano, CA	1.3517
8735	Ventura, CA Ventura, CA	1.1105
8750	Victoria, TX Victoria, TX	0.8469
8760	Vineland-Millville-Bridgeton, NJ Cumberland, NJ	1.0573
8780	Visalia-Tulare-Porterville, CA Tulare, CA	0.9975
8800	Waco, TX McLennan, TX	0.8146

MSA	Urban Area (Constituent Counties or County Equivalents)	Wage Index
8840	Washington, DC-MD-VA-WV District of Columbia, DC Calvert, MD Charles, MD Frederick, MD Montgomery, MD Prince Georges, MD Alexandria City, VA Arlington, VA Clarke, VA Culpepper, VA Fairfax, VA Fairfax City, VA Falls Church City, VA Fauquier, VA Fredericksburg City, VA King George, VA Loudoun, VA Manassas City, VA Manassas Park City, VA Prince William, VA Spotsylvania, VA Stafford, VA Warren, VA Berkeley, WV Jefferson, WV	1.0971
8920	Waterloo-Cedar Falls, IA Black Hawk, IA	0.8633
8940	Wausau, WI Marathon, WI	0.9570
8960	West Palm Beach-Boca Raton, FL Palm Beach, FL	1.0362
9000	Wheeling, OH-WV Belmont, OH Marshall, WV Ohio, WV	0.7449
9040	Wichita, KS Butler, KS Harvey, KS Sedgwick, KS	0.9468
9080	Wichita Falls, TX Archer, TX Wichita, TX	0.8395
9140	Williamsport, PA Lycoming, PA	0.8485

MSA	Urban Area (Constituent Counties or County Equivalents)	Wage Index
9160	Wilmington-Newark, DE-MD New Castle, DE Cecil, MD	1.1121
9200	Wilmington, NC New Hanover, NC Brunswick, NC	0.9237
9260	Yakima, WA Yakima, WA	1.0322
9270	Yolo, CA Yolo, CA	0.9378
9280	York, PA York, PA	0.9150
9320	Youngstown-Warren, OH Columbiana, OH Mahoning, OH Trumbull, OH	0.9517
9340	Yuba City, CA Sutter, CA Yuba, CA	1.0363
9360	Yuma, AZ Yuma, AZ	0.8871

Addendum C.- Comparison of Pre-Floor and Pre-Reclassified Hospital Wage Index for FY 2003 and CY 2005

Rural Area	FY 2003 Wage Index	CY 2005 Wage Index	Percent Change, FY 2003-CY 2005
ALABAMA	0.7660	0.7637	-0.30
ALASKA	1.2293	1.1637	-5.34
ARIZONA	0.8493	0.9140	7.62
ARKANSAS	0.7666	0.7703	0.48
CALIFORNIA	0.9840	1.0297	4.64
COLORADO	0.9015	0.9368	3.92
CONNECTICUT	1.2394	1.1917	-3.85
DELAWARE	0.9128	0.9503	4.11
FLORIDA	0.8814	0.8721	-1.06
GEORGIA	0.8230	0.8247	0.21
GUAM	0.9611	0.9611	0.00

Rural Area	FY 2003 Wage Index	CY 2005 Wage Index	Percent Change, FY 2003-CY 2005
HAWAII	1.0255	1.0522	2.60
IDAHO	0.8747	0.8826	0.90
ILLINOIS	0.8204	0.8340	1.66
INDIANA	0.8755	0.8736	-0.22
IOWA	0.8315	0.8550	2.83
KANSAS	0.7923	0.8087	2.07
KENTUCKY	0.8079	0.7844	-2.91
LOUISIANA	0.7567	0.7290	-3.66
MAINE	0.8874	0.9039	1.86
MARYLAND	0.8946	0.9179	2.60
MASSACHUSETTS	1.1288	1.0216	-9.50
MICHIGAN	0.9000	0.8740	-2.89
MINNESOTA	0.9151	0.9339	2.05
MISSISSIPPI	0.7680	0.7583	-1.26
MISSOURI	0.8021	0.7829	-2.39
MONTANA	0.8481	0.8701	2.59
NEBRASKA	0.8204	0.9035	10.13
NEVADA	0.9577	0.9832	2.66
NEW HAMPSHIRE	0.9796	0.9940	1.47
New Jersey	----------	.....	.....
NEW MEXICO	0.8872	0.8529	-3.87
NEW YORK	0.8542	0.8403	-1.63
NORTH CAROLINA	0.8666	0.8500	-1.92
NORTH DAKOTA	0.7788	0.7743	-0.58
OHIO	0.8613	0.8759	1.70
OKLAHOMA	0.7590	0.7537	-0.70
OREGON	1.0303	1.0049	-2.47
PENNSYLVANIA	0.8462	0.8348	-1.35
PUERTO RICO	0.4356	0.4047	-7.09
RHODE ISLAND	----------	.....	.....
SOUTH CAROLINA	0.8607	0.8640	0.38
SOUTH DAKOTA	0.7815	0.8393	7.40
TENNESSEE	0.7877	0.7876	-0.01
TEXAS	0.7821	0.7910	1.14
UTAH	0.9312	0.8843	-5.04

Rural Area	FY 2003 Wage Index	CY 2005 Wage Index	Percent Change, FY 2003-CY 2005
VERMONT	0.9345	0.9375	0.32
VIRGINIA	0.8504	0.8479	-0.29
VIRGIN ISLANDS	0.7845	0.7456	-4.96
WASHINGTON	1.0179	1.0072	-1.05
WEST VIRGINIA	0.7975	0.8083	1.35
WISCONSIN	0.9162	0.9498	3.67
WYOMING	0.9007	0.9182	1.94

Urban MSA	FY 2003 Wage Index	CY 2005 Wage Index	Percent Change, FY 2003-CY 2005
0040	0.7792	0.8009	2.78
0060	0.4587	0.4294	-6.39
0080	0.9600	0.9055	-5.68
0120	1.0594	1.1266	6.34
0160	0.8384	0.8570	2.22
0200	0.9315	1.0485	12.56
0220	0.7859	0.8171	3.97
0240	0.9735	0.9536	-2.04
0280	0.9225	0.8462	-8.27
0320	0.9034	0.9178	1.59
0380	1.2358	1.2109	-2.01
0440	1.1103	1.0816	-2.58
0450	0.8044	0.7881	-2.03
0460	0.8997	0.9115	1.31
0470	0.4337	0.3757	-13.37
0480	0.9876	0.9501	-3.80
0500	1.0211	1.0202	-0.09
0520	0.9991	0.9971	-0.20
0560	1.1017	1.0907	-1.00
0580	0.8325	0.8215	-1.32
0600	1.0264	0.9208	-10.29
0640	0.9637	0.9595	-0.44
0680	0.9899	1.0036	1.38
0720	0.9929	0.9907	-0.22
0733	0.9664	0.9955	3.01
0743	1.3202	1.2335	-6.57
0760	0.8294	0.8354	0.72
0840	0.8324	0.8616	3.51
0860	1.2282	1.1642	-5.21
0870	0.9042	0.8847	-2.16
0875	1.2150	1.1967	-1.51
0880	0.9022	0.8961	-0.68
0920	0.8757	0.8649	-1.23
0960	0.8341	0.8447	1.27
1000	0.9222	0.9198	-0.26
1010	0.7972	0.7505	-5.86
1020	0.8907	0.8587	-3.59
1040	0.9109	0.9111	0.02
1080	0.9310	0.9352	0.45
1123	1.1235	1.1290	0.49

1125	0.9689	1.0046	3.68
1145	0.8535	0.8524	-0.13
1150	1.0944	1.0614	-3.02
1240	0.8880	1.0125	14.02
1260	0.8821	0.9243	4.78
1280	0.9365	0.9339	-0.28
1303	1.0052	0.9322	-7.26
1310	0.4371	0.4061	-7.09
1320	0.8932	0.8895	-0.41
1350	0.9690	0.9243	-4.61
1360	0.9056	0.8975	-0.89
1400	1.0635	0.9527	-10.42
1440	0.9235	0.9420	2.00
1480	0.8898	0.8876	-0.25
1520	0.9850	0.9711	-1.41
1540	1.0438	1.0294	-1.38
1560	0.8976	0.9207	2.57
1580	0.8628	0.8980	4.08
1600	1.1044	1.0851	-1.75
1620	0.9745	1.0542	8.18
1640	0.9381	0.9595	2.28
1660	0.8406	0.8022	-4.57
1680	0.9670	0.9626	-0.46
1720	0.9916	0.9792	-1.25
1740	0.8496	0.8396	-1.18
1760	0.9307	0.9450	1.54
1800	0.8374	0.8690	3.77
1840	0.9751	0.9753	0.02
1880	0.8729	0.8647	-0.94
1890	1.1453	1.0545	-7.93
1900	0.7847	0.8662	10.39
1920	0.9998	1.0054	0.56
1950	0.8859	0.8643	-2.44
1960	0.8835	0.8773	-0.70
2000	0.9282	0.9231	-0.55
2020	0.9062	0.8900	-1.79
2030	0.8973	0.8894	-0.88
2040	0.8055	0.8122	0.83
2080	1.0601	1.0904	2.86
2120	0.8791	0.9266	5.40
2160	1.0448	1.0227	-2.12
2180	0.8137	0.7596	-6.65
2190	0.9356	0.9825	5.01
2200	0.8795	0.8748	-0.53

2240	1.0368	1.0356	-0.12
2281	1.0684	1.1657	9.11
2290	0.8952	0.9139	2.09
2320	0.9265	0.9181	-0.91
2330	0.9722	0.9278	-4.57
2335	0.8416	0.8445	0.34
2340	0.8376	0.9001	7.46
2360	0.8925	0.8699	-2.53
2400	1.0944	1.0940	-0.04
2440	0.8177	0.8395	2.67
2520	0.9684	0.9114	-5.89
2560	0.8889	0.9363	5.33
2580	0.8100	0.8636	6.62
2620	1.0682	1.0611	-0.66
2640	1.1135	1.1178	0.39
2650	0.7792	0.7883	1.17
2655	0.8780	0.8960	2.05
2670	1.0066	1.0218	1.51
2680	1.0297	1.0165	-1.28
2700	0.9680	0.9371	-3.19
2710	0.9823	1.0046	2.27
2720	0.7895	0.8303	5.17
2750	0.9693	0.8786	-9.36
2760	0.9457	0.9737	2.96
2800	0.9446	0.9520	0.78
2840	1.0216	1.0407	1.87
2880	0.8505	0.8049	-5.36
2900	0.9871	0.9459	-4.17
2920	0.9465	0.9403	-0.66
2960	0.9584	0.9342	-2.53
2975	0.8281	0.8467	2.25
2980	0.8892	0.8778	-1.28
2985	0.8897	0.9091	2.18
2995	0.9456	0.9900	4.70
3000	0.9525	0.9519	-0.06
3040	0.8950	0.8810	-1.56
3060	0.9237	0.9444	2.24
3080	0.9502	0.9586	0.88
3120	0.9282	0.9312	0.32
3150	0.9100	0.9183	0.91
3160	0.9122	0.9400	3.05
3180	0.9268	0.9940	7.25
3200	0.9418	0.9066	-3.74
3240	0.9223	0.9286	0.68

3283	1.1549	1.1054	-4.29
3285	0.7659	0.7362	-3.88
3290	0.9028	0.9502	5.25
3320	1.1457	1.1013	-3.88
3350	0.8385	0.7721	-7.92
3360	0.9892	1.0117	2.27
3400	0.9636	0.9564	-0.75
3440	0.8903	0.8851	-0.58
3480	0.9717	1.0039	3.31
3500	0.9587	0.9654	0.70
3520	0.9532	0.9146	-4.05
3560	0.8607	0.8406	-2.34
3580	0.9275	0.8900	-4.04
3600	0.9381	0.9548	1.78
3605	0.8239	0.8401	1.97
3610	0.7976	0.7589	-4.85
3620	0.9849	0.9583	-2.70
3640	1.1190	1.0923	-2.39
3660	0.8268	0.8202	-0.80
3680	0.8329	0.7980	-4.19
3700	0.7749	0.8144	5.10
3710	0.8613	0.8721	1.25
3720	1.0595	1.0350	-2.31
3740	1.0790	1.0603	-1.73
3760	0.9736	0.9641	-0.98
3800	0.9686	0.9772	0.89
3810	1.0399	0.9242	-11.13
3840	0.8970	0.8508	-5.15
3850	0.8971	0.8986	0.17
3870	0.9400	0.9289	-1.18
3880	0.8475	0.8105	-4.37
3920	0.9278	0.9067	-2.27
3960	0.7965	0.7972	0.09
3980	0.9357	0.8930	-4.56
4000	0.9078	0.9883	8.87
4040	0.9726	0.9658	-0.70
4080	0.8472	0.8747	3.25
4100	0.8745	0.8784	0.45
4120	1.1521	1.1121	-3.47
4150	0.7923	0.8644	9.10
4200	0.8315	0.8212	-1.24
4243	0.9179	0.9562	4.17
4280	0.8581	0.9219	7.44
4320	0.9483	0.9258	-2.37

4360	0.9892	1.0208	3.19
4400	0.9097	0.8826	-2.98
4420	0.8629	0.8739	1.27
4480	1.2001	1.1732	-2.24
4520	0.9276	0.9162	-1.23
4600	0.9646	0.8777	-9.01
4640	0.9219	0.9017	-2.19
4680	0.9204	0.9596	4.26
4720	1.0467	1.0395	-0.69
4800	0.8900	0.9105	2.30
4840	0.4914	0.4769	-2.95
4880	0.8428	0.8602	2.06
4890	1.0498	1.0534	0.34
4900	1.0253	0.9633	-6.05
4920	0.8920	0.9234	3.52
4940	0.9837	1.0575	7.50
5000	0.9802	0.9870	0.69
5015	1.1213	1.1360	1.31
5080	0.9893	1.0076	1.85
5120	1.0903	1.1066	1.50
5140	0.9157	0.9618	5.03
5160	0.8108	0.7932	-2.17
5170	1.0498	1.1966	13.98
5190	1.0674	1.0888	2.00
5200	0.8137	0.7913	-2.75
5240	0.7734	0.8300	7.32
5280	0.9284	0.8580	-7.58
5330	0.8976	0.9022	0.51
5345	0.9754	1.0558	8.24
5360	0.9578	1.0108	5.53
5380	1.3357	1.2907	-3.37
5483	1.2408	1.2254	-1.24
5523	1.1767	1.1596	-1.45
5560	0.9046	0.9103	0.63
5600	1.4414	1.3586	-5.74
5640	1.1381	1.1625	2.14
5660	1.1387	1.1170	-1.91
5720	0.8574	0.8894	3.73
5775	1.5072	1.5220	0.98
5790	0.9402	0.9153	-2.65
5800	0.9397	0.9632	2.50
5880	0.8900	0.8966	0.74
5910	1.0960	1.1006	0.42
5920	0.9978	0.9754	-2.24

5945	1.1474	1.1611	1.19
5960	0.9640	0.9742	1.06
5990	0.8344	0.8434	1.08
6015	0.8865	0.8124	-8.36
6020	0.8127	0.8288	1.98
6080	0.8645	0.8306	-3.92
6120	0.8739	0.8886	1.68
6160	1.0713	1.0824	1.04
6200	0.9820	0.9982	1.65
6240	0.7962	0.8673	8.93
6280	0.9365	0.8756	-6.50
6323	1.0235	1.0439	1.99
6340	0.9372	0.9601	2.44
6360	0.5169	0.4954	-4.16
6403	0.9794	1.0112	3.25
6440	1.0667	1.1403	6.90
6483	1.0854	1.1061	1.91
6520	0.9984	0.9613	-3.72
6560	0.8820	0.8752	-0.77
6580	0.9218	0.9441	2.42
6600	0.9334	0.9045	-3.10
6640	0.9990	1.0258	2.68
6660	0.8846	0.8912	0.75
6680	0.9295	0.9215	-0.86
6690	1.1135	1.1835	6.29
6720	1.0648	1.0456	-1.80
6740	1.1491	1.0520	-8.45
6760	0.9477	0.9397	-0.84
6780	1.1365	1.0970	-3.48
6800	0.8614	0.8428	-2.16
6820	1.2139	1.1504	-5.23
6840	0.9194	0.9196	0.02
6880	0.9625	0.9626	0.01
6895	0.9228	0.8998	-2.49
6920	1.1500	1.1848	3.03
6960	0.9650	0.9696	0.48
6980	0.9700	1.0215	5.31
7000	0.8021	1.0013	24.83
7040	0.8855	0.9081	2.55
7080	1.0367	1.0556	1.82
7120	1.4623	1.3823	-5.47
7160	0.9945	0.9487	-4.61
7200	0.8374	0.8167	-2.47
7240	0.8753	0.9023	3.08

7320	1.1131	1.1267	1.22
7360	1.4142	1.4712	4.03
7400	1.4145	1.4744	4.23
7440	0.4741	0.4802	1.29
7460	1.1271	1.1118	-1.36
7480	1.0481	1.0771	2.77
7485	1.3646	1.4779	8.30
7490	1.0712	1.0590	-1.14
7500	1.3046	1.2961	-0.65
7510	0.9425	0.9629	2.16
7520	0.9376	0.9460	0.90
7560	0.8599	0.8522	-0.90
7600	1.1474	1.1479	0.04
7610	0.7869	0.7881	0.15
7620	0.8697	0.8948	2.89
7640	0.9255	0.9617	3.91
7680	0.8987	0.9111	1.38
7720	0.9046	0.9094	0.53
7760	0.9257	0.9441	1.99
7800	0.9802	0.9447	-3.62
7840	1.0852	1.0660	-1.77
7880	0.8659	0.8738	0.91
7920	0.8424	0.8597	2.05
8003	1.0927	1.0173	-6.90
8050	0.8941	0.8461	-5.37
8080	0.8804	0.8280	-5.95
8120	1.0506	1.0564	0.55
8140	0.8273	0.8520	2.99
8160	0.9714	0.9394	-3.29
8200	1.0940	1.1078	1.26
8240	0.8504	0.8655	1.78
8280	0.9065	0.9024	-0.45
8320	0.8599	0.8582	-0.20
8360	0.8088	0.8413	4.02
8400	0.9810	0.9524	-2.92
8440	0.9199	0.8904	-3.21
8480	1.0432	1.0276	-1.50
8520	0.8911	0.8926	0.17
8560	0.8332	0.8729	4.76
8600	0.8130	0.8440	3.81
8640	0.9521	0.9502	-0.20
8680	0.8465	0.8295	-2.01
8720	1.3354	1.3517	1.22
8735	1.1096	1.1105	0.08

8750	0.8756	0.8469	-3.28
8760	1.0031	1.0573	5.40
8780	0.9429	0.9975	5.79
8800	0.8073	0.8146	0.90
8840	1.0851	1.0971	1.11
8920	0.8069	0.8633	6.99
8940	0.9782	0.9570	-2.17
8960	0.9939	1.0362	4.26
9000	0.7670	0.7449	-2.88
9040	0.9520	0.9468	-0.55
9080	0.8498	0.8395	-1.21
9140	0.8544	0.8485	-0.69
9160	1.1173	1.1121	-0.47
9200	0.9640	0.9237	-4.18
9260	1.0569	1.0322	-2.34
9270	0.9434	0.9378	-0.59
9280	0.9026	0.9150	1.37
9320	0.9358	0.9517	1.70
9340	1.0276	1.0363	0.85
9360	0.8589	0.8871	3.28

BILLING CODE 4120–01–C

III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a notice such as this take effect in accordance with 5 U.S.C. 553(b)(B). We can waive this procedure, however, if we find good cause that notice and comment procedure is impracticable, unnecessary, or contraryto the public interest and incorporate a statement of the finding and the reasons for it into the notice issued.

The policies and payment methodology expressed in the CY 2005 final rule have previously been subjected to notice and comment procedures. This correction notice merely provides technical corrections to the CY 2005 final rule that was promulgated through notice and comment rulemaking, and does not make substantive changes to the policies or payment methodology that were expressed in the final rule. Specifically, this correction notice revises inaccurate tabular data. We find it unnecessary to undertake further notice and comment procedures with respect to this correction notice. Therefore, we find there is good cause to waive the notice and comment procedures for this correction notice.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 22, 2004.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 04–26174 Filed 11–26–04; 8:45 am]

BILLING CODE 4120–01–P

Federal Register

Tuesday,
November 30, 2004

Part III

Department of Housing and Urban Development

Statutorily Mandated Designation of Difficult Development Areas for Section 42 of the Internal Revenue Code of 1986; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4889–N–03]

Statutorily Mandated Designation of Difficult Development Areas for Section 42 of the Internal Revenue Code of 1986

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: This document designates ''Difficult Development Areas'' for purposes of the Low-Income Housing Tax Credit (LIHTC) under section 42 of the Internal Revenue Code of 1986 (the Code) (26 U.S.C. 42). The United States Department of Housing and Urban Development (HUD) makes new Difficult Development Area designations annually. The designations of ''Qualified Census Tracts'' under section 42 of the Internal Revenue Code published December 12, 2002, as supplemented on December 19, 2003, remain in effect.

FOR FURTHER INFORMATION CONTACT: For questions on how areas are designated and on geographic definitions: Alastair McFarlane, Senior Economist, Economic Development and Public Finance Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–6000, telephone (202) 708–2770, e-mail *Alastair_McFarlane@hud.gov*. For specific legal questions pertaining to Section 42: Branch 5, Office of the Associate Chief Counsel, Passthroughs & Special Industries, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone (202) 622–3040, fax (202) 622–4524. For questions about the ''HUB Zones'' program: Michael P. McHale, Assistant Administrator for Procurement Policy, Office of Government Contracting, Suite 8800, Small Business Administration, 409 Third Street, SW., Washington, DC 20416, telephone (202) 205–8885, fax (202) 205–7167, e-mail *hubzone@sba.gov*. A text telephone is available for persons with hearing or speech impairments at (202) 708–9300. (These are not toll-free telephone numbers.) Additional copies of this notice are available through HUD User at (800) 245–2691 for a small fee to cover duplication and mailing costs.

Copies Available Electronically: This notice and additional information about Difficult Development Areas and Qualified Census Tracts are available electronically on the Internet (World Wide Web) at *http://www.huduser.org/datasets/qct.html*.

SUPPLEMENTARY INFORMATION:

This Document

This notice designates Difficult Development Areas for each of the 50 states, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands. The designations of Difficult Development Areas in this notice are based on final fiscal year 2004 Fair Market Rents (FMRs), 2004 income limits, and 2000 Census population counts as explained below. The designations of Qualified Census Tracts under Section 42 of the Internal Revenue Code published December 12, 2002 (67 FR 76451), as supplemented on December 19, 2003 (68 FR 70982), remain in effect.

2000 Census

Data from the 2000 Census on total population of metropolitan areas and nonmetropolitan areas are used in the designation of Difficult Development Areas. The Office of Management and Budget (OMB) published new metropolitan area definitions incorporating 2000 Census data in OMB Bulletin No. 03–04 on June 6, 2003, as updated in OMB Bulletin No. 04–03 on February 18, 2004. The FY2004 FMRs and 2004 income limits used to designate Difficult Development Areas are based on the Metropolitan Statistical Area (MSA) and Primary Metropolitan Statistical Area (PMSA) definitions established by OMB in OMB Bulletin No. 99–04 on June 30, 1999. Therefore, for the purposes of designating Difficult Development Areas, ''metropolitan areas'' will continue to be defined according to the MSA/PMSA definitions established in OMB Bulletin No. 99–04 on June 30, 1999, until further notice.

Background

The U.S. Department of the Treasury (Treasury) and its Internal Revenue Service (IRS) are authorized to interpret and enforce the provisions of the Code, including the LIHTC found at Section 42 of the Code. The Secretary of HUD is required to designate Difficult Development Areas and Qualified Census Tracts by Section 42(d)(5)(C) of the Code. In order to assist in understanding HUD's mandated designation of Difficult Development Areas and Qualified Census Tracts for use in administering Section 42, a summary of the section is provided. The following summary does not purport to bind Treasury or the IRS in any way, nor does it purport to bind HUD, as HUD has authority to interpret or administer the Code only in instances where it receives explicit delegation.

Summary of Low-Income Housing Tax Credit

The LIHTC is a tax incentive intended to increase the availability of low-income housing. Section 42 provides an income tax credit to owners of newly constructed or substantially rehabilitated low-income rental housing projects. The dollar amount of the LIHTC available for allocation by each state (credit ceiling) is limited by population. Each state is allowed a credit ceiling based on a statutory formula indicated at Section 42(h)(3). States may carry forward unallocated credits derived from the credit ceiling for one year; however, to the extent these unallocated credits are not used by then, the credits go into a national pool to be redistributed to states as additional credit. State and local housing agencies allocate the state's credit ceiling among low-income housing buildings whose owners have applied for the credit. Besides Section 42 credits derived from the credit ceiling, states may also provide Section 42 credits to owners of buildings based upon the percentage of certain building costs financed by tax-exempt bond proceeds. Credits provided under the tax-exempt bond ''volume cap'' do not reduce the credits available from the credit ceiling.

The credits allocated to a building are based on the cost of units placed in service as low-income units under certain minimum occupancy and maximum rent criteria. In general, a building must meet one of two thresholds to be eligible for the LIHTC: Either 20 percent of the units must be rent-restricted and occupied by tenants with incomes no higher than 50 percent of the area median gross income (AMGI) or 40 percent of the units must be rent restricted and occupied by tenants with incomes no higher than 60 percent of AMGI. The term ''rent-restricted'' means that gross rent, including an allowance for utilities, cannot exceed 30 percent of the tenant's imputed income limitation (*i.e.*, 50 percent or 60 percent of AMGI). The rent and occupancy thresholds remain in effect for at least 15 years, and building owners are required to enter into agreements to maintain the low-income character of the building for at least an additional 15 years.

The LIHTC reduces income tax liability dollar for dollar. It is taken annually for a term of ten years and is intended to yield a present value of either (1) 70 percent of the ''qualified basis'' for new construction or substantial rehabilitation expenditures that are not federally subsidized (*i.e.*, financed with tax-exempt bonds or

below-market federal loans), or (2) 30 percent of the qualified basis for the cost of acquiring certain existing buildings or projects that are federally subsidized. The actual credit rates are adjusted monthly for projects placed in service after 1987 under procedures specified in Section 42. Individuals can use the credits up to a deduction equivalent of $25,000 (the actual maximum amount of credit that an individual can claim depends upon the individual's marginal tax rate). Individuals cannot use the credits against the alternative minimum tax. Corporations, other than S or personal service corporations, can use the credits against ordinary income tax. They cannot use the credits against the alternative minimum tax. These corporations can also deduct losses from the project.

The qualified basis represents the product of the building ''applicable fraction'' and its ''eligible basis.'' The applicable fraction is based on the number of low-income units in the building as a percentage of the total number of units, or based on the floor space of low income-units as a percentage of the total floor space of residential units in the building. The eligible basis is the adjusted basis attributable to acquisition, rehabilitation, or new construction costs (depending on the type of LIHTC involved). These costs include amounts chargeable to a capital account that are incurred prior to the end of the first taxable year in which the qualified low-income building is placed in service or, at the election of the taxpayer, the end of the succeeding taxable year. In the case of buildings located in designated Difficult Development Areas or designated Qualified Census Tracts, eligible basis can be increased up to 130 percent of what it would otherwise be. This means that the available credits also can be increased by up to 30 percent. For example, if a 70 percent credit is available, it effectively could be increased to as much as 91 percent.

Section 42 of the Code defines a Difficult Development Area as any area designated by the Secretary of HUD as an area that has high construction, land, and utility costs relative to the AMGI. All designated Difficult Development Areas in metropolitan areas (taken together) may not contain more than 20 percent of the aggregate population of all metropolitan areas, and all designated areas not in metropolitan areas may not contain more than 20 percent of the aggregate population of all nonmetropolitan areas.

Explanation of HUD Designation Methodology

A. Difficult Development Areas

In developing the list of Difficult Development Areas, HUD compared housing costs with incomes. HUD used 2000 Census population data and the metropolitan area (MSA/PMSA) definitions as published in OMB Bulletin No. 99–04 on June 30, 1999. In keeping with past practice of basing the coming year's Difficult Development Area designations on data from the preceding year, the basis for these comparisons was the 2004 HUD income limits for Very Low-Income households (Very Low Income Limits, or VLILs) and final FY2004 FMRs used for the Section 8 Housing Choice Voucher program. The procedure used in making the Difficult Development Area calculations follows:

1. For each MSA/PMSA and each nonmetropolitan area, a ratio was calculated. This calculation used the final FY2004 two-bedroom FMR and the 2004 four-person VLIL.

a. The numerator of the ratio was the area's final FY2004 FMR. In general, the FMR is based on the 40th percentile rent paid by recent movers for a two-bedroom apartment. In metropolitan areas granted a FMR based on the 50th percentile rent for purposes of improving the administration of HUD's Housing Choice Voucher program (see 66 FR 162), the 40th percentile rent is used for nationwide consistency of comparisons.

b. The denominator of the ratio was the monthly LIHTC income-based rent limit calculated as 1/12 of 30 percent of 120 percent of the area's VLIL (where 120 percent of the VLIL was rounded to the nearest $50 and not allowed to exceed 80 percent of the AMGI in areas where the VLIL is adjusted upward from its 50 percent of AMGI base).

2. The ratios of the FMR to the LIHTC income-based rent limit were arrayed in descending order, separately, for MSAs/PMSAs and for nonmetropolitan areas.

3. The Difficult Development Areas are those with the highest ratios cumulative to 20 percent of the 2000 population of all metropolitan areas and of all nonmetropolitan areas, respectively.

B. Application of Population Caps to Difficult Development Area Determinations

In identifying Difficult Development Areas, HUD applied caps, or limitations, as noted above. The cumulative population of metropolitan Difficult Development Areas cannot exceed 20 percent of the cumulative population of all metropolitan areas and the cumulative population of nonmetropolitan Difficult Development Areas cannot exceed 20 percent of the cumulative population of all nonmetropolitan areas.

In applying these caps, HUD established procedures to deal with how to treat small overruns of the caps. The remainder of this section explains the procedure. In general, HUD stops selecting areas when it is impossible to choose another area without exceeding the applicable cap. The only exceptions to this policy are when the next eligible excluded area contains either a large absolute population or a large percentage of the total population, or the next excluded area's ranking ratio as described above was identical (to four decimal places) to the last area selected, *and* its inclusion resulted in only a minor overrun of the cap. Thus, for both the designated metropolitan and nonmetropolitan Difficult Development Areas, there may be minimal overruns of the cap. HUD believes the designation of these additional areas is consistent with the intent of the legislation. As long as the apparent excess is small due to measurement errors, some latitude is justifiable because it is impossible to determine whether the 20 percent cap has been exceeded. Despite the care and effort involved in a decennial census, the Census Bureau and all users of the data recognize that the population counts for a given area and for the entire country are not precise. The extent of the measurement error is unknown. Thus, there can be errors in both the numerator and denominator of the ratio of populations used in applying a 20 percent cap. In circumstances where a strict application of a 20 percent cap results in an anomalous situation, recognition of the unavoidable imprecision in the census data justifies accepting small variances above the 20 percent limit.

C. Exceptions to OMB Definitions of MSAs/PMSAs and Other Geographic Matters

As stated in OMB Bulletin 99–04 defining metropolitan areas:

> ''OMB establishes and maintains the definitions of the [Metropolitan Areas] solely for statistical purposes * * * OMB does not take into account or attempt to anticipate any nonstatistical uses that may be made of the definitions. * * * We recognize that some legislation specifies the use of metropolitan areas for programmatic purposes, including allocating federal funds.''

HUD makes exceptions to OMB definitions in calculating FMRs by deleting counties from metropolitan areas whose OMB definitions are

determined by HUD to be larger than their housing market areas.

The following counties are assigned their own FMRs and VLILs and evaluated as if they were separate metropolitan areas for purposes of designating Difficult Development Areas.

Metropolitan Area and Counties Deleted

Chicago, Illinois: DeKalb, Grundy, and Kendall Counties.

Cincinnati-Hamilton, Ohio-Kentucky-Indiana: Brown County, Ohio; Gallatin, Grant, and Pendleton Counties, Kentucky; and Ohio County, Indiana.

Dallas, Texas: Henderson County.

Flagstaff, Arizona-Utah: Kane County, Utah.

New Orleans, Louisiana: St. James Parish.

Washington, DC-Maryland-Virginia-West Virginia: Clarke, Culpeper, King George, and Warren Counties, Virginia; and Berkely and Jefferson Counties, West Virginia.

Affected MSAs/PMSAs are assigned the indicator ''(part)'' in the list of Metropolitan Difficult Development Areas. Any of the excluded counties designated as Difficult Development Areas separately from their metropolitan areas are designated by the county name.

In the New England states (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont), OMB defined MSAs/PMSAs according to county subdivisions or minor civil divisions (MCDs), rather than county boundaries. Thus, when a New England county is designated as a Nonmetropolitan Difficult Development Area, only that part of the county (the group of MCDs) not included in any MSA/PMSA is the Nonmetropolitan Difficult Development Area. Affected counties are assigned the indicator ''(part)'' in the list of Nonmetropolitan Difficult Development Areas.

For the convenience of readers of this notice, the geographical definitions of designated Metropolitan Difficult Development Areas and the MCDs included in Nonmetropolitan Difficult Development Areas in the New England states are included in the list of Difficult Development Areas.

Certain nonmetropolitan county equivalent areas in Alaska for which FMRs and VLILs are calculated and thus form the basis of Difficult Development Area determinations are no longer recognized as geographic entities by the Bureau of the Census. Therefore, no 2000 Census population counts are produced for these areas. HUD estimated the 2000 population of these areas as follows:

1. The 2000 Population of Denali Borough (1,893) was allocated entirely to the Yukon-Koyukuk Census Area. The part of Denali Borough created from the Southeast Fairbanks Census Area was deemed uninhabited after examination of Census Block data for, and maps of, the area of Denali Borough formerly in the Southeast Fairbanks Census Area.

2. The population of Yakutat City and Borough (808) was allocated to the former Skagway-Yakutat-Angoon Census Area (680) and the Valdez-Cordova Census Area (128). The populations of Yakutat City and Borough Census Blocks located east of 141° west longitude were allocated to the Skagway-Yakutat-Angoon Census Area. The populations of Yakutat City and Borough Census Blocks located west of 141° west longitude were allocated to the Valdez-Cordova Census Area.

Future Designations

Difficult Development Areas are designated annually as updated income and FMR data become available.

Effective Date

The 2005 lists of Difficult Development Areas are effective (1) for allocations of credit after December 31, 2004; or (2) for purposes of Section 42(h)(4)(B) of the Code, if the bonds are issued and the building is placed in service after December 31, 2004. If an area is not on a subsequent list of Difficult Development Areas, the 2005 lists are effective for the area if (1) the allocation of credit to an applicant is made no later than the end of the 365-day period after the submission to the credit-allocating agency of a complete application by the applicant, and the submission is made before the effective date of the subsequent lists; or (2) for purposes of Section 42(h)(4)(B) of the Code, the bonds are issued or the building is placed in service no later than the end of the 365-day period after the applicant submits a complete application to the bond-issuing agency, and the submission is made before the effective date of the subsequent lists, provided that both the issuance of the bonds and the placement in service of the building occur after the application is submitted.

An application is deemed to be submitted on the date it is filed if the application is determined to be complete as certified in writing by the credit-allocating agency or bond-issuing agency. A ''complete application'' means that no more than *de minimis* clarification of the application is required for the agency to make a decision about the allocation of tax credits or issuance of bonds requested in the application.

The designations of ''Qualified Census Tracts'' under Section 42 of the Internal Revenue Code published December 12, 2002 (67 FR 76451) as supplemented on December 19, 2003 (68 FR 70982), remain in effect. The above language regarding calendar year 2005 and subsequent designations of Difficult Development Areas also applies to the designations of Qualified Census Tracts published December 12, 2002 (67 FR 76451), as supplemented on December 19, 2003 (68 FR 70982), and subsequent designations of Qualified Census Tracts.

Interpretive Examples of Effective Date

For the convenience of readers of this notice, interpretive examples are provided below to illustrate the consequences of the effective date in areas that gain or lose Difficult Development Area status. The examples are equally applicable to future Qualified Census Tract designations.

(Case A): Project ''A'' is located in a 2005 Difficult Development Area that is not a designated Difficult Development Area in 2006. A complete application for tax credits for Project ''A'' is filed with the allocating agency November 15, 2005, which the credit-allocating agency certified in writing as complete. Credits are allocated to project ''A'' on October 30, 2006. Project ''A'' is eligible for the increase in basis accorded a project in a 2005 Difficult Development area because the application was filed *before* January 1, 2006 (the assumed effective date for the 2006 Difficult Development Area lists), and tax credits were allocated no later than the end of the 365-day period after the filing of the complete application for an allocation of tax credits.

(Case B): Project ''B'' is located in a 2005 Difficult Development Area that is not a designated Difficult Development Area in 2006. A complete application for tax credits for Project ''B'' is filed with the allocating agency December 1, 2005, which the credit-allocating agency certified in writing as complete. Credits are allocated to project ''B'' on March 30, 2007. Project ''B'' is not eligible for the increase in basis accorded a project in a 2005 Difficult Development area because, although the application for an allocation of tax credits was filed *before* January 1, 2006 (the assumed effective date of the 2006 Difficult Development Area lists), the tax credits were allocated later than the end of the 365-day period after the filing of the complete application.

(Case C): Project ''C'' is located in a 2005 Difficult Development Area that was not a Difficult Development Area in 2004. Project ''C'' was placed in service November 15, 2004. A complete application for tax-exempt bond financing for Project ''C'' is filed with the bond-issuing agency on January 15, 2005, which the bond-issuing agency certified in writing as complete. The bonds that will support the permanent financing of Project ''C'' are issued September 30, 2005. Project ''C'' *is not* eligible for the increase in basis otherwise accorded a project in a 2005 Difficult Development Area because the project was placed in service *before* January 1, 2005.

(Case D): Project ''D'' is located in an area that is a Difficult Development Area in 2005, but *is not* a Difficult Development Area in 2006. A complete application for tax-exempt bond financing for Project ''D'' is filed with the bond-issuing agency on October 30, 2005, which the bond-issuing agency certified in writing as complete. Bonds are issued for Project ''D'' on April 30, 2006, but Project ''D'' is not placed in service until January 30, 2007. Project ''D'' is eligible for the increase in basis available to projects located in 2005 Difficult Development Areas because the first of the two events necessary for triggering the effective date for buildings described in Section 42(h)(4)(B) of the Code (the two events being bonds issued and buildings placed in service) took place on April 30, 2006, within the 365-day period after a complete application for tax-exempt bond financing was filed, and the application was filed during a time when the location of Project ''D'' was in a Difficult Development Area.

Findings and Certifications

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.19(c)(6) of HUD's regulations, the policies and procedures contained in this notice provide for the establishment of fiscal requirements or procedures that do not constitute a development decision affecting the physical condition of specific project areas or building sites and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act, except for extraordinary circumstances, and no Finding of No Significant Impact is required.

Federalism Impact

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any policy document that has federalism implications if the document either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the document preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the executive order. This notice merely designates ''Difficult Development Areas'' and ''Qualified Census Tracts'' as required under Section 42 of the Internal Revenue Code, as amended, for the use by political subdivisions of the states in allocating the Low-Income Housing Tax Credit. This notice also details the technical methodology used in making such designations. As a result, this notice is not subject to review under the order.

Dated: November 23, 2004.

Alphonso Jackson,

Secretary.

BILLING CODE 4210–62–P

2005 IRS SECTION 42(d)(5)(C) METROPOLITAN DIFFICULT DEVELOPMENT AREAS (MSA/PMSA DEFINITIONS June 30, 1999)

State	Metropolitan Area	Metropolitan Area Components			
Arizona	**Flagstaff, AZ-UT MSA (part)**	Coconino County, AZ			
	Yuma, AZ MSA	Yuma County			
California	**Los Angeles-Long Beach, CA PMSA**	Los Angeles County			
	Oakland, CA PMSA	Alameda County	Contra Costa County		
	Orange County, CA PMSA	Orange County			
	Salinas, CA MSA	Monterey County			
	San Diego, CA MSA	San Diego County			
	San Francisco, CA PMSA	Marin County	San Francisco County	San Mateo County	
	San Jose, CA PMSA	Santa Clara County			
	Santa Barbara-Santa Maria-Lompoc, CA MSA	Santa Barbara County			
	Santa Cruz-Watsonville, CA PMSA	Santa Cruz County			
	Santa Rosa, CA PMSA	Sonoma County			
Florida	**Miami, FL PMSA**	Miami-Dade County			
	Tampa-St. Petersburg-Clearwater, FL MSA	Hernando County	Hillsborough County	Pasco County	Pinellas County

2005 IRS SECTION 42(d)(5)(C) METROPOLITAN DIFFICULT DEVELOPMENT AREAS (MSA/PMSA DEFINITIONS June 30, 1999)

State	Metropolitan Area	Metropolitan Area Components			
Massachusetts	Barnstable-Yarmouth, MA MSA	Barnstable city	Brewster town	Chatham town	Dennis town
		Eastham town	Harwich town	Mashpee town	Orleans town
		Sandwich town	Yarmouth town		
	Boston, MA-NH PMSA	Acton town	Amesbury town	Arlington town	Ashland town
		Ayer town	Bedford town	Bellingham town	Belmont town
		Berkley town	Berlin town	Beverly city	Blackstone town
		Bolton town	Boston city	Boxborough town	Braintree town
		Brookline town	Burlington town	Cambridge city	Canton town
		Carlisle town	Carver town	Chelsea city	Cohasset town
		Concord town	Danvers town	Dedham town	Dighton town
		Dover town	Duxbury town	Essex town	Everett city
		Foxborough town	Framingham town	Franklin city	Gloucester city
		Hamilton town	Hanover town	Harvard town	Hingham town
		Holbrook town	Holliston town	Hopedale town	Hopkinton town
		Hudson town	Hull town	Ipswich town	Kingston town
		Lancaster town	Lexington town	Lincoln town	Littleton town
		Lynn city	Lynnfield town	Malden city	town
		Mansfield town	Marblehead town	Marlborough city	Marshfield town
		Maynard town	Medfield town	Medford city	Medway town
		Melrose city	Mendon town	Middleton town	Milford town
		Millis town	Millville town	Milton town	Nahant town
		Natick town	Needham town	Newbury town	Newburyport city
		Newton city	Norfolk town	North Reading town	Norton town
		Norwell town	Norwood town	Peabody city	Pembroke town
		Plainville town	Plymouth town	Quincy city	Randolph town
		Reading town	Revere city	Rockland town	Rockport town
		Rowley town	Salem city	Salisbury town	Saugus town
		Scituate town	Sharon town	Sherborn town	Shirley town
		Somerville city	Southborough town	Stoneham town	Stoughton town
		Stow town	Sudbury town	Swampscott town	Taunton city
		Topsfield town	Townsend town	Upton town	Wakefield town
		Walpole town	Waltham city	Wareham town	Watertown city

2005 IRS SECTION 42(d)(5)(C) METROPOLITAN DIFFICULT DEVELOPMENT AREAS (MSA/PMSA DEFINITIONS June 30, 1999)

State	Metropolitan Area	Metropolitan Area Components			
Massachusetts (continued)	Boston, MA-NH PMSA (continued)	Wayland town	Wellesley town	Wenham town	Weston town
		Westwood town	Weymouth town	Wilmington town	Winchester town
		Winthrop town	Woburn city	Wrentham town	
New Hampshire	Boston, MA-NH PMSA	Seabrook town	South Hampton town		
New Jersey	Jersey City, NJ PMSA	Hudson County			
New York	Nassau-Suffolk, NY PMSA	Nassau County	Suffolk County		
	New York, NY PMSA	Bronx County	Kings County	New York County	Putnam County
		Queens County	Richmond County	Rockland County	Westchester County
Puerto Rico	Aguadilla, PR MSA	Aguada Municipio	Aguadilla Municipio	Moca Municipio	
	Caguas, PR PMSA	Caguas Municipio	Cayey Municipio	Cidra Municipio	Gurabo Municipio
		San Lorenzo Municipio			
	Mayaguez, PR MSA	Anasco Municipio	Cabo Rojo Municipio	Hormigueros Municipio	Mayaguez Municipio
		Sabana Grande Municipio	San German Municipio		
	San Juan-Bayamon, PR PMSA	Aguas Buenas Municipio	Barceloneta Municipio	Bayamon Municipio	Canovanas Municipio
		Carolina Municipio	Catano Municipio	Ceiba Municipio	Comerio Municipio
		Corozal Municipio	Dorado Municipio	Fajardo Municipio	Florida Municipio
		Guaynabo Municipio	Humacao Municipio	Juncos Municipio	Las Piedras Municipio
		Loiza Municipio	Luquillo Municipio	Manati Municipio	Morovis Municipio
		Naguabo Municipio	Naranjito Municipio	Rio Grande Municipio	San Juan Municipio
		Toa Alta Municipio	Toa Baja Municipio	Trujillo Alto Municipio	Vega Alta Municipio
		Vega Baja Municipio	Yabucoa Municipio		

2005 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN DIFFICULT DEVELOPMENT AREAS (MSA/PMSA DEFINITIONS June 30, 1999)

State	Nonmetropolitan Counties or County Equivalents			
Alabama	Pike County			
Alaska	Bethel Census Area	Denali Borough	Dillingham Census Area	Fairbanks North Star Borough
	Haines Borough	Juneau City and Borough	Kenai Peninsula Borough	Ketchikan Gateway Borough
	Kodiak Island Borough	Lake and Peninsula Borough	Matanuska-Susitna Borough	Nome Census Area
	North Slope Borough	Northwest Arctic Borough	Sitka City and Borough	Valdez-Cordova Census Area
	Wrangell-Petersburg Census Area			
Arizona	Apache County	Cochise County	Gila County	Graham County
	Greenlee County	La Paz County	Navajo County	Santa Cruz County
	Yavapai County			
California	Amador County	Calaveras County	Colusa County	Del Norte County
	Glenn County	Humboldt County	Imperial County	Inyo County
	Kings County	Lake County	Lassen County	Mariposa County
	Mendocino County	Modoc County	Mono County	Nevada County
	San Benito County	Sierra County	Siskiyou County	Tehama County
	Trinity County	Tuolumne County		
Colorado	Archuleta County	Garfield County	La Plata County	Pitkin County
	San Miguel County	Summit County		

2005 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN DIFFICULT DEVELOPMENT AREAS (MSA/PMSA DEFINITIONS June 30, 1999)

State	Nonmetropolitan Counties or County Equivalents			
Connecticut	LITCHFIELD COUNTY (part) towns of	Canaan town	Colebrook town	Cornwall town
	Goshen town	Kent town	Litchfield town	Morris town
	Norfolk town	North Canaan town	Salisbury town	Sharon town
	Torrington town	Warren town		
	MIDDLESEX COUNTY (part) towns of	Chester town	Deep River town	Essex town
	Westbrook town			
Delaware	Sussex County			
Florida	Calhoun County	Citrus County	Columbia County	DeSoto County
	Dixie County	Franklin County	Gilchrist County	Glades County
	Gulf County	Hamilton County	Hardee County	Hendry County
	Highlands County	Holmes County	Indian River County	Jackson County
	Jefferson County	Lafayette County	Levy County	Liberty County
	Madison County	Monroe County	Okeechobee County	Putnam County
	Sumter County	Suwannee County	Taylor County	Union County
	Walton County	Washington County		
Hawaii	Hawaii County	Kalawao County	Kauai County	Maui County
Idaho	Bonner County	Kootenai County		
Kentucky	Harlan County	Knox County	Laurel County	

2005 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN DIFFICULT DEVELOPMENT AREAS (MSA/PMSA DEFINITIONS June 30, 1999)

State	Nonmetropolitan Counties or County Equivalents			
Maine	ANDROSCOGGIN COUNTY (part) towns of	Durham town	Leeds town	Livermore town
	Livermore Falls town	Minot town		
	Aroostook County			
	CUMBERLAND COUNTY (part) towns of	Baldwin town	Bridgton town	Brunswick town
	Harpswell town	Harrison town	Naples town	New Gloucester town
	Pownal town	Sebago town		
	Franklin County	Hancock County	Kennebec County	Knox County
	Lincoln County	Oxford County		
	PENOBSCOT COUNTY (part) towns of	Alton town	Argyle unorg.	Bradford town
	Bradley town	Burlington town	Carmel town	Carroll plantation
	Charleston town	Chester town	Clifton town	Corinna town
	Corinth town	Dexter town	Dixmont town	Drew plantation
	East Central Penobscot unorg.	East Millinocket town	Edinburg town	Enfield town
	Etna town	Exeter town	Garland town	Greenbush town
	Greenfield town	Howland town	Hudson town	Kingman unorg.
	Lagrange town	Lakeville town	Lee town	Levant town
	Lincoln town	Lowell town	Mattawamkeag town	Maxfield town
	Medway town	Millinocket town	Mount Chase town	Newburgh town
	North Penobscot unorg.	Newport town	Passadumkeag town	Patten town
	Plymouth town	Prentiss plantation	Seboeis plantation	Springfield town
	Stacyville town	Stetson town	Twombly unorg.	Webster plantation
	Whitney unorg.	Winn town	Woodville town	
	Piscataquis County	Sagadahoc County	Somerset County	
	WALDO COUNTY (part) towns of	Belfast city	Belmont town	Brooks town
	Burnham town	Frankfort town	Freedom town	Islesboro town
	Jackson town	Knox town	Liberty town	Lincolnville town
	Monroe town	Montville town	Morrill town	Northport town
	Palermo town	Prospect town	Searsmont town	Searsport town
	Stockton Springs town	Swanville town	Thorndike town	Troy town
	Unity town	Waldo town		
	Washington County			

2005 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN DIFFICULT DEVELOPMENT AREAS (MSA/PMSA DEFINITIONS June 30, 1999)

State	Nonmetropolitan Counties or County Equivalents			
Maine (continued)	YORK COUNTY (part) towns of	Acton town	Alfred town	Arundel town
	Biddeford city	Cornish town	Dayton town	Kennebunk town
	Kennebunkport town	Lebanon town	Limerick town	Lyman town
	Newfield town	North Berwick town	Ogunquit town	Parsonsfield town
	Saco city	Sanford town	Shapleigh town	Waterboro town
	Wells town			
Maryland	St. Mary's County	Wicomico County		
Massachusetts	BARNSTABLE COUNTY (part) towns of	Bourne town	Falmouth town	Provincetown town
	Truro town	Wellfleet town		
	Dukes County			
	FRANKLIN COUNTY (part) towns of	Ashfield town	Bernardston town	Buckland town
	Charlemont town	Colrain town	Conway town	Deerfield town
	Erving town	Gill town	Greenfield town	Hawley town
	Heath town	Leverett town	Leyden town	Monroe town
	Montague town	New Salem town	Northfield town	Orange town
	Rowe town	Shelburne town	Shutesbury town	Warwick town
	Wendell town	Whately town		
	HAMPDEN COUNTY (part) towns of	Blandford town	Brimfield town	Chester town
	Granville town	Tolland town	Wales town	
	HAMPSHIRE COUNTY (part) towns of	Chesterfield town	Cummington town	Goshen town
	Middlefield town	Pelham town	Plainfield town	Westhampton town
	Worthington town			
	Nantucket County			
	WORCESTER COUNTY (part) towns of	Athol town	Hardwick town	Hubbardston town
	Petersham town	New Braintree town	Phillipston town	Royalston town
	Warren town			

2005 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN DIFFICULT DEVELOPMENT AREAS (MSA/PMSA DEFINITIONS June 30, 1999)

State	Nonmetropolitan Counties or County Equivalents			
Michigan	Montcalm County			
Minnesota	Kanabec County			
Mississippi	Bolivar County	Coahoma County	Issaquena County	Washington County
Montana	Beaverhead County	Big Horn County	Blaine County	Broadwater County
	Carbon County	Carter County	Chouteau County	Custer County
	Daniels County	Dawson County	Deer Lodge County	Fallon County
	Fergus County	Gallatin County	Garfield County	Glacier County
	Golden Valley County	Granite County	Hill County	Judith Basin County
	Lake County	Liberty County	Lincoln County	Madison County
	McCone County	Meagher County	Mineral County	Musselshell County
	Petroleum County	Phillips County	Pondera County	Powder River County
	Powell County	Prairie County	Ravalli County	Richland County
	Roosevelt County	Sanders County	Sheridan County	Silver Bow County
	Sweet Grass County	Teton County	Treasure County	Wheatland County
	Wibaux County			
Nevada	Carson City	Churchill County	Douglas County	Esmeralda County
	Humboldt County	Lander County	Lincoln County	Lyon County
	Mineral County	Pershing County	White Pine County	

2005 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN DIFFICULT DEVELOPMENT AREAS (MSA/PMSA DEFINITIONS June 30, 1999)

State	Nonmetropolitan Counties or County Equivalents			
New Hampshire	Belknap County	Carroll County	Cheshire County	Grafton County
	HILLSBOROUGH COUNTY (part) towns of	Antrim town	Bennington town	Deering town
	Francestown town	Greenfield town	Hancock town	Hillsborough town
	Lyndeborough town	New Boston town	Peterborough town	Sharon town
	Temple town	Windsor town		
	MERRIMACK COUNTY (part) towns of	Andover town	Boscawen town	Bow town
	Bradford town	Canterbury town	Chichester town	Concord city
	Danbury town	Dunbarton town	Epsom town	Franklin city
	Henniker town	Hill town	Hopkinton town	Loudon town
	Newbury town	New London town	Northfield town	Pembroke town
	Pittsfield town	Salisbury town	Sutton town	Warner town
	Webster town	Wilmot town		
	ROCKINGHAM COUNTY (part) towns of	Deerfield town	Northwood town	Nottingham town
	STRAFFORD COUNTY (part) towns of	Middleton town	New Durham town	Strafford town
New Mexico	Catron County	Chaves County	Cibola County	Curry County
	DeBaca County	Grant County	Guadalupe County	Luna County
	McKinley County	Mora County	Otero County	Quay County
	Rio Arriba County	Roosevelt County	San Miguel County	Sierra County
	Socorro County	Taos County		
New York	Columbia County	Cortland County	Essex County	Greene County
	Hamilton County	Jefferson County	Otsego County	Schuyler County
	Sullivan County	Tompkins County	Ulster County	
North Carolina	Cleveland County	Jackson County	Pender County	Rutherford County
	Watauga County			

2005 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN DIFFICULT DEVELOPMENT AREAS (MSA/PMSA DEFINITIONS June 30, 1999)

State	Nonmetropolitan Counties or County Equivalents			
Ohio	Athens County			
Oklahoma	Payne County			
Oregon	Baker County Curry County Harney County Klamath County Malheur County Wheeler County	Clatsop County Deschutes County Hood River County Lake County Union County	Coos County Douglas County Jefferson County Lincoln County Wallowa County	Crook County Grant County Josephine County Linn County Wasco County
Pennsylvania	Monroe County	Union County	Wayne County	
Rhode Island	NEWPORT COUNTY (part) towns of WASHINGTON COUNTY (part) towns of	Middleton town New Shoreham town	Newport city	Portsmouth town
South Dakota	Butte County	Lawrence County	Meade County	
Texas	Aransas County Reagan County	Camp County Val Verde County	Nacogdoches County Yoakum County	Navarro County
Utah	Cache County Washington County	Daggett County	Iron County	Tooele County

2005 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN DIFFICULT DEVELOPMENT AREAS (MSA/PMSA DEFINITIONS June 30, 1999)

State	Nonmetropolitan Counties or County Equivalents			
Vermont	Addison County	Bennington County		
	FRANKLIN COUNTY (part) towns of	Bakersfield town	Berkshire town	Enosburg town
	Fairfield town	Fletcher town	Franklin town	Highgate town
	Montgomery town	Richford town	Sheldon town	
	Lamoille County	Orange County	Rutland County	Windham County
	Windsor County			
Virginia	Caroline County	Cumberland County	Orange County	Westmoreland County
Washington	Clallam County	Grays Harbor County	Mason County	San Juan County
	Skagit County			

2005 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN DIFFICULT DEVELOPMENT AREAS (MSA/PMSA DEFINITIONS June 30, 1999)

State	Nonmetropolitan Counties or County Equivalents			
American Samoa	Eastern District	Manu'a District	Swains Island	Western District
Guam	Guam			
Northern Mariana Islands	Northern Islands Municipality	Rota Municipality	Saipan Municipality	Tinian Municipality
Puerto Rico	Adjuntas Municipio	Aibonito Municipio	Arroyo Municipio	Barranquitas Municipio
	Ciales Municipio	Coamo Municipio	Culebra Municipio	Guanica Municipio
	Guayama Municipio	Isabela Municipio	Jayuya Municipio	Lajas Municipio
	Lares Municipio	Las Marias Municipio	Maricao Municipio	Maunabo Municipio
	Orocovis Municipio	Patillas Municipio	Quebradillas Municipio	Rincon Municipio
	Salinas Municipio	San Sebastian Municipio	Santa Isabel Municipio	Utuado Municipio
	Vieques Municipio			
Virgin Islands	St. Croix	St. John	St. Thomas	

[FR Doc. 04–26328 Filed 11–29–04; 8:45 am]

BILLING CODE 4210–62–C

Federal Register

Tuesday,
November 30, 2004

Part IV

Department of Agriculture

Animal and Plant Health Inspection Service

7 CFR Part 319

Mexican Avocado Import Program; Final Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 03–022–5]

RIN 0579–AB81

Mexican Avocado Import Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of fruits and vegetables to expand the number of States in which fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, may be distributed. We are also allowing the distribution of the avocados during all months of the year. For the first 2 years following the effective date of this rule, those avocados may be distributed in all States except California, Florida, and Hawaii; after 2 years, the avocados may be distributed in all States. We are taking this action in response to a request from the Government of Mexico and based on our finding that the phytosanitary measures described in this final rule will reduce the risk of introducing plant pests associated with Mexican Hass avocados into the United States.

DATES: *Effective Date:* January 31, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Bedigian, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56 through 319.56–8) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests, including fruit flies, that are new to or not widely distributed within the United States.

The regulations in 7 CFR 319.56–2ff (referred to below as the regulations) have provided for the importation of fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, into specified areas of the United States, subject to certain conditions. Those conditions, which include pest surveys and pest risk-reducing cultural practices, packinghouse procedures, inspection and shipping procedures, and restrictions on the time of year (October 15 through April 15) that shipments may enter the United States, are designed to reduce the risk of pest introduction. Further, the regulations have limited the distribution of the avocados to 31 northeastern and north central States (Colorado, Connecticut, Delaware, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming) and the District of Columbia.

In November 2000, the Government of Mexico requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow Hass avocados to be imported year round into all 50 States. We did not act on Mexico's request at the time because we did not have documentation available to support Mexico's position that such importations would not present a risk of introducing plant pests into certain States.

As part of our evaluation of Mexico's request, we prepared a draft pest risk assessment (PRA), titled ''Importation of 'Hass' Avocado Fruit (*Persea americana*) from Mexico'' (June 2003), to evaluate the importation of fruit to the entire United States throughout the year. The draft PRA contained two components: (1) A risk assessment component that identifies quarantine pests that are likely to follow the Mexican Hass avocado import pathway, and (2) a risk management component that evaluates the ability of the selected phytosanitary measures to mitigate the risk posed by those quarantine pests.

The first component revealed that the quarantine pests of concern remained the same as those identified in previous risk assessments. After eliminating non-quarantine and non-pathway pests from the list, eight pests of quarantine significance that follow the pathway remain: Three fruit flies (*Ceratitis capitata, Anastrepha ludens, A. striata*), three seed weevils (*Conotrachelus aguacatae, C. perseae,* and *Heilipus lauri*), one stem weevil (*Copturus aguacatae*), and one seed moth (*Stenoma catenifer*).

The second component of the draft PRA evaluated the selected phytosanitary measures to mitigate the risk posed by the eight identified pests. This component concluded that imports of Mexican avocados subject to those phytosanitary requirements will result in the following:

- Fewer than 387 infested avocados will enter the United States each year, estimated with 95 percent confidence.
- Fewer than 49 avocados infested with stem weevil, seed weevils, and seed moth will enter avocado producing areas each year, estimated with 95 percent confidence.
- Fewer than 208 avocados infested with fruit flies will enter fruit fly susceptible areas each year, estimated with 95 percent confidence.
- Fewer than 3 avocados infested with stem weevil, seed weevils and seed moth will be discarded in avocado producing areas each year, estimated with 95 percent confidence.
- Fewer than 11 avocados infested with fruit flies will be discarded in fruit fly susceptible areas each year, estimated with 95 percent confidence.
- There is an overall low likelihood of pest introduction.
- Based on the statistical models we have used to estimate sampling efficacy, it is slightly more likely that zero infested avocados will enter the United States than one infested avocado; however, we cannot rule out the possibility that some may enter the country.

Only those avocados discarded in susceptible areas pose a risk of establishment of the pests in the United States. In the PRA, the risk associated with the importation of commercial shipments of avocados is compared to the risks associated with infested avocados smuggled into the United States. During the 17-year period from 1985 to 2002, an average of 30 avocados each year (specific variety or cultivar not recorded) infested with pathway pests were intercepted in baggage and cargo and denied entry into the United States. Studies of port efficiency, when searching for prohibited materials, indicate that inspectors detect approximately 10 to 20 percent of what actually arrives. That suggests that the number of prohibited avocados (*i.e.*, smuggled or inadvertently imported non-program avocados) entering the United States would average 150 to 300 per year.

While we state above that fewer than 387 infested avocados will enter the United States each year, estimated with 95 percent confidence, this number is based on statistical models. An examination of over 10 million program fruit has not revealed any pests in 6 years of fruit cutting and inspection and, also based on statistical models, we determined that it is slightly more likely that zero infested avocados will enter the United States than one infested

avocado. Prohibited transport of avocados in baggage and cargo poses a substantially greater risk of introducing the above pests into the United States than commercial imports of Hass avocados from Mexico.

Additionally, the 6 years' worth of data from the avocado import program gives us confidence that the systems approach currently in place provides adequate safeguards against avocado pests. The systems approach mitigations include annual pest field surveys; orchard certification; and packinghouse, packaging, and shipping requirements. The efficacy of the systems approach depends on multiple measures. Those measures are backed up by an inspection system that, when a pest is detected, shuts down the imports from an affected area, depending on the pest, until corrective actions are taken. An examination of over 10 million fruit has not revealed any pests in 6 years of fruit cutting and inspection.

On May 24, 2004, we published in the **Federal Register** (69 FR 29466–29477, Docket No. 03–022–3) a proposal to expand the number of States in which fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, may be distributed. We also proposed to allow the distribution of the avocados during all months of the year and to make other changes in the regulations, such as removing restrictions on the ports through which the avocados may enter the United States and the corridor through which the avocados must transit the United States. We proposed this action in response to a request from the Government of Mexico and based on our finding that the phytosanitary measures described in this final rule will reduce the risk of introducing plant pests associated with Mexican Hass avocados into the United States.

We solicited comments concerning our proposal for 60 days ending July 23, 2004. We received 17,022 comments by that date (including 11,000 form letters, both for and against the proposed rule). They were from producers, exporters, researchers, members of Congress, and representatives of State and foreign governments. They are discussed below by topic.

After the comment period for the proposed rule closed on July 23, 2004, we updated the risk assessment [1] based on comments that we received. The updated risk assessment incorporates suggested changes to the May 2004 version of the risk assessment that accompanied the proposed rule and reflects new information received in public comments. These changes include the following:

- A 47-State scenario was added in which the risk is calculated for all States excluding California, Florida, and Hawaii.
- Uncertainty was added to the estimate for sensitivity of inspection in the model. The estimate of 50 percent was replaced with a uniform distribution from 17.9 percent to 83.5 percent.
- The estimate for the number of avocados imported was changed for consistency with the economic analysis prepared for the proposed rule.
- Statistics including mean, mode, and standard deviation were reported for all model output distributions.

Our new conclusions, based on the recalculations discussed above in the second bullet, are as follows:

In the 50-State scenario, the risk assessment model results present, with 95 percent confidence, the following estimates:

- Fewer than 442 infested avocados will enter the entire United States each year;
- Fewer than 54 avocados infested with stem weevil, seed weevils, and seed moth will enter avocado producing areas each year;
- Fewer than 238 avocados infested with fruit flies will enter fruit fly susceptible areas each year;
- Fewer than three avocados infested with stem weevil, seed weevils, and seed moth will be discarded in avocado producing areas each year;
- Fewer than 12 avocados infested with fruit flies will be discarded in fruit fly susceptible areas each year.

Under the 50-State scenario, there is an overall low likelihood of pest introduction.

In the 47-State scenario (excluding California, Florida, and Hawaii), the risk assessment model results present, with 95 percent confidence, the following estimates:

- Fewer than 393 infested avocados will enter the 47 States each year;
- Fewer than seven avocados infested with stem weevil, seed weevils, and seed moth will enter avocado producing areas outside of California, Florida, and Hawaii each year;
- Fewer than 98 avocados infested with fruit flies will enter fruit fly susceptible areas outside of California, Florida, and Hawaii each year;
- Fewer than one avocado infested with stem weevil, seed weevils, and seed moth will be discarded in avocado producing areas outside of California, Florida, and Hawaii each year;
- Fewer than five avocados infested with fruit flies will be discarded in fruit fly susceptible areas outside of California, Florida, and Hawaii each year; and

Under the 47-State scenario, there is an overall low likelihood of pest introduction.

Even if some infested avocados entered the country, the likelihood of pest establishment and spread would require that: (1) The infested avocados must be in close proximity to host material; (2) the pests must find mates; (3) the pests must successfully avoid predation; (4) the adult pests must find host material; and (5) the climatological and microenvironmental conditions must be suitable. These factors substantially reduce the likelihood of establishment. The degree of pest risk reduction attributable to each of the factors has not been quantified. People generally consume the fruit they purchase and dispose of the waste material in a manner (such as in plastic bags that are landfilled or incinerated) that precludes the release of pests into the environment.

In the preceding bullet points, the reader may note that the estimated numbers of potentially infested fruit are in some cases different than the similar bullet points presented in the proposed rule. These differences are attributable to adjustments made in the updated risk assessment to the 95th percentile estimates for ''N'' (number of Hass avocados imported from Mexico per year) and ''P1'' (proportion of avocados infested). P1 was revised upwards because the detection sensitivity range 17.9 to 83.5 was used. P1 is the same for the 47 and 50 State scenarios. N was revised downward based on the revised economic analysis.

Based on comments that we received on the proposed rule, and taking into account the findings of the updated risk assessment, this final rule includes several provisions that differ from the proposed rule. Specifically:

- We proposed to allow the avocados to be distributed in all 50 States, but solicited comments on the possibility of delaying the distribution of the avocados in California, Florida, and Hawaii for 1 year. In this final rule, we have adopted a delay in the distribution of the avocados in California, Florida, and Hawaii for a period of 2 years based on the comments that we received. After that 2-year period, the avocados may be distributed in all 50 States. The effective dates for importing fruit into all 50 States are built into the final rule, which precludes the need for APHIS to initiate further rulemaking in order to expand the area into which the fruit may be

[1] The updated risk assessment may be viewed on the Internet at *http://www.aphis.usda.gov/ppq/avocados* and may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

imported. If it is determined that the requirements of the export program are not being observed routinely or uniformly, APHIS will be able to act quickly to suspend the effective dates or even the entire program, if warranted. The export program provides for the detection of infested fruit at any point in the pathway, with that detection leading to the rejection of the shipment containing the infested fruit and the removal of the grove or municipality that produced the fruit from the export program until it is determined by APHIS and the Mexican NPPO that the grove or municipality may be readmitted to the program. Thus, the detection of infested fruit will not, by itself, result in the suspension of all or part of the export program. To determine whether the requirements of the export program are being observed routinely or uniformly and to ensure that the distribution restrictions of this rule are being observed, APHIS personnel will be involved in monitoring activities in both the United States and Mexico.

- To reflect our proposal to allow the avocados to be distributed in all 50 States, we proposed to remove the requirement in § 319.56–2ff(c)(3)(vii) that all boxes or crates of avocados be clearly marked with, among other things, the statement ''Not for distribution in AL, AK, AZ, AR, CA, FL, GA, HI, LA, MS, NV, NM, NC, OK, OR, SC, TN, TX, WA, Puerto Rico, and all other U.S. Territories.'' In this final rule, we have retained that marking requirement, specific to California, Florida, and Hawaii, for the term of the 2-year delay in distribution to those States.
- To reflect our proposal to allow the avocados to be distributed in all 50 States, we proposed to remove the provisions in § 319.56–2ff(f), which limited the ports of entry through which the avocados may be imported, and § 319.56–2ff(g), which described the areas of the United States that avocados moving by truck or rail car may transit while en route to approved States. In this final rule, we continue to prohibit the movement of the avocados into or through California, Florida, and Hawaii for the term of the 2-year delay in distribution to those States.
- To reflect our proposal to allow the avocados to be distributed in all 50 States, we proposed to remove the provisions in § 319.56–2ff(j) that required any boxes used to repackage the avocados in the United States to bear the same information that is required to be displayed on the original boxes in which the fruit was packed in Mexico. In this final rule, we have retained those repackaging requirements due to the 2-year delay in distribution to California, Florida, and Hawaii.
- We proposed to add a requirement for the avocados to be packed in insect-proof cartons, loaded in insect-proof containers, or covered with insect-proof mesh or plastic tarpaulin prior to leaving the packinghouse. This proposed requirement was intended to replace the requirement in § 319.56–2ff (c)(3)(viii) that, prior to leaving the packinghouse, the truck or container transporting the avocados must be secured by Sanidad Vegetal with a seal that will be broken when the truck or container is opened. In this final rule, we retain the requirement for seals and will not require the insect-proofing measures we had proposed.

Although our adoption of a 2-year delay in distribution to California, Florida, and Hawaii has led us to retain, at least in part, the box marking, port of entry, and repackaging provisions discussed above that we had proposed to remove, we have decided to follow through with the removal of another measure related to limited distribution, *i.e.*, compliance agreements. The compliance agreement provisions that were located in § 319.56–2ff(k) were intended to ensure that distributors and handlers of the avocados were familiar with the distribution restrictions and other requirements of the regulations. Given that the distribution restrictions established in this final rule cover only three States, and only for a limited time, we believe that the time, costs, and logistical difficulties involved in initiating compliance agreements with all distributers and handlers of imported Mexican Hass avocados in 47 States would outweigh the benefits that may be gained by retaining the compliance agreement requirement. The fruit stickering, box marking, and repackaging requirements of the regulations will serve to ensure that the avocado's origin can be determined, and the latter two requirements will ensure that the limited distribution statement is present on all boxes of fruit. During the 2-year delay, we will focus our efforts on education and outreach so that distributors and handlers will be made aware of product origin indicators and penalties for violation of regulations. We will be able to concentrate our enforcement efforts more readily since the avocados will be prohibited in only three States during the 2-year delay, and will continue to take action and seek penalties for violations of the regulations under the Plant Protection Act.

Determination by the Secretary

Under section 412(a) of the Plant Protection Act, the Secretary of Agriculture may prohibit or restrict the importation and entry of any plant or plant product if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed.

The Secretary has determined that it is not necessary to prohibit the importation of Hass avocados from Mexico subject to the phytosanitary requirements described in this final rule in order to prevent the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed. This determination is based on the findings of the risk assessment referred to earlier in this document, and the Secretary's judgment that the application of the measures required under § 319.56–2ff would prevent the introduction or dissemination of plant pests into the United States.

Based on the Secretary's determination, and in response to the Mexican Government's request, we are amending the regulations to expand the number of States (plus the District of Columbia) in which fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, may be distributed and to allow the distribution of the Hass avocados during all months of the year.

Comments

Comment: The U.S. Department of Agriculture's (USDA's) Mexican avocado import program has never before operated during warm summer months when pest population levels in Mexico are at their peak and susceptible crops are in full production in the United States. The proposed rule would allow avocados from Mexico to be imported during all months of the year, across all States, including those currently excluded under the existing rule. By increasing the timeframe to all months, the proposed rule includes the time period when pest insects are most active and sexually mature, in highly favorable environments for infestation on avocados and other host plants.

Response: The goal of the program continues to be the exclusion of any quarantine pests that could become established in the United States. Under the modified systems approach semiannual surveys, rather than annual, will be conducted at the municipality and orchard level. Municipalities must be free of *Ceratitis capitata,*

Conotrachelus aguacatae, C. perseae, Heilipus *lauri,* and *Stenoma catenifer* before they can be certified to export avocados to the United States. In addition, orchards must be certified free of *Copturus aguacatae.* Trapping is conducted in orchards for *Anastrepha* spp. fruit flies. Both the regulations and the workplan specify what mitigation measures must be taken when a pathway pest is detected in a certified orchard or municipality. The time periods selected for the surveys were based on the biology of the pests. Additionally, fruit cutting will be conducted in the orchard, packinghouses, and at the port of entry. Since the expansion of Mexican avocado imports in 1997, none of these pests have been intercepted during inspections of fruit at packinghouses or upon inspection at the U.S. border ports. Further, the limited distribution plan that we will implement would delay the importation of Hass avocados from the Mexico State of Michoacan into the commercial avocado producing States of California, Florida, and Hawaii for 2 years from the effective date of this final rule. This restriction will provide APHIS an opportunity to further substantiate the effectiveness of the mitigation measures under the expanded program.

Comment: USDA has ignored the fact that stem weevils continue to be found in alarming numbers in the Mexican production areas and that these insects can easily migrate from backyard orchards to commercial groves.

Response: Registered orchards and all contiguous orchards and property are surveyed for the stem weevil, *Copturus aguacatae* and must be found free of the pest. If *Copturus aguacatae* is detected in an orchard requesting certification, eradication must be completed prior to the orchard receiving certification to export avocados to the United States. If the stem weevil is found in an orchard or property contiguous to a certified orchard, eradication measures will be ordered for that orchard or property. Surveys for the stem weevil will commence in the registered orchard contiguous to the area where the detection was found on a weekly basis until eradication of the stem weevil in the contiguous orchard has been completed. Since 1997, the stem weevil has been detected in 7 orchards that applied for certification. Certification was denied due to the presence of the stem weevil. Since the expansion of Mexican avocado imports in 1997, no stem weevils have been intercepted during inspections of fruit at packinghouses or upon inspection at the U.S. border ports.

Comment: USDA has mistakenly decided that other thrips-related insects pose no threat because they are not associated with avocado fruit; this is demonstrably false and inconsistent with research done by prominent entomologists. Every year a significant percentage of the California avocado crop is either downgraded to Grade 2 fruit, for which growers receive a lot less money, or is culled or thrown out due to thrips damage. Thrips-damaged fruit is unattractive and cannot be sold in grocery stores. Why would the USDA allow Mexican fruit known to be infested with thrips to be imported into avocado producing areas?

Response: The risk analysis does not list any thrips as pests that would follow the pathway. There are 16 thrips listed in the Appendix A pest list. Of the 16 which occur in Mexico, 5 occur in the United States. All 16 pests are associated with a plant part other than avocado fruit, or in rotting fruit on the ground. For example, research (*e.g.*, Hoddle, 2002; Yee *et al.*, 2003, cited in the risk assessment) has demonstrated that *Scirtothrips perseae,* lays eggs in small, immature fruits and tender leaves, and does not feed on or lay eggs in mature fruit, and is, therefore, unlikely to be imported with the fruit. APHIS considers *Scirtothrips perseae* as probably representative of other pest thrips species. Mitigation of these pests in rotting fruit is addressed in the workplan and regulation. Avocado fruit that has fallen from the trees must be removed from the orchard within 7 days and may not be included in field boxes of fruit to be packed for export. In addition, damaged fruit must be culled at the packinghouse. Although *Frankliniella bruneri* is listed as having been intercepted in avocados at the U.S. border, the interception was made in fruit found in baggage, not in a commercial shipment imported under the program. Since the expansion of Mexican avocado imports in 1997, no thrips have been intercepted in program fruit during inspections at packinghouses or upon inspection at the U.S. border ports.

Comment: The USDA import program has grown exponentially since 1997, from approximately 3,700 to over 53,000 certified acres, stretching USDA resources and increasing the probability of human error. Believing a screening system can be set up to catch all infested fruit at the border is not realistic. Control at the source with identification and traceability through the entire chain is required.

Response: APHIS' role under the operational workplan provided by the regulations is to provide management and monitoring of the activities specified in the workplan, *e.g.*, trapping, surveying, and packinghouse inspections. While APHIS personnel do not necessarily conduct these activities themselves, they do monitor Mexican officials' compliance with workplan specifications. The staffing level of APHIS personnel is sufficient to ensure that APHIS meets its requirements under the workplan and that other signatories are in compliance with the regulations. The lack of pest detections in the orchard, packinghouse, and border inspection since the program began in 1997 is evidence that the regulations and workplan are being complied with.

In addition, as more orchards have applied for certification, it does take longer for inspectors to perform the initial inspection before the first shipping date of October 15. The inspectors have had to start inspections earlier before that date each year to finish inspecting all of the orchards. Nevertheless, all orchards must be inspected using the same workplan criteria, as the records show. APHIS keeps lists of all the orchards inspected by name.

Comment: USDA should test the proposed expansion regulations under actual production and distribution conditions over a 2-year period at a minimum before allowing shipments into California, Florida, and Hawaii.

Response: As noted previously, APHIS has decided, based on the comments we received on the issue, to implement a limited distribution plan that would delay the importation of Hass avocados from the Mexico State of Michoacan into the commercial avocado producing States of California, Florida, and Hawaii for 2 years from the effective date of this final rule. This restriction will provide APHIS an opportunity to further substantiate the effectiveness of the mitigation measures under the expanded program.

As stated in the economic analysis, the volume of Mexican Hass avocado exported to the United States is expected to substantially increase. In addition, some of the commenters stated that they believed the expansion of this program could not be effectively managed. The data collected during the first 2 years of the expanded program will provide confirmation of the effectiveness of the mitigation measures and management of the Mexican Hass avocado export program. Some of those data will cover production and distribution periods not previously covered by the current regulation.

Comment: USDA has never allowed untreated fruit to be imported from a

region where quarantine pests are present into a region of the United States where the same crop is produced.

Response: We disagree with the commenter's characterization of the proposed action and statement that USDA has never allowed untreated fruit to be imported from a region where quarantine pests are present into a region of the United States where the same crop is produced. In the case of tomatoes from France, for example, we allow the entry of tomatoes from France under certain conditions. The tomatoes must be produced under a systems approach to mitigate the pest risk of Ceratitis capitata, which is a quarantine pest for the United States. The systems approach includes trapping for Mediterranean fruit fly, the tomatoes must be greenhouse grown, and the tomatoes must be safeguarded from harvest to arrival in the United States. In addition, a phytosanitary certificate is required. While phytosanitary treatment is not an option to mitigate the fruit fly risk, the mitigation measures applied to this commodity are equivalent to a pesticide treatment. Similarly, under the Mexican avocado import program, Hass avocados are subject to a systems approach to mitigating pest risk that produces results similar to those achieved through treatment measures.

Comment: California growers have been unable to gain access to the avocado market in Mexico since 1998. Rather than assisting U.S. growers in dismantling false trade barriers erected by Mexico, USDA has diligently worked with Mexican officials to open up the U.S. avocado market to Mexican avocados.

Response: APHIS officials are aware that U.S. avocado producers would like further access to Mexican markets. Initially, APHIS officials requested market access for U.S. avocados only to Mexicali and Tijuana and successfully opened these markets. Thereafter, APHIS requested market access to the five northern Mexican States along the border with the United States and more recently informed Mexico that our avocado producers are interested in access to all of Mexico. In response to APHIS' request, Mexican plant health officials began a pest risk assessment for the importation of U.S. avocados to additional Mexican markets. This process is similar to the pest risk assessment process APHIS conducted prior to publishing the proposed rule to allow Mexican avocados further access to our markets. USDA has continually pursued the issue of expanded market access for U.S. avocados with Mexico, however the next stage of the process cannot take place until Mexico completes its risk assessment.

Comment: Mexican avocado growers have the ability to use pesticides on their crops that American growers are prohibited from using. American growers are at a disadvantage if they were ever faced with a pest infestation, as USDA does not have a method of dealing with an infestation that has occurred other than imposing an economically devastating quarantine. Additionally, there are concerns about human health issues that might arise as a result of pesticide residues.

Response: Considering the conclusions of the risk assessment and given the fact that there have been no interceptions of pests in commercial shipments of Hass avocados from Mexico, we do not believe that a pest infestation will occur under the expanded program. USDA and its State counterparts, however, have a variety of options for dealing with pest outbreaks that may occur in this country. The response in any particular instance depends largely on the specific circumstances of the outbreak.

In addition, while the United States does not have direct control over pesticides that are used on food commodities such as avocados in other countries, there are regulations in the United States concerning the importation of food to ensure that commodities do not enter the United States containing illegal pesticide residues. Because DDT is a pesticide that is banned in the United States, even if it were used on food commodities in foreign countries, the current regulations concerning the importation of food into the United States prevent the entry of products treated with it.

Through section 408 of the Federal Food, Drug, and Cosmetic Act, the Environmental Protection Agency (EPA) has the authority to establish, change, or cancel tolerances for food commodities. These tolerances are the maximum levels of pesticide residues that have been determined, through comprehensive safety evaluations, to be safe for human consumption. Tolerances apply to both food commodities that are grown in the United States and food commodities that are grown and imported into the United States from foreign countries. While EPA has no authority in a foreign country, the tolerance levels are enforced once the commodity enters the United States. Chemicals such as DDT that are banned in the United States do not have tolerances on food commodities.

Federal government food inspectors are responsible for monitoring food commodities that enter the United States to confirm that tolerance levels are not exceeded and that residues of pesticide chemicals that are banned in the United States are not present on the commodities. Tolerance levels for all chemicals that are acceptable for use on avocados may be found in EPA's regulations in 40 CFR 180.101 through180.2020. Tolerance information can also be obtained at *http://www.epa.gov/pesticides/food/viewtols.htm*.

Comment: If USDA expands the Mexican Hass avocado import program as proposed, it should ensure that compensation is available for U.S. growers in avocado producing areas should a pest infestation occur.

Response: The Plant Protection Act provides that the Secretary may pay compensation to any person for economic losses incurred by the person as a result of action taken by the Secretary under the extraordinary emergency authority provided in section 415 of the Act (7 U.S.C. 7715). The determination of an extraordinary emergency would depend on the circumstances of an infestation on a case-by-case basis and APHIS cannot regulate on this issue at this time since infestation has not occurred. Any decision as to the need to declare an extraordinary emergency and, if declared, to pay compensation, rests with the Secretary.

Comment: USDA should set up an insurance or indemnification program to compensate domestic avocado growers for any damage incurred as a result of any pest infestation that may occur as a result of the proposed expansion.

Response: APHIS does not have the authority to establish such a program under the Plant Protection Act.

Comment: Growers in Mexico should have to pay for the quarantine insurance for the avocado growers in the United States. While it could be argued that all of the previous infestations were the result of illegal importation, it is inevitable that legal importation will eventually create a domestic quarantine. Requiring the Mexican producers to pay for the quarantine insurance would level the economic costs. Paying for insurance would also encourage Mexico to rid other areas of applicable pests.

Response: APHIS has no authority to require foreign producers to pay quarantine insurance for domestic producers.

Comment: Mexican avocados should not be imported into the United States because of the prevalence of stem weevils, seed weevils, fruit flies, thrips, and persea mites in Mexico.

Response: APHIS has assessed the risk and determined that there is low likelihood of introducing quarantine pests such as stem weevils, seed weevils, seed moth, and fruit flies. Nine mites are identified in the pest list in Appendix A of the risk assessment. Of the nine mites, eight are also present in the United States so those species are not considered to be quarantine pests. Only one mite, *Brevipalpus australis*, occurs in Mexico but not in the United States. All the identified mites are associated with a plant part other than the avocado fruit, or in rotting fruit on the ground and, therefore, are not likely to follow the pathway. Since the expansion of Mexican avocado imports in 1997, mites have not been intercepted during inspections at packinghouses or upon inspection at the U.S. border ports.

The risk analysis does not list any thrips as pests that would follow the pathway. There are 16 thrips listed in the Appendix A pest list. Of the 16 that occur in Mexico, 5 also occur in the United States. All 16 pests are associated with a plant part other than avocado fruit, or in rotting fruit on the ground. For example, research (*e.g.*, Hoddle, 2002; Yee *et al.*, 2003, cited in the risk assessment) has demonstrated that *Scirtothrips perseae* lays eggs in small, immature fruits and tender leaves, and does not feed on or lay eggs in mature fruit, and is, therefore, unlikely to be imported with the fruit. APHIS considers *Scirtothrips perseae* as probably representative of other pest thrips species. Mitigation of these pests in rotting fruit is addressed in the workplan and the regulations. Avocado fruit that has fallen from the trees must be removed from the orchard within 7 days and may not be included in field boxes of fruit to be packed for export. In addition, damaged fruit must be culled at the packinghouse. Although *Frankliniella bruneri* is listed as having been intercepted in avocados at the U.S. border, the interception was made in fruit found in baggage, not in a commercial shipment imported under the program. Since the expansion of Mexican avocado imports in 1997, no thrips have been intercepted in program fruit during inspections at packinghouses or upon inspection at the U.S. border ports.

Comment: I am opposed to the expansion of the Mexican avocado program into avocado-producing States due to a pest infestation that resulted in a quarantine in San Diego County and other counties in California in 2002 and 2003 (the Valley Center infestation). The quarantine caused financial losses for which we were not compensated.

Response: The Valley Center infestation in California stemmed from unknown origins and not from commercially imported Hass avocados from Mexico which were prohibited from entering California at the time.

Comment: The avocado expansion will jeopardize not only domestic avocado production, but all U.S. agricultural products susceptible to pests found in Mexico.

Response: With the exception of fruit flies, the pathway pests identified in the risk assessment are avocado specific, thus we expect that the commenter is referring to fruit flies in speaking of ''pests found in Mexico'' that would affect other U.S. agricultural products. The risk assessment identified three fruit flies capable of following the pathway. *Ceratitis capitata* can infest avocado (Liquido *et al.*,1998) and is a quarantine pathway pest. The species is under official control in Mexico and is found only on the Mexico-Guatemala border (APHIS, 1999). Municipalities participating in the program must be certified free from *Ceratitis capitata*.

Hass avocados are considered poor hosts for the other two fruit flies, *Anastrepha ludens* and *Anastrepha striata*, thus those pests are unlikely to follow the pathway. *Anastrepha ludens*, *Anastrepha striata*, and *Ceratitis capitata* have not been intercepted in any of the more than 10 million avocados cut during the course of the program.

The risk assessment further identifies the conditions that would be necessary for fruit flies to be introduced in the United States. Even if an infested avocado were to arrive at a region with host material, several additional conditions are required for pest establishment: (1) The pest must survive in the avocado during transportation and storage; (2) the infested avocado must be discarded in close proximity to host material; (3) the pest must find a mate; (4) the pest must successfully avoid predation and other threats; (5) the adult pest must find appropriate host material; (6) suitable climatological and microenvironmental conditions must exist; and (7) they must escape detection and subsequent eradication measures.

Comment: Mexican agricultural field workers are not reliable enough to consistently follow procedures necessary for pest-free exports from Mexico. In contrast, American avocado growers go through an abundance of measures to monitor for disease and to contain outbreaks from spreading to our neighbor growers.

Response: The commenter provided no information to support his contention regarding the reliability of Mexican field workers. Avocados are a commercially important crop in Mexico, and Mexico's continued ability to export avocados to markets such as the United States and Japan is dependent on its ability to meet the phytosanitary standards of those importing nations. It has been our experience that avocado producers in Mexico are fully capable of meeting the requirement of the regulations and anticipate that they will continue to do so.

Comment: Eighty-five different *Thysanoptera* species of thrips have been found in Mexican avocados and 24 different mite pest species, pertaining to eight distinct families, have been found in Mexican avocado plantings. More research should be done into these pests and the damage they could incur should they reach an American avocado farm.

Response: In the latest risk assessment update, the list of quarantine pest thrips has been updated. Mites and thrips are not likely to be in the commercial import pathway because they are not generally associated with mature fruit or remain on mature, harvested fruit. None have been intercepted by APHIS with program Hass avocados from Mexico. The risk assessment does not list any thrips as pests that would follow the pathway. There are 16 thrips listed in the risk assessment's Appendix A pest list as occurring in Mexico; of those, 5 also occur in the United States. All 16 pests are associated with a plant part other than avocado fruit, or in rotting fruit on the ground. For example, research (*e.g.*, Hoddle, 2002; Yee *et al.*, 2003, cited in the risk assessment) has demonstrated that *Scirtothrips perseae* lays eggs in small, immature fruits and tender leaves, and does not feed on or lay eggs in mature fruit, and is, therefore, unlikely to be imported with the fruit. APHIS considers *Scirtothrips perseae* as probably representative of other pest thrips species. Mitigation of these pests in rotting fruit is addressed in the workplan and the regulations. Avocado fruit that has fallen from the trees must be removed from the orchard within 7 days and may not be included in field boxes of fruit to be packed for export. In addition, damaged fruit must be culled at the packinghouse. Although *Frankliniella bruneri* is listed as having been intercepted in avocados at the U.S. border, the interception was made in fruit found in baggage, not a commercial shipment imported under the program. Since the expansion of Mexican avocado imports in 1997, no thrips have been intercepted during inspections at packinghouses or upon inspection at the U.S. border ports.

Nine mites are identified in the pest list in Appendix A of the risk assessment. Of the nine mites, eight are also present in the United States. Only one mite, *Brevipalpus australis*, occurs only in Mexico. All the identified mites are associated with a plant part other than avocado fruit, or in rotting fruit on the ground and, therefore, not likely to follow the pathway. Since the expansion of Mexican avocado imports in 1997, mites have not been intercepted in program fruit during inspections at packinghouses or upon inspection at the U.S. border ports.

Comment: The study that served as underlying research for the APHIS risk assessment did not test Hass susceptibility to Mexican fruit fly at all maturity levels during all-year weather conditions such as temperature and humidity. Mexican fruit fly does reproduce in Hass avocado, certainly so in harvested fruit. Fruit still on the tree but ready to drop is a very probable host. A study should be performed by APHIS experts, or by Agricultural Research Service (ARS) experts on subtropical fruit pests, and Hass avocado host susceptibility should be studied at all potential stages of the Hass avocado during its marketing season, *i.e.*, from just barely mature to very mature on-tree Hass fruit, as well as fresh, naturally dropped from tree Hass fruit, since the fruit could be harvested just before they drop.

Response: The host studies conducted by Aluja *et al.* for *Anastrepha* species and Hass avocados in Mexico [2] did test Hass susceptibility to Mexican fruit fly at all maturity levels during all-year weather conditions such as the temperature and humidity that occurs during the summer months of June, August, and September. The study considered fruits of a range of sizes that were commercially mature, and mature fruit attached to the tree as well as off the tree. The study concluded that this fruit was not considered to be a host for Mexican fruit fly under any of these conditions.

The Aluja *et al.* study was subjected to rigorous peer review prior to its publication and was likewise reviewed by USDA fruit fly experts in ARS and APHIS. The input from ARS follows the tradition and guidelines of peer review. The ARS experts offered their own interpretation of the scope and applicability of the findings. This information suggested that we should update our risk assessment, and we considered the ARS input in preparing our updates and changing our classification of the host status of Hass avocados. We fully intend to continue to seek and incorporate ARS expertise and guidance in our risk analysis products.

Comment: Paragraph (e)(1) of proposed § 319.56–2ff provides that if *Heilipus lauri, Conotrachelus aguacatae, C. perseae*, or *Stenoma catenifer* are detected during the semiannual pest surveys, orchard surveys, packinghouse inspections, or other monitoring or inspection activity in the municipality, the municipality where the pest is found will be suspended until APHIS and the Mexican NPPO agree that the eradication measures taken have been effective and the risk of the pest in the municipality has been eliminated. In order to harmonize phytosanitary measures between Mexico and the United States, and given that preclearance programs for exports from the United States to Mexico do not in any case suspend the export program for a whole county when there is a single detection of a quarantine pest, we request that the suspension provided for in paragraph (e)(1) be applied to only the grove involved, and not the entire municipality.

Response: Under the regulations, as well as in the proposed rule and its final rule, area freedom for *Heilipus lauri, Conotrachelus aguacatae, C. perseae*, and *Stenoma catenifer* is defined at the municipality level. Mexico has requested that we adjust this to the orchard level. Such an adjustment would require a change to the regulations, and we believe that the public should have the opportunity to comment on that change and its underlying basis. Therefore, APHIS will take this suggestion under advisement and review whether a pest risk analysis must be conducted to address the requested change, if the change would provide an equivalent measure of phytosanitary security, and whether or not to initiate the rulemaking that would be required to make the requested change.

Comment: Different sensitivities in inspection have not been taken into account in the risk assessment.

Response: The commenter is suggesting that the sensitivity of fruit cutting may be different for the eight pathway pests. The estimate for the sensitivity of fruit cutting used in the May 2004 risk assessment is 50 percent (*i.e.*, an infested fruit would be identified 50 percent of the time). Our use of a point value (50 percent) in the quantitative model did not include uncertainty about the estimate. APHIS had used the average sensitivity of starfruit and grapefruit ([35 percent + 80 percent] ÷ 2 = 57.5 percent) and rounded down to 50 percent. For simplicity we used a point value, confident that this number is a reasonable minimum and that the actual value is probably higher.

For our updated (August 2004) risk analysis, data were reanalyzed to determine the effect of variation in the sensitivity parameter on the model output. We replaced the 50 percent point estimate with a uniform distribution from 17.9 to 83.5 percent. When we used the entire range given in Gould (1995, table 3, as cited in the risk assessment) of 17.9 percent to 83.5 percent, there was very little change in the results. Gould (1995) reported that the sensitivity of detection by experienced inspectors of six types of fruit (not including avocado) infested with third instar Caribbean fruit fly (Anastrepha suspensa) larvae ranged from 17.9 percent for green guavas to 83.5 percent for carambolas. In order to account for uncertainty, a uniform distribution was used in the analysis presented in Appendix D of the updated risk assessment.

The sensitivity of detection could vary somewhat among pathway pests. All of them can damage the fruit pulp when present in the fruit; however, the stem weevil (*Copturus aguacatae*) produces tunnels that are usually restricted to a small portion of the fruit close to the peduncle. Stem weevil larvae rarely migrate into the fruit, but when they do, they are usually localized to the area of the fruit near the peduncle (APHIS, 1997; Gudino Juarez and Garcia Guzman, 1990, cited in the risk assessment). Inspectors are specifically instructed and trained to examine the peduncle end of the fruit for stem weevil larvae (APHIS, 1997, cited in the risk assessment). Because of this training and because the location of stem weevil larvae is highly predictable and usually quite localized, APHIS has determined that the sensitivity of detection for stem weevils and other internal avocado pests could reasonably be considered to be close to the 50 percent point in the 17.9 to 83.5 percent range.

Comment: In the proposed rule, USDA points to the fact that no pests of concern have been found in commercial shipments of Mexican avocados since the program began. This fact may be true, but the Department's reliance on it is misplaced; the dynamic nature of the program ensures that the systems approach will not operate in the same

[2] Aluja, M., Diaz-Fleisher, F., and J. Arredondo. 2004. Non-host status of *Persea americana* ''Hass'' to *Anastrepha ludens, Anastrepha obliqua, Anastrepha serpentina,* and *Anastrepha striata* (Diptera: Tephritidae) in Mexico. *Journal of Economic Entomology*, volume 97, issue 2, April 2004.

fashion from one year to the next, and possibility of human error increases as the program grows in size. The importance of analyzing human reliability factors in the estimation of risk is undisputed. Nonetheless, USDA's consideration of human error in the operation of its systems approach for Mexican avocados has, to date, been inconsequential. The omission of the characterization of failure modes and human reliability in the Department's risk assessment is a fatal flaw that U.S. avocado growers cannot accept.

Response: While there will be additional acres under certification in Michoacan as well as additional avocado imports, the systems approach can be adapted to deal with these increasing requirements. Additional staff or additional layers of mitigations may be added to deal with issues that arise. APHIS meets yearly to negotiate a work plan with Mexican plant health authorities and address issues that arose in the previous year's operation. We are confident that adequate resources will be available to ensure that the systems approach will continue to be effective.

While past experience is not a perfect guide to future performance, there is no reason to believe that we will not be able to rely on the effectiveness of the systems approach under conditions that may exist in the future. Additionally, there is also no reason to believe that the systems approach will remain the same while demand for program resources increases. The systems approach is a dynamic process that is, and will continue to be, modified to address changes and future needs.

Comment: Given the very high long-term costs to California avocado producers (and the State of California) of a pest introduction from Mexican imports, why are all of the pest risk assessments on page 4 of the analysis presented at a 95 rather than a 99 percent level of confidence? I am sure that producers want a high level of confidence that risks are very low or nonexistent.

Response: The risk assessment's Appendix D was modified to include graphic representations of all percentile results for all of the model outputs. Both the 95th percentile and the 99th percentile results are included in the table of results in the body of the document and in Appendix D. The 95th percentile results are as relevant as the 99th percentile.

Comment: I have a problem reconciling the first and last pest risk conclusions on page 4 of the proposed rule. The statement that ''fewer than 387 infested avocados will enter the United States each year, estimated with 95 confidence'' must be based on a different distribution than the statement that ''it is slightly more likely that zero infested avocados will enter the United States than one infested avocado,'' or the distribution has to have a large standard error on the high side.

Response: The number of infested avocados entering the United States is not a point value but is represented by a probability distribution. A probability distribution presents the range of values a parameter can assume (x-axis), plotted against the relative likelihood of assuming those values (y-axis). The probability distribution for the number of infested avocados entering the United States is presented in Appendix D, page 104. The figure indicates that the value with the highest relative likelihood (the most likely value) is zero, and the mean of the distribution is 122.6.

A cumulative probability distribution presents the range of values a parameter can assume (x-axis), plotted against the likelihood of assuming those values or less (y-axis). The cumulative probability distribution for the number of infested avocados entering the United States is presented in Appendix D, page 104. The 95th percentile value for the number of infested avocados entering the United States is 387. The 95th percentile of a parameter is the value in the data set for which 95 percent of the values are below it and 5 percent are above. The distribution for the number of infested avocados entering the United States is skewed to the left, and has a tail to the right.

The most likely value or mode is the value that occurs most often in a set of values. In a histogram and a result distribution, it is the center value in the class or bar with the highest probability. In this case, the most likely value is zero.

Comment: The statement in the APHIS risk assessment comparing the probability of entry of zero versus one infested avocado is not at all useful. A more relevant comparison of probabilities is between zero and one or more infested avocados entering the United States. In addition, a description of the statistical distributions (*i.e.*, mean and variance) that these statements are based on would help the reader to better understand the nature of the risks.

Response: Appendix D has been modified to include mean and standard deviations for all model output results. The mode of the distribution is zero; therefore, zero infested avocados entering the United States is more probable than one.

Comment: The consideration on behalf of the USDA to import foreign fruit motivates foreign growers to purposely smuggle and introduce insects into U.S. growing areas so as to overcome the opposition to import, such as was suggested in the Valley Center Mexican fruit fly infestation which cost growers millions.

Response: While the origin of the Valley Center outbreak has not been determined, we have no information to suggest it was the result of an intentional introduction of pests as the commenter contends.

Comment: The public must be informed about where the transportation of avocados is prohibited and where it is not. The public must also be informed that they are prohibited from personally transporting avocados into the United States, even if commercial (inspected) avocados are permitted. Public education is even more critical within the avocado growing and producing States of Florida, California, and Hawaii. How does the USDA propose to educate the public about this proposal? If there is a trial period, how does the USDA plan to inform the public in Florida, California, and Hawaii that commercially produced Mexican avocados are still prohibited into those States? The public will not see a difference between these two scenarios and it is not discussed within the proposal. I fully expect to see serious increases in inadvertent movement of fruit from Mexico.

Response: The general public will be notified of the change in the Mexican avocado program and its specific restrictions through this rulemaking process and through Agency outreach and the media by way of press releases, fact sheets, publications, and other materials that help explain APHIS programs. The Agency's outreach efforts are coordinated with those of the States in order to extend their coverage. Federal inspection officers at ports of entry will continue to inspect members of the public returning to the United States and will seize any agricultural items, including avocados, that are prohibited from entering the country.

Comment: In light of the ARS conclusion that Hass avocados are a very poor host for *Anastrepha* fruit flies, it would seem logical for APHIS to at least lower some of the very costly elements of the systems approach in Michoacan that are targeted at *Anastrepha* spp. fruit flies. Yet, instead of decreasing the requirements aimed at fruit flies in Michoacan, APHIS has left the requirements for fruit fly trapping completely intact. This means that when *Anastrepha* spp. flies are found, a list of unnecessary regulatory actions must take place, including the needless application of pesticides.

Considering the consensus that the Hass avocado is a very poor pathway for *Anastrepha* spp. fruit flies, it would seem logical to replace the current restrictions requiring the need for a full fruit fly trapping program with a fruit fly monitoring program. Additionally, in light of the proposal to remove the specific details of the seed and stem pest surveys from the regulation and insert them into the phytosanitary work plan, it would also make sense to remove the specific language referring to this fruit fly monitoring activity from the regulation and, for the sake of consistency, insert it into the phytosanitary work plan as well. This way, as the discussion on the host status of the Hass avocado continues to evolve, there will be no need to go through the rulemaking process to make adjustments to this section of the regulation in the future.

Response: Removing the details for fruit fly trapping was not considered at the time the proposed rule was published and, therefore, we will not remove those details in the final rule. We will, however, consider this issue for future rulemaking.

Comment: USDA should ensure that the surveys and detection trappings in Mexico occur during all 12 months of the year to ensure that monitoring for all potential pests is sufficient for all the listed pests and occurs during all the potential detection periods (instead of the proposed semiannual surveys).

Response: The semiannual municipality and orchard surveys are required for initial certification and to maintain certification later on. There is year-round trapping for fruit flies, which is performed in support of a separate APHIS program, and packinghouse and border inspections will occur on a continual basis. Other pests of concern are surveyed at specific times of the year based on the biology of those species. The regulations provide for the suspension of an orchard or municipality from the program at any time as a result of the detection of specified pests during the semiannual pest surveys, orchard surveys, packinghouse inspections, or other monitoring or inspection activity.

Comment: We disagree with the APHIS proposal to replace the requirement to seal each consignment moving from the packing shed to the border with a new requirement for the avocados to be packed in insect-proof boxes, loaded in insect-proof containers, or covered with insect-proof mesh or plastic tarpaulin prior to leaving the packing shed so that in the very infrequent occurrence of a shipment being stopped for inspection by Mexican authorities, fruit flies or hitchhiking pests will not enter. It is not logical to add those requirements for the following reasons:

- Refrigerated containers do not attract fruit flies or other subtropical pests. In fact the opposite is true. Refrigerated containers present a very inhospitable environment for tropical and subtropical arthropods. Additionally, such conveyances do not provide an adequate environment for insect activity such as oviposition.
- If the Hass avocado is not a host to the fruit flies that occur only in rather small numbers in Michoacan, then fruit fly-proofing the shipment is completely unnecessary.
- Actual fruit fly host materials such as mangos, citrus, tomatoes, and peppers, which are routinely shipped from Mexico to the United States, are not subject to such a requirement, nor is it necessary.
- Fruit fly/insect proof requirements on commodities such as tomatoes from Israel or citrus from Spain are in place because the fruit is often subject to long periods of exposure to the environment while awaiting shipment to the United States at seaports or airports. One hundred percent of the Hass avocado shipments destined to the United States from Mexico are safeguarded in insect-proof warehouses prior to being sealed in insect-proof, refrigerated trailers.

Based upon this reasoning, we believe that the current sealing requirement is adequate and should remain in place.

Response: After careful consideration of the comments, APHIS has decided to retain the provisions regarding sealing of containers. In the proposed rule, we stated that our reason for changing from sealing of containers to pest proof boxes, for safeguarding purposes, was because some containers had been arriving at the port of entry with broken seals. Seals could and were being broken by Mexican authorities, to inspect containers for contraband. When the containers were inspected by Mexican authorities, we were concerned that the shipment could be exposed to possible infestation.

Upon further investigation, APHIS found that Mexico has effectively addressed the issue of shipments arriving with broken seals. If a seal is broken by a Mexican official, that official is to provide a specific document stating that he/she has broken the seal. If the documentation is not provided, U.S. inspectors use various methods to determine if the shipment had been tampered with.

Data collected at the border reflects that Mexico has taken steps to adequately address the broken seal issue. The number of shipments that arrived at the ports of entry with broken safeguarding seals decreased considerably, from 690 shipments in the 2002/2003 season to 231 in the 2003/2004 season. Of the 231 shipments arriving with a broken seal during that last season, more than 86 percent had documentation from the Mexican official who broke the seal. In addition, the data show that none of the shipments arriving with broken seals were compromised or infested with pests. As the commenter noted, refrigerated containers present a very inhospitable environment for tropical and subtropical arthropods and such conveyances do not provide an adequate environment for insect activity such as oviposition. We agree with the commenter as our data supports this statement.

Based on the above, we will continue to require sealing of shipping containers at the packinghouse to safeguard each consignment as it transits Mexico to the United States. This will not affect the results or conclusions of the risk assessment. As long as sufficient measures remain in place to safeguard the avocados during transit to the United States, the conclusion of the risk assessment that likelihood of introduction of quarantine pests is low will remain the same. Therefore, this final rule does not require the avocados to be packed in insect-proof cartons, loaded in insect-proof containers, or covered with insect-proof mesh or plastic tarpaulin prior to leaving the packinghouse.

Comment: Five years ago, the USDA representatives presented a plan, called the ''systems approach to pest risk mitigation.'' The plan was evaluated by two models, using the Monte Carlo modeling engine. The first model, that of no import restrictions, was compared to the second model, that of the systems approach. Had the evaluation established a model for the current environment at the time, that of a complete ban on Mexican avocado imports, the systems approach could never have generated acceptable numbers in the modeling engine. Model 1, no restrictions, indicates a likelihood of infestation by the seed weevil in an average of 95 years, seed moth in 355 years, and the fruit fly in 72 years. Model 2, the systems approach, indicates a likelihood of infestation by the seed weevil or fruit fly in 10,000 years, and by the stem weevil in 11,000 years. In reality, a complete ban on Mexican avocado imports into California in the current environment has led to two Mexican fruit fly infestations in the last 5 years.

Infestations by persea mite, thrips, and other pests have also occurred within the last 12 years.

Response: Contrary to the commenter's conclusion that prior infestations in California were the result of APHIS policy, there is no evidence linking any infestations with commercial Hass avocados from Mexico imported under the program regardless of a model used to predict risk. The current APHIS risk assessment based its predictive model on detection samples for the quarantine pests of concern. The samples were program fruits cut during orchard certification surveys, packinghouse inspections, and at the border. This produced a sample of over 10 million fruit taken over 6 years of the import program. The results of the model are presented as expected numbers of infested avocados entering the United States annually.

Comment: The fruit fly study does not address susceptibility of late season avocado to infestation. From my own grove operation, I have noted the following late season fruit quality characteristics which could influence fruit susceptibility to insect infestation:

- Fruit oil content is higher than early season fruit;
- Seed tap root pushes through bottom of avocado giving easy access to fruit interior;
- Fruits start ripening on the tree; and
- Handling time window shortens; mature fruit ripen quicker.

The fruit fly is not the only insect pest of concern. How does late season avocado fruit impact the occurrence of stem and seed weevils? What other late season Mexican insect pests must the industry be concerned with? USDA has failed to account for the possibility of the harvest of mature, ripe avocados that could harbor fruit fly eggs and larvae.

Response: The Aluja *et al.* fruit fly study included avocados tested on the tree at maturity levels from low to high percentage dry matter, indicating early and late season fruit. ARS reviewed the study and concluded that commercial Hass avocados are a very poor host for Mexican fruit fly and did not single out any maturity stage on the tree as particularly vulnerable. APHIS has concluded, based partly on the ARS findings, that there is a low likelihood of *Anastrepha* species of fruit flies being in program fruit. APHIS recognizes that other internal quarantine pests analyzed in the risk assessment may be present in mature fruit, but that systems approach measures maintain the low likelihood of their introduction in program fruit, which has been validated by the fruit sampling that has been conducted over 6 years of the program.

Stem weevils are found in all varieties of avocados and can be especially abundant in trees not managed under the program. Stem weevils can be detected both by visual examination of cut fruit and by the highly visible exudates the larvae leave on tree branches. Orchards will be surveyed semiannually for stem weevil, and if weevils or weevil signs are found, certification is denied or suspended. Additionally, if stem weevil larvae are found in fruit cut at the packinghouse or at the border, the regulations require the removal of the originating orchard from the program immediately and avocado exports from that orchard will be suspended until APHIS and the Mexican NPPO agree that the pest eradication measures taken have been effective and that the pest risk within that orchard has been eliminated.

Additionally, and as previously stated, USDA considers mature, commercial Hass avocados to be a very poor pathway for thrips. Several research studies (*e.g.*, Hoddle, 2002; Yee *et al.*, 2003, cited in the PRA) have demonstrated that *Scirtothrips perseae*, the avocado thrips (which APHIS considers as probably representative of other pest thrips species) lays eggs in small, immature fruits and tender leaves, and does not feed on or lay eggs in mature fruit, and is, therefore, unlikely to be imported with the fruit. This is supported by the fact that there have been no thrips interceptions by APHIS on commercial Hass avocados from Mexico since the program began.

Comment: In order to provide time to reconcile critical issues on safe agricultural import practices and create parity in U.S./Mexican trade policy, there should be no expansion of Mexican avocado imports beyond the 31 currently approved States for a period of 7 years. During that time, U.S. avocado producers should have unrestricted access to designated Mexican markets with allowances for comparable levels of export (tonnage). Also during the 7-year period, the USDA should:

- Conduct a comprehensive research program on U.S. avocado farms to document existing exotic pest and disease problems;
- Monitor U.S. avocado farms to measure the increase or decrease to U.S. avocado production and costs from exotic pests; and
- In conjunction with the California and Florida avocado commissions, verify Mexico's compliance with and support of the U.S. avocado export program.

After this 7-year period, USDA may consider easing restrictions subject to the following conditions:

- U.S. avocado farms experience no significant additional impacts due to exotic pests or expanded quarantines;
- U.S. avocado exports to Mexico have reached a comparable equilibrium measured in tonnage and price with Mexican avocado exports to the United States; and
- No new research or data demonstrate greater future risk from exotic pests or diseases from expanding Mexican avocado imports into additional U.S. States.

Assuming these conditions have been met, USDA may propose to allow further Mexican exports to U.S. States other than California and Florida and the States which directly border California.

Response: APHIS has no authority under the Plant Protection Act to prohibit or restrict the entry of an article merely to create parity in trade between the United States and another nation. Further, as a signatory to the International Plant Protection Convention, the United States has agreed not to prescribe or adopt phytosanitary measures concerning the importation of plants, plant products, and other regulated articles unless such measures are made necessary by phytosanitary considerations and are technically justified. Based on the conclusions of the APHIS risk assessment, we do not believe that there is a technical justification for the 7-year delay or other measures suggested by the commenter. We have, however, implemented a 2-year delay for imports into and distribution within California, Florida, and Hawaii in response to other comments we received on the proposed rule. This restriction will provide APHIS an opportunity to further substantiate the effectiveness of the mitigation measures under the expanded program.

Comment: USDA's proposed rule on the Mexican Hass avocado import program includes several proposed changes to the protocol under which the program operates. For example, the Department has proposed conducting semiannual, rather than annual, pest surveys at the municipality and orchard levels. We support the idea of semiannual surveys during the wet and dry seasons. It is appropriate, too, to leave the details of how and when surveys will be conducted to the annual work plan developed by Mexico's national plant protection organization and APHIS. In our view, it is imperative, however, that areas with wild or backyard avocado trees continue to be included in pest surveys conducted at the municipality level. These areas represent the greatest

potential source of infestation or reinfestation of export orchards.

Response: The proposed rule did not include a proposal to eliminate the surveying of areas with wild or backyard avocado trees during municipality surveying. The proposal was to eliminate specific language on the surveys from the regulations because this information would be included in the workplan. Areas with wild or backyard avocado trees will continue to be surveyed.

Comment: The regulations in § 319.56–2ff (c)(2)(iii) state that ''avocado fruit that has fallen from the trees must be removed every 7 days and may not be included in field boxes of fruit to be packed for export.'' I request and strongly recommend this permissive ''may'' be strengthened to a mandatory ''must'' or ''shall.''

Response: The phrase ''may not be included'' does not contain a ''permissive'' element as the commenter suggests. As written, the text of § 319.56–2ff (c)(2)(iii) serves as clear prohibition on the inclusion of fallen fruit in field boxes of fruit to be packed for export.

Comment: Serious program infirmities must be addressed before expansion can occur: There are no standardized procedures, training, or oversight for fruit cutting; fruit cutting techniques are ineffective at detecting the eggs, first instar, and second instar larvae of fruit flies or the stem weevil, rendering USDA's risk probabilities unreliable; improper pest survey timing has underrepresented pest population levels; fruit fly trapping methodology and servicing are flawed; fruit fly response and treatment procedures are inadequate. The inspection process is not sufficient. USDA inspectors may simply drop an avocado into a slicer and check for a mature worm rather than using a loupe (a portable microscope lense). The larvae for almost every pest are not visible to the naked eye. Additionally, the Department of Homeland Security (DHS) is now doing port inspections that focus more on drugs, guns, etc., than plant pests.

Response: Regarding training and oversight for fruit cutting, inspectors are trained to detect pathway pests based on the biology of the pest and what signs or symptoms of infestation to look for. They have hand lenses that they may use, if they need them, to complete an inspection. Pest damage, rot, and most stages of each of the internal pests are visible to the trained inspector. APHIS is aware that there is a possibility that a pest may escape detection and has accounted for this uncertainty in the current risk assessment. Fruit cutting is only one of the multiple measures of the systems approach that mitigates pest risk.

Survey timing: Under the modified systems approach, semiannual surveys will be conducted at the municipality and orchard level. Municipalities must be free of *Ceratitis capitata, Conotrachelus aguacatae, C. perseae, Heilipus lauri*, and *Stenoma catenifer* before they can be certified to export avocados to the United States. In addition, orchards must be certified free of *Copturus aguacatae*. Trapping is conducted in orchards for Anastrepha spp. fruit flies. Both the regulations and the workplan specify what mitigation measures must be taken when a pathway pest is detected in a certified orchard. The time periods selected for the surveys were based on the biology of the pests. Additionally, the fruit cutting will be conducted in the orchard, packinghouses, and at the port of entry. Since the expansion of Mexican avocado imports in 1997, none of these pests have been intercepted during inspections of fruit at packinghouses or upon inspection at the U.S. border ports.

Fruit fly trapping is modeled after other APHIS programs for consistency, and the actions are based on the biology of the pests and fruit fly detections.

Comment: Because of insufficient analysis, USDA should subject its risk assessment to rigorous, external peer review, to incorporate the best science available and to establish a more credible research base for its decision to allow imports to particular States. Serious program deficiencies must be addressed before Mexico is allowed to expand exports to additional States. For example, there are no standardized procedures, training, or oversight for fruit cutting during pest inspections. Fruit cutting techniques are ineffective at detecting the eggs and larvae of fruit flies or the stem weevil, thus rendering USDA's risk probabilities unreliable. Additionally, improper pest survey timing has underrepresented pest population levels; fruit fly trapping methodology and servicing are flawed; and fruit fly response and treatment procedures are inadequate. I urgently request that this program be suspended for further study by independent experts in the field and in consultation with the industry because the scientific basis for allowing Mexican fruit into the United States was based on a joint USDA-Mexico study for one growing season in Mexico. This study is a very small basis upon which to overthrow 80 years of exclusion and contains much that is controversial and open to question.

Response: The APHIS risk assessment has been made available for public review twice. First, we made the draft risk assessment available for public comment for a total of 90 days through a notice of availability published in the **Federal Register** on June 16, 2003 (68 FR 35619, Docket No. 03–022–1), and a subsequent extension of the comment period (68 FR 48595–48596, Docket No. 03–022–2, published August 14, 2003). An updated version of the risk assessment was also made available for public comment for an additional 60 days as part of our May 2004 proposed rule. We received numerous comments regarding the risk assessment in both instances, including comments from professional risk analysts, private risk consultants, and university and government scientists, and updates have been made to the risk assessment to address those comments. Further, the fruit fly study (Aluja *et al.* 2004) noted by the commenter that is cited in the risk assessment was subjected to rigorous peer review prior to its publication in the Journal of Economic Entomology and was likewise reviewed by USDA fruit fly experts in ARS and APHIS. The input that APHIS received from ARS follows the tradition and guidelines of peer review. The ARS experts offered their own interpretation of the scope and applicability of the findings. This information suggested that we should update our risk assessment, and we considered the ARS input in preparing our updates and changing our classification of the host status of Hass avocados. We believe that these documents do, in fact, provide a credible research base for our decisionmaking with regard to the expansion of the Mexican avocado export program to additional States and the Secretary's determination is based on the findings of the risk assessment and her judgment that the application of the measures required under § 319.56–2ff would prevent the introduction or dissemination of plant pests into the United States, thus we do not believe that the program suspension recommended by the commenter is appropriate.

The specific issues raised by the commenter regarding fruit cutting, pest surveys, inspection, and fruit fly trapping are addressed in the response to the previous comment.

Comment: In the proposed rule, APHIS states that even if an infested avocado were to arrive in an area of the United States where host material was present, several additional conditions are required for pest establishment (*i.e.*, the pests survive during transportation and storage; the infested avocados must

be discarded in close proximity to host material; the pests must find mates; the pests must successfully avoid predation; the adult pests must find host material; the climatological and microenvironmental conditions must be suitable; and they must escape detection and subsequent eradication measures). APHIS admits that information that would allow quantifying these conditions is not currently available. Without that information, how can the Secretary conclude that it is not necessary to restrict Mexican avocados for phytosanitary reasons?

Response: As stated in the proposed rule and in this document, the Secretary's determination is based on the findings of the risk assessment and her judgment that the application of the measures required under § 319.56–2ff would prevent the introduction or dissemination of plant pests into the United States. The risk assessment contains both quantitative and qualitative elements, and our final expression of a likelihood of introduction is a descriptive statement. The results of the quantitative analysis do not equate to likelihood of establishment. Rather, they express the likelihood of an infested avocado being discarded in a suitable location; establishment and spread would require the additional steps noted by the commenter, which substantially reduce the likelihood of establishment. People generally consume the fruit they purchase and dispose of the waste material in a manner (such as in plastic bags that are landfilled or incinerated [3]) that precludes the release of pests into the environment. For these reasons, our final expression of a likelihood of introduction is a descriptive statement. These factors, in combination with the results of the quantitative analyses, led APHIS to conclude that the likelihood of establishment of infested avocados through the commercial pathway of Hass avocados imported from the State of Michoacan and produced using the systems approach is low.

Comment: Much is made in the risk assessment of the maximum likelihood estimate of the number of infested avocados imported in any year being zero. However, a more interesting statistic, from the point of view of the agricultural industry, is the probability of no infested avocados being imported in any year. From this one can calculate the probability of importation of infested fruit over a period more meaningful to agriculture. For tree crop agriculture, 20 years or more is a meaningful planning horizon, and the formula p20 = 1-(pi)20 where p20 = the probability that 1 or more infested fruit will be introduced during a 20 year period and pi = the probability of no infested avocados being imported (assuming pi for i = 1 to 20 are independent) in any year. This p20 can be adjusted for the likelihood that any imported infested fruit will result in establishment of the pest in a producing area, as presented in the text. From this estimate of the probability of establishment of the pest, multiplied by the cost of eradication plus losses to growers, one can calculate the expected cost of allowing the importation of Mexican avocados. This calculation has much more meaning to the industry than the mere statement that the probability of infestation from imported avocados (in any one year) is ''low.''

Response: The risk assessment was prepared to assist APHIS in evaluating Mexico's request to expand the scope of the existing Hass avocado import program. As such, its purpose was to analyze the risks of expanding the Mexican Hass avocado import program to authorize imports throughout the United States year-round. Although the method presented by the commenter for estimating the likelihood of no infested avocados being imported in any year could produce useful information from the point of view of the agricultural industry, it does not appear that the endpoint sought by the commenter—*i.e.*, the ''expected cost of allowing the importation of Mexican avocados''—could be achieved in a meaningful way. Two of the factors that would be considered in the calculation proposed by the commenter—the cost of eradication plus losses to growers—could vary enormously, depending on the nature and scope of the pest outbreak to be eradicated and the effects the particular pest might have on production, so the final estimates would necessarily be very broad in their range.

Comment: With respect to the risk assessment, USDA has ignored the directive of the Congressional Appropriations Committee, which stated ''The Committee directs APHIS to include independent, third party scientists in the development of any PRA for Mexican avocados prior to the publication of any PRA in the **Federal Register**.'' Further, USDA ignored fundamental disagreements between its own scientists regarding the conclusions drawn by the underlying research data, and has not released that research data, thus not allowing time for independent review before the risk assessment was issued. Finally, the USDA has assigned only a minimum crew of 11 men to survey and monitor an increase of Mexican avocado acreage from 3,700 acres in 1997 to over 53,000 certified acres.

Response: On June 16, 2003, APHIS published a notice in the **Federal Register** to inform the public of the availability of a new draft PRA that was prepared in response to the Mexican Government's request that the avocado import program be expanded to include all 50 States for the entire year. In accordance with the Committees' direction to include independent, third party scientists in the development of PRAs for the avocado program, APHIS scientists consulted with independent subject matter experts from a variety of accredited academic institutions during the development of the draft PRA. These institutions included, among others, Florida A&M University, the University of Florida, and the Institute of Ecology in Veracruz, Mexico. APHIS scientists also consulted with ARS researchers from various locations, including Hawaii and Texas. APHIS extended the original comment period on the PRA for an additional 30 days and accepted public comments on the assessment until September 15, 2003. The public comment period served as an additional opportunity for all members of the public, including independent researchers and members of academia, to evaluate the draft PRA. After reviewing all the comments, we determined that it was appropriate to move ahead with a proposed rule. We reported our action to the Committee prior to publishing the proposed rule.

As noted above, APHIS solicited the opinion of ARS scientists regarding the fruit fly research presented in Aluja *et al.* (2004) and worked with those scientists to understand the similarities and differences between our Agencies' interpretations of the conclusions drawn in the study. The APHIS position was to initially agree with Dr. Aluja's findings that commercially packed Hass avocados are not a host of Mexican fruit flies. ARS took a slightly more conservative position that those avocados are a very poor host of the Mexican fruit fly. The difference in the categorization of the Hass avocado's host status did not effect the level of risk in the APHIS risk assessment. APHIS did, in the final analysis, change its categorization of the Hass avocado host status based on ARS's conclusions. Changing our conclusions on the host status made it then necessary to calculate the pest risk for fruit fly in our risk assessment. After performing these calculations, we found the likelihood of

[3] Citations pertaining to disposal patterns can be found on pages 9 and 36 of ''Importation of Avocado Fruit (Persea americana Mill. var. ''Hass'') from Mexico: A Risk Assessment,'' September 17, 2004.

fruit fly infestation through commercial shipments of Hass avocado from Mexico to be very low. The pest risk did not change as a result of labeling the fruit fly as a poor host rather than a non-host.

The Aluja *et al.* research used in the APHIS risk assessment was published in the Journal of Economic Entomology in April 2004. Because the proposed rule was published on July 23, 2004, and was open for public comment for 60 days, we believe that the research was available to the general public with ample time for examination. Because the Aluja *et al.* study had already been accepted for publication in 2003, it was unavailable for distribution during the June-September 2003 comment period for the draft PRA.

Finally, as previously stated, APHIS' role under the operational workplan provided by the regulations is to provide management and monitoring of the activities specified in the workplan, *e.g.*, trapping, surveying, and packinghouse inspections. While APHIS personnel do not necessarily conduct these activities themselves, they do monitor Mexican officials' compliance with workplan specifications. The staffing level of APHIS personnel is sufficient to ensure that APHIS meets its requirements under the workplan and that other signatories are in compliance with the regulations. The lack of pest detections in the orchard, packinghouse, and border inspection since the program began in 1997 is evidence that the regulations and workplan are being complied with.

In addition, as more orchards have applied for certification, it does take longer for inspectors to perform the initial inspection before the first shipping date of October 15. The inspectors have had to start inspections earlier before that date each year to finish inspecting all of the orchards. Additional inspectors would be hired to inspect the increased acreage within the required time-frame. If the inspection does not occur within that timeframe, the orchards would not be certified. All orchards must be inspected using the same work plan criteria, as the records show. APHIS keeps lists of all the orchards inspected by name.

Comment: Limiting Mexican fruit to colder climates makes sense. Maybe Mexican fruit could be allowed only if it were packaged and processed in a frozen type of product.

Response: Some types of processed avocado products are allowed into the United States and can go to all States. Whether or not the processed product is allowed in depends on whether the processing mitigates any pest risk. Frozen avocados are allowed entry if they meet these requirements:

- An import permit is required,
- The seeds must be removed; and
- The avocados must be at or below 20 °F at the time of arrival at the port of entry. If the temperature of the avocados is higher than specified, the avocados will be required to meet the import requirements of fresh avocados.

As we discussed in the proposed rule and in this final rule, we do not believe it is necessary to limit the importation of Mexican avocados to cooler climates because of the mitigations in place and the findings in our risk assessment.

Comment: Cultural practices used by Mexican avocado growers, including unsanitary Mexican growing conditions in which human waste is used, could cause illness in U.S. consumers.

Response: APHIS has no information to suggest that human waste is used in avocado production in Mexico. Even if it were used in some cases, the fact that avocados are a tree fruit make it unlikely that avocados on the tree would be contaminated as a result.

Comment: Regarding this proposal to establish limitations on the entry of Hass avocados into States with commercial production of avocados in the United States, we believe that the scientific support contained in the Aluja *et al.* study, which documents the scientific evidence showing that the Hass avocado is not a host for *Anastrepha* spp. fruit flies, together with there having been no detections of quarantine pests throughout 7 years of exporting, ensures an adequate level of plant health protection for the United States, including the avocado-producing areas.

The above is also supported by the risk assessment prepared by USDA in which the probabilistic analysis, based on the information from cut fruit exported to the United States, establishes that the annual number of fruits infested by quarantine pests imported into the United States is zero.

Response: To provide APHIS an opportunity to further substantiate the effectiveness of the mitigation measures under the expanded program as discussed in our risk assessment on pages 4, 10, and 11, APHIS has decided to delay for 2 years the implementation of the importation of Hass avocados from Mexico into all 50 States. Rather, APHIS will allow for the immediate importation of those avocados into all States except for California, Florida, and Hawaii, which are avocado producing States, to monitor the program and gather efficacy data under production conditions during all months of the year. While APHIS has concluded in the risk assessment that there is low likelihood of introduction of fruit flies based on the findings of the Aluja *et al.* study, as well as the conclusion of ARS that commercial program Hass avocados are a ''very poor host'' of Mexican fruit fly and our own analysis of detections based on over 10 million fruit sampled over 6 years of the import program, we believe the delay will offer the opportunity to further substantiate these findings. In the risk assessment, APHIS was asked to determine the likelihood of introduction of quarantine pests of concern in program Hass avocados from Mexico. Based on the above evidence presented in the risk assessment, a finding of ''non-host'' for Anastrepha spp. fruit flies was not necessary for APHIS to draw the conclusion of low likelihood of introduction. During the near future, however, APHIS plans to work with Mexico, ARS, and independent researchers in the scientific community to form a consensus on the host status issue of the Hass avocado and Anastrepha spp. fruit flies.

Comment: To protect our avocado-growing States from inadvertent transmission of infested fruit, buffer zones of additional States is a must. There is ample clientele for Mexico to sell, promote, and educate outside our vulnerable areas. Mexican producers' insistence to sell fruit in California and other growing areas shows proof of their intent to destroy their competitors by causing pest infestations in an area that would not have the tools to deal with the infestation because of government regulations.

Response: APHIS has determined that the likelihood of introduction of quarantine pests of concern would not be significantly reduced by buffer States any more than just prohibiting movement into or through California, Florida, and Hawaii for 2 years for the following reasons:

1. The likely buffer States, which would be Alabama, Arizona, Georgia, Nevada, and Oregon, do not produce avocados or have special quarantine regulations against avocados moving through their States or moving into the prohibited States, but California and Florida do have adequate quarantine regulations against certain agricultural products moving within them. Since Hawaii is an island, it would not need ''buffer States.''

2. The avocado-growing area of Florida is confined to the southern half of the peninsula, therefore the State's northern counties serve as buffers to the producing counties. The avocado-growing areas of California are more extensive, but they are either bordered

by the Pacific Ocean on the west, large expanses of mainly desert counties of California or desert areas of Nevada and Arizona to the east, a wide expanse of non-avocado-growing counties to the north, and Mexico to the south.

Comment: I strongly oppose any provisions that would allow Mexican Hass avocados to enter Florida until at least 1 year's worth of monitoring data, both within Mexico and shipments to other States, has been collected to demonstrate that the shipments are free of plant pests of quarantine significance. Scientific data should be provided that proves that the Mexican Hass variety of avocados is, under all environmental conditions, resistant to all fruit flies known to be established in Mexico. There is concern that environmental conditions may cause the avocado to ripen prematurely while still on the tree and therefore making it susceptible to fruit flies. I would also like to receive information regarding the Mediterranean fruit fly trapping program that is being utilized in Hass avocado production areas in Mexico.

Response: As previously stated, APHIS is implementing a 2-year delay on the importation of Hass avocados from Mexico into California, Florida, and Hawaii. Additionally, in their review of the Aluja *et al.* fruit fly research, ARS noted that there were some larvae that developed in a few infested fruit, that the conditions enabling the larvae to develop were not known, and that viable adults were not produced. Even allowing for the few larvae, ARS experts still concluded that the fruit were a ''very poor host'' of Mexican fruit fly. The Aluja *et al.* research included fruit at all levels of maturity including fruit off of the tree that had been allowed to ripen for three hours. The conclusion was that fruit still on the tree was not a host for the fruit fly.

The Mexican Mediterranean fruit fly trapping areas include all of the avocado-growing areas of Michoacan. APHIS monitors all aspects of the pest detection protocol in all avocado producing municipalities that export to United States, including trapping for Medfly. Under our regulations, Medfly is trapped at a density of 1 trap per 1 to 4 square miles. Any findings of Medfly must be reported to APHIS.

Comment: There are a number of issues of concern not addressed in the underlying research and the APHIS risk assessment used to justify the expansion of the Mexican Hass avocado import program. These issues are:

- The APHIS risk assessment does not provide scientific data covering phenology of fruit or the changes in soluble solids throughout the year as it relates to pest infestation;
- Traceback methods have been ineffective in the past;
- The movement of fruit from an area of low pest prevalence may not be accurate. The number of infested fruit could be much higher than predicted;
- There is no information about temperature ranges during exposure period and effect of temperature changes on quarantine pests;
- USDA has never clarified how the Mexican fruit fly infestation entered Valley Center, CA, in 2002.

Response: The Aluja *et al.* study did include the summer months June, August, and September as well as other months, fruits of a range of sizes that were commercially mature, and mature fruit attached to the tree as well as off the tree. This covered a range of fruit sizes and soluble solid ranges. APHIS and ARS both concluded, based on the study, that the fruit were a very poor host for Mexican fruit fly. Fruit of a range of sizes and solid content have been present on the trees during the 6-month shipping season, and only mature fruit are exported, which may represent a range of soluble solid contents. Sampling is done throughout the shipping period as well as in the orchards before the season, so a range of soluble solid contents that may occur in mature fruit would be in the sampled fruit. The shipping season, which has occurred during a 6-month period with wide temperature fluctuations, and the inspections conducted during that period were considered in the risk assessment. The risk assessment describes fruit sampling by other researchers that included most months of the year when pests would be likely to be found.

Regarding tracebacks, because no infested exported fruit have been detected in 6 years of sampling, no tracebacks have been necessary in the program. However, because of required labeling on the boxes, the necessary information is available to trace fruit back to packinghouses and orchards if necessary.

Additionally, APHIS has monitored infestation through inspection of program exported fruit. Predictions of infestation are based on the inspections. The ''area of low prevalence'' concept is not an element of the systems approaches that is relied upon under the importation program. In relation to fruit flies, orchard trapping and subsequent eradication if there is a detection are required under the program.

Finally, as stated previously, the Valley Center infestation stemmed from unknown origins and not from a legally imported commercial Hass avocado shipment from Mexico, which were prohibited from entering California. The Mexican fruit fly could have been introduced into California through a number of pathways, including the smuggling of many different kinds of fruit.

Comment: Allowing Mexican avocados into California would be a signal to the public that it is permissible to bring avocados across the border from sources that have not been inspected. Therefore, USDA should formulate a rule that includes a permanent provision to not allow Mexican Hass avocados to be imported into California or any other avocado-producing State.

Response: It is stated in the regulations that commercial shipments of Hass avocados from Mexico cannot be imported or distributed into California, Florida, and Hawaii for the first 2 years of the expanded importation program. Inspectors will continue to check returning travelers for unapproved agricultural commodities, including avocados. Our regulations are enforceable under the provisions of the Plant Protection Act.

Comment: Based on the results reported in the Aluja *et al.* study, which established that the avocado should be considered a non-host for *Anastrepha* spp. fruit flies, we request that *A. ludens* and *A. striata* be removed from the list of pests of Hass avocados grown in Mexico that follow the pathway.

Response: APHIS has concluded in the risk assessment that there is low likelihood of introduction of fruit flies based on the finding of ARS that commercial program Hass avocados are a ''very poor host'' of Mexican fruit fly, and on analysis of detections based on over 10 million fruit sampled over 6 years of the import program. During the near future, however, APHIS plans to work with Mexico, ARS, and independent researchers in the scientific community to form a consensus on the host status issue of the Hass avocado and *Anastrepha* spp. fruit flies. At that time we will evaluate all *Anastrepha* spp. fruit flies and determine which species should be removed from the pest list.

Comment: For reasons not known, it appears that APHIS has accepted the unsupported and seemingly arbitrary opinion of ARS over the conclusions of a team of scientific experts, headed by one of the foremost fruit fly researchers in the world, after 2 years of exacting research on the precise issue, and subsequently peer reviewed and published in the Journal of Economic Entomology. In short, a three-page memo based upon the opinion of two

ARS researchers with limited history in this area, containing one reference to a study that was done on a different avocado, in a different environment, with different insects has overruled the years of painstaking research and the peer reviewed study published in the Nation's leading relevant scientific journal.

Even the California Avocado Commission (CAC) supports this concept. On December 20, 2002, in a letter to Dr. Richard Dunkle, Deputy Administrator, USDA–APHIS–PPQ, an official of the CAC requested an ''alternative protocol'' that would allow Hass avocado growers in the core area of the Valley Center Mexican fruit fly outbreak in California the opportunity to harvest and distribute Hass avocados under a system that mirrors the Mexican Hass avocado export program. Surely, the CAC would not make this request if they thought that the Hass avocado would pose the threat of moving *Anastrepha* spp. fruit flies out of the quarantined area into other areas of California and the country.

Response: The claim that non-experts from ARS provided input is incorrect. Whereas those particular ARS experts may not have published extensively on fruit flies, a biological scientist is perfectly able to review documents for scientific validity. The input from ARS follows the tradition and guidelines of peer review, and the ARS experts did not say that the article from Aluja *et al.* was invalid; rather the ARS experts offered their own interpretation of the scope and applicability of the findings. This information suggested that we should update our risk assessment, and we considered the ARS input in preparing our updates. We fully intend to continue to seek and incorporate ARS expertise and guidance in our risk analysis products.

Comment: The Mediterranean fruit fly (*Ceratitis capitata*) is not present in Mexico. Only two outbreaks have occurred along the border between Chiapas and Guatemala, which were treated through the National C. capitata Campaign, in which the Governments of the United States, Mexico, and Guatemala participate, and those outbreaks were controlled. For this reason, there is no justification for establishing measures to prevent the introduction of this pest by means of the entry of Mexican Hass avocados into the United States, since the avocado exporting zone is located far away from the site of the outbreaks in Chiapas.

Response: While the Mediterranean fruit fly is currently considered eradicated in Michoacan, there have been occasional limited outbreaks beyond those cited by the commenter. Therefore, APHIS will continue monitoring for Medfly. APHIS continues to consider Mediterranean fruit fly monitoring and control as important elements of the Hass avocado program systems approach, as avocados are considered to be a good host of Mediterranean fruit fly. The pest is regarded in the risk assessment as a quarantine pest that could be in the pathway if it is detected in the avocado-producing area.

Comment: An expansion of the Mexican Hass avocado import program will lead to increased air pollution and unsafe Mexican truck traffic.

Response: USDA has no authority over emissions or safety standards for Mexican trucks.

Comments on the Economic Analysis

A number of commenters raised issues regarding the economic analysis that accompanied the proposed rule. These issues are grouped into three sections: The model and analysis, effects for California avocado producers, and other comments.

The Model and Analysis

Comment: The base period for the analysis is October 15, 2000, through October 15, 2002, with base figures being an average of these 2 years. A possible problem with the use of these 2 years is that the rules for Mexican avocado imports changed, effective November 2001, and only 1 of the 2 years included the expanded number of States and time period that are currently effective. This choice of base period tends to understate likely Mexican imports.

Response: We agree with the commenter and have changed the baseline used in the analysis for this final rule to the 2-year period October 15, 2001, to October 15, 2003.

Comment: There is evidence that the producer level price elasticity of demand may be even less than the −0.57 [used in the proposed rule]. If a more inelastic coefficient were used (−0.50 or lower), the estimated price impacts of Mexican imports on California producers would be greater, especially in the short run.

Response: USDA agrees with the commenter that price elasticity of demand seems to have generally decreased over time. However, year-to-year fluctuations occur, due to changes in real price levels. In the analysis for the proposed rule, the elasticity of demand was adjusted downward from an earlier study (''An Economic Evaluation of California Avocado Industry Marketing Programs 1961–1995,'' by Hoy F. Carman and R. Kim Craft, Giannini Foundation Research Report Number 345, University of California, July 1998), from −0.75 to −0.57. In the analysis for this final rule, the price elasticity of demand used for California avocados is −0.63, based on the parameters estimated in Carman and Kraft and the observed level of per-capita consumption and the real producer price of California avocados from our baseline data. This elasticity is somewhat higher than that used in the analysis for the proposed rule due to a higher real producer price in the new baseline.

The commenter provides an equation by which he has estimated a price elasticity of −0.53 at average prices and quantities, and an average of −0.44 for the period 1996/1997 through 2000/2001. (We presume that the description of Q_t as consumption of avocados from all sources is a notational error, since the equation is supposed to represent the demand function for only California avocados.)

The small changes suggested by the commenter would affect the results of the analysis insignificantly. As the commenter himself states, ''Estimated coefficients from a recent demand function indicate that the f.o.b. [free-on-board] level price elasticity of demand for California avocados may be slightly more inelastic than −0.57, but this should have only a small effect on the final estimates.'' The overall conclusions of the study in terms of net social benefits of the rule would still hold.

Comment: Mexico's market share in currently approved States during Period 1 (October 15 through April 15) is understated in the analysis for the proposed rule because the baseline is not current. A more current baseline would show Mexico's larger market share, thereby affecting the shift parameters and resulting in larger Mexican imports.

Response: We agree with the commenter. Based on the updated baseline (October 15, 2001, to October 15, 2003) used in the analysis for this final rule, we find nearly an 11 percent increase in Mexico's market share in the currently approved region and time period, from 57.5 percent to 68.3 percent.

Comment: The retail food sector has significant market power. At the very least, the analysis should point out that retailers (middlemen) will use their market power to capture a portion of the welfare gains.

Response: If food retailers do possess some degree of market power in pricing avocados, we agree that retailers will

use their market power to capture some of the welfare benefits. However, this will largely represent a change in the distribution of the welfare gains from the proposed rule, with some of the benefits being transferred from consumers to retailers. There will be some increase in the deadweight loss due to an increase in the retail margin, but the magnitude of deadweight loss is typically a very small portion of the overall welfare change.

As the commenter suggests, we acknowledge in the analysis for this final rule that if retailers do possess market power in the pricing of avocados, a portion of the welfare gains to consumers will be transferred to retailers, with a resulting small deadweight loss. In this case, the overall welfare gain will be slightly overstated.

Comment: The price elasticity of supply used in the analysis, 0.35, is overly elastic. Perennial crop acreage adjustments are lagged and occur over many years. California production will change very little in the first year or two after a rule change, with the result that prices may be lower than projected for several years. The decrease in supply will occur over time as some producers go out of business and others remove trees in response to low prices and returns.

Response: The elasticity of supply used in the analysis for the proposed rule was based on elasticities used in previous avocado studies. We agree with the commenter that there will be limited opportunity for producer adjustments during the first year following publication of the final rule. In the analysis for the final rule, the time assumed for moving to the new equilibrium is 2 years. Due to the uncertainty of the magnitudes of the supply and demand elasticities in the model, we conduct a sensitivity analysis that considers alternative elasticity values. For the supply elasticity, we consider a range of 0.05 to 0.65. As is reported in the analysis accompanying this final rule, the estimated standard deviations of the estimated changes in the producer price of California avocados are relatively small. Thus, the model results are not very sensitive to the choice of the value of the supply elasticity within this range.

Comment: The initial values for the shift parameters for Region A during Period 1 should be applied to Regions B and C during Period 1. Adjustment of the shift parameters for Period 2 (April 15 to October 15) in all three regions will be a judgment call. I suggest that the parameter for Mexico must be increased significantly (at least to midway between Chile's parameter for Period 2 and Mexico's parameter for Region A, Period 1), with proportional reductions in the parameters for the United States and Chile.

Response: For time period 1, we disagree that the initial values of the shift parameters for Region A should be applied to Regions B and C. First, consumers in Region A have been able to purchase fresh Hass avocados from Mexico for an extended period of time; since 1997 for some consumers. Because individual preferences are usually thought to evolve slowly over time, applying the shift parameters for Region A to the other regions during Period 1 would likely overstate the increase in demand for Mexican avocados. We believe that it is more likely that consumers in Regions B and C will maintain a slight preference for California avocados, at least in the short run. This belief is based on the observation that the quantity market shares for avocados from California and Chile for Regions B and C in the baseline data for the final rule are almost equal. The wholesale price premium for California avocados in both regions implies a preference towards California avocados. (The initial values of the shift parameters are approximately 0.6 for California avocados and 0.4 for Chilean avocados.) This preference may be a result of marketing activities by the Californian Avocado Commission or consumer perceptions that fruit from California is fresher than fruit from Chile. In the analysis of the final rule, the shift parameters for Regions B and C during Period 1 are adjusted to 0.4 for California avocados and 0.3 each for Chilean and Mexican avocados.

For period 2, we disagree with the commenter that the shift parameters for Mexican avocados should be increased significantly. Due to seasonality in production, we believe that the preference parameter for Californian avocados should be higher in Period 2 than in Period 1. More fresh avocados are available from California than from Chile and Mexico during the summer months and therefore the shift parameter for California avocados should be larger for this time period. In the analysis accompanying this final rule, the shift parameters for California avocados in Regions A and B are approximately equal to 0.65, and the preference parameters for Chilean and Mexican avocados are each approximately equal to 0.175. Using this pattern of shift parameters, the empirical model estimates that approximately 60 percent of total Mexican and Chilean exports will occur during Period 1. This closely matches historical seasonal export shares for both Mexico and Chile.

Comment: Mexican producers with avocados certified for export to the United States have a choice to ship to the United States or to a domestic Mexican market, with the choice of shipping destination based on where the avocados will return the highest net price to the producer. Given average wholesale prices in Mexico, I would expect Mexican producers to continue to ship avocados to the United States until U.S. prices decreased to that available for domestic shipments. I do not have the ''break-even'' producer price for Mexican shipments to the domestic or U.S. export markets, but it could be estimated. I would expect this price to be significantly less than $0.63 per pound (the producer price used in the analysis for the proposed rule); perhaps less than $0.50 per pound. A realistic Mexican farm price for analysis of the proposed rule change, one that accounts for domestic marketing opportunities in Mexico, should be estimated and entered into the model.

Response: Mexico exports only about one-tenth of its production (in 2002, about 94,243 metric tons out of 897,231 metric tons), so we would generally not expect export prices to have a large effect on Mexico's domestic prices. Moreover, the export and domestic markets are different in their production requirements. For exports to the United States (the destination of half of Mexico's exports in 2003), the required risk mitigation measures mean higher costs of production—costs readily borne because of the much higher net returns compared to domestic sales. We expect that most of Mexico's avocado producers have limited access to export opportunities because they cannot satisfy the risk mitigation requirements, and perhaps because of commercial and infrastructural limitations as well. Mexican growers, however, are currently exporting to the United States only a fraction of the avocados they could export from already approved orchards and municipalities in the State of Michoacán, thus the rule does assume a substantial increase in imported Mexican avocados.

We agree with the commenter that producers with certified fields will prefer to export to the United States as long as there is an export premium to be gained. Because the average U.S. wholesale price of Mexican avocados is substantially less than the wholesale prices of California and Chilean avocados, we would not expect significant decreases in the U.S. wholesale and farm prices of Mexican avocados. Thus, we believe that any

price premium enjoyed by Mexican producers from exporting to the United States will be maintained. Because exports are a small share of total avocado production in Mexico, even a large increase in exports will not likely substantially affect the Mexican domestic price.

Comment: The analysis assumes that recent price differentials between California, Chilean, and Mexican Hass avocados will continue. I believe that a portion of the differential will disappear over time as Mexican shippers improve their quality of pack and as they establish relationships with large U.S. buyers.

Response: The model does indicate a reduction in price differentials with the increase in imports from Mexico, as shown in the following table of the results of the analysis for the proposed rule.

	Wholesale prices in the initial equilibrium	Wholesale prices with the rule
Supply region:		
California	$1.63	$1.43
Chile	1.29	1.20
Mexico	1.14	1.14
Price differences:		
California-Chile	0.34	0.23
Chile-Mexico	0.15	0.06
Mexico-California	0.49	0.29

Comment: We generally concur with the evaluation and offer the following perspectives for consideration in reviewing the model. We believe that the increase in consumption of 10.4 percent utilized in the model may be overly conservative. The introduction of Mexican grown avocados over a period of 7 years has resulted in an increase of over 400 percent in the consumption of avocados in the approved States. We believe that the quality of Mexican avocados, coupled with targeted promotional activities, may likely yield a higher growth in consumption than is assumed within the model. We believe that the impact of future imports from Chile will have a greater effect than is being projected in the model. Chilean avocado growers have invested significantly in new avocado groves that will increase the volume of fruit exported to the United States in the near future. Approximately 95 percent of Chilean avocado exports are destined for the U.S. marketplace, and it is unlikely that these exports will be reduced regardless of the opening of the U.S. marketplace to Mexican Hass avocados. We believe that greater consideration should be given to the impact that the proposed rule will have on the domestic Mexican avocado market. We believe that historical domestic consumption rates coupled with the reaction of prices in the domestic Mexican markets as a result of decreases in the domestic supply of avocados will have a significant impact. If Mexican domestic prices increase substantially, it is likely that the Mexican avocado producers will choose to supply quantities that are less than those contemplated in the model. A significant adjustment in volumes from those assumed in the model may have a considerable impact on the results of the analysis.

Response: We acknowledge the significant growth in consumption of avocados from Mexico in the approved States, but also note that this is the region and time period of weakest demand for California avocados. We do not expect the same market dominance by Mexican imports in the currently non-approved States, especially during the summer months.

The model shows continued strong participation in the U.S. avocado market by Chile. Notwithstanding the expected decline in prices earned and quantities supplied by that country, the model shows that with the rule, prices and quantities of Chilean avocados will remain higher than those of Mexican avocados.

The difference between Mexican domestic and export wholesale avocado prices is significant. Compared to an average wholesale price during the baseline period in the United States of $1.08 per pound, the average wholesale price per pound in Mexico was $0.46 in 2001, $0.37 in 2002, and $0.46 in January through October 2003. There will be price adjustments in Mexico in response to increased exports to the United States, but we do not believe that increases in Mexican domestic prices will significantly affect expected export levels.

Comment: I believe that the USDA is being negligent in concluding that the U.S. economy will have a significant net welfare benefit from the proposed rule. According to your own economic analysis (May 19, 2004), the proposed rule will result in a net welfare loss of somewhere around $85 million to the California avocado producers. However, in that same analysis you admit that you cannot reasonably predict the impact to the California producer. In fact, you conclude that the cost to producers could be as high as $114 million. Shouldn't we know with reasonable certainty whether it will cost producers $114 million or not? It is important to know because if the impact is $114 million, it will substantially eliminate the $115 million gain to the consumer.

Response: The results of the analysis for the proposed rule were tested for their sensitivity to changes in the parameters used in the model. The range in values from the sensitivity analysis for the loss in producer surplus did include $114 million as an extreme upper end-point value. Larger losses in producer surplus for Californian producers are associated with larger decreases in the price of California avocados, which also create larger welfare gains for consumers. In the preliminary economic analysis (May 19, 2004), the net change in U.S. welfare was approximately $31 million with a standard deviation of $2.3 million. Assuming a normal distribution, a 95 percent confidence interval for the net change in welfare would be approximately $26.5 million to $34.5 million.

Comment: The analysis reports that small entities are a factor to be considered, and that 98 percent of the producers are small entities. However, it does not report how much weight is to be given to this factor. I believe that it should be given much weight. This proposed rule could wipe out 6,500 avocado growers for the benefit of a handful of large Mexican avocado producers. Other ramifications would include the handlers, the fertilizer suppliers, the grove managers, equipment suppliers, the City of Fallbrook, CA, *etc*. Are these ramifications insignificant to the USDA? If not, then why have they not been accounted for?

Response: As discussed in other responses, the California avocado industry will not be eliminated by the rule, although producers will incur price and quantity declines due to increased avocado imports from Mexico. Expected losses for California's producers are evaluated as part of the expected benefits and costs of the rule. As stated in the Small Business Administration's ''A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act [RFA]'' (page 1): ''The RFA does not seek preferential treatment for small entities, require agencies to adopt regulations that impose the least burden on small entities, or mandate exemptions for small entities.''

We recognize that their will be indirect and induced effects of the rule, especially in avocado-growing localities. We note that while some U.S. entities will be indirectly affected negatively, others will benefit indirectly from the increase in imports from Mexico.

Comment: An in-depth economic and business assessment should be done to take the needed measures to avoid a negative impact in the agricultural businesses of California and Texas.

Response: An economic and business assessment of measures that could be taken to avoid negative agricultural impacts is beyond the scope of the regulatory impact analysis.

Comment: How is it Chile presently ships in avocados with no appreciable drop in price? We know this because we hear a common complaint from friends who say the fruit seems to get smaller but stays the same price.

Response: The increased supply of Mexican avocados will result in lower wholesale and producer prices for Californian and Chilean suppliers. Chile has exported avocados to the United States for many years, and the impact of imports from Chile on the aggregate price for avocados would need to be considered in terms of a base period. The aggregate price for avocados and relative prices for California, Chilean, and Mexican avocados depend on a variety of market influences, including promotional activities.

Comment: Increased imports from Mexico would increase consumption of all avocados.

Response: We expect that increased supply of Mexican avocados will cause a reduction in the demand for higher-priced avocados from California and Chile, and an increase in the total demand for avocados.

Comment: The analysis of effects for small entities should be redone using the 2002 Census of Agriculture.

Response: In the analysis prepared for this final rule, we cite the 2002 Census of Agriculture.

Effects for California Avocado Producers

A number of commenters emphasized the financial hardship and negative economic effects the rule will cause California avocado producers, with several stating that jobs will be lost and avocado farms will be put out of business.

Three examples of these types of comments are the following:

- USDA's economic analysis estimated that opening all of the United States all year to Mexican imports will reduce the price that California growers receive by about 20 percent. When you consider that avocado growers in the United States make less than a 10 percent margin on their crops, this proposal will mean an end to avocado production in the United States.
- Our county has enacted laws restricting the use of agricultural land for any other purposes. These types of laws have been upheld in court. Because Mexico clearly has cost advantages that cannot be enjoyed in the United States, many of our farms may no longer be economically viable. Our farms cannot be retooled like factories to produce different parts. We have trees that would have to be destroyed and replanted with other crops. Many growers are in situations like mine where the only possible alternate crop is lemons. It would take over 5 years and enormous costs to make that change. Right now that does not look like a practical option.
- The California avocado industry is made up almost entirely (98 percent) of small business entities. Most of these entities are likely to go out of business if the proposed rule is implemented. What now brings $330 million into the U.S. economy, and provides tens of thousands of jobs, could be destroyed forever.

The following comment received from the Office of Advocacy of the U.S. Small Business Administration encapsulates many of these issues:

''APHIS documented the impacts as a percentage of revenue lost in California, but it doesn't go the next extra step to examine how that might impact growers. The agency should determine profit margins for growers and examine how the impact will affect their bottom line, perhaps by using average industry profit margins for appropriately sized agricultural firms. This could reveal a potentially important impact caused by one parameter in the model. Specifically, very inelastic supply of avocados by California producers means that while prices fall dramatically, California growers don't reduce production much. Thus, California producer costs do not decrease nearly as much as their revenues, which drop over 30 percent. This undoubtedly will strain profit margins and suggests that there potentially could be significant business closures among growers—particularly among very small growers—who may exit the market. APHIS should consider completing a profitability analysis that will assess the possibility of business closures. Ideally, the model should also include a more long run market analysis that will allow entry and exit of producers. It seems likely that with the possibility of exit, and the relatively elastic supply of Mexican avocados, the losses to California growers will be greater in the long run than in the short run.''

Response: California producers will be economically harmed by the rule, but not as severely as they would be if there were no delayed access of Mexican Hass avocados into California, Florida, and Hawaii. As shown in the analysis for this final rule, we have no reason to expect the demise of the California avocado industry.

The question of effects of the rule on small entity profit margins is not easily addressed. Each avocado farm draws upon a unique set of human and capital resources and marketing arrangements that define its financial position and prospects. Profit margins vary among firms and from one season to the next. Nonetheless, the Agency agrees with the commenter that small-entity producers with recent histories of small or negative profit margins may be placed at risk by the rule.

As an indicator of possible effects, we reproduce in the following table part of the results of a profitability analysis published in 2002. The table shows returns to management (returns per acre above cash and non-cash costs) for various price-yield combinations. For example, for a yield of 5,000 pounds per acre, a drop in price from $1.10 to $1.00 per pound would mean returns to management declining from $276 per acre to a negative $224 per acre.

The profitability analysis was based on avocado orchard establishment and production practices considered typical in Ventura and Santa Barbara Counties. The results are applicable to the economic analysis to the extent that costs and returns in Ventura and Santa Barbara Counties in 2001 are similar to those for California Hass avocado producers generally between October 2001 and October 2003. With the rule, California producer prices are shown to fall from $1.02 to $0.81 per pound. Using the price-yield combinations from the table, farms with yields of at least 7,000 pounds per acre would still show positive returns to management (although total returns would be reduced due to the 7.3 percent decline in California's overall supply indicated by the model). Farms with yields of 6,000 pounds per acre would move from positive to negative returns to management. Farms with yields of 5,000 pounds per acre or less would probably not be providing positive returns to management to begin with, given the initial baseline price of $1.02 per pound. The 2003–2004 estimated average yield for Hass avocado orchards in California is 6,865 pounds per acre (California Avocado Commission, *http://www.avocado.org/growers/pages/2000_38.php?sd=growers*).

RETURNS TO MANAGEMENT PER ACRE FOR VARIOUS YIELDS AND PRICES, VENTURA AND SANTA BARBARA COUNTIES, 2001

	Yield in pounds per acre								
	3,000	4,000	5,000	6,000	7,000	7,500	8,000	9,000	10,000 Dollars per acre
Dollars/pound:									
$0.70	−$2,871	− $2,298	−$1,724	−$1,151	−$557	−$290	−$4	$570	$1,143
0.80	−2,571	−1,898	−1,224	−551	123	460	796	1,470	2,143
0.90	−2,271	−1,498	−724	49	823	1,210	1,596	2,370	3,143
1.00	−1,971	−1,098	−224	649	1,523	1,960	2,396	3,270	4,143
1.10	−1,691	−698	276	1,249	2,223	2,710	3,196	4,170	5,143
1.20	−1,371	−298	776	1,849	2,923	3,460	3,996	5,070	6,143
1.30	−1,071	102	1,276	2,449	3,623	4,210	4,796	5,970	7,143

Source: Table 7 of ''Avocado Sample Establishment and Production Costs and Profitability Analysis for Ventura and Santa Barbara Counties, Based on 2001 Data Collected in Ventura and Santa Barbara Counties, California,'' by Etaferahu Takele, Ben Faber, and Silvana Chambers, UCCE Southern California.

The rule may contribute to some small entity avocado farms failing, if their operation is already showing borderline returns. We note that the California avocado industry has been trending toward fewer operations, with expansion only among the very largest producers. Overall, the number of avocado farms in California dropped by nearly 20 percent between 1997 and 2002, from 5,963 to 4,801 farms. This decline in the number of avocado farms is on top of a 16 percent decline between 1992 and 1997. There was a decrease in the number for farms of all sizes except those with 100 or more acres (which increased in number from 99 in 1997 to 114 in 2002), and the smaller farms experienced the larger percentage declines. Even without this rule, avocados farms are becoming fewer, with the sharpest decline for those of smallest size.

Comment: APHIS should analyze the potential impact to the very small growers with less than 5-acre plots, and potentially those in the next higher size category as well. As it stands, the analysis for the proposed rule mentions only that it is likely these growers produce other agricultural products in addition to avocados because of the small revenue earned from avocado production. To analyze profitability and business survival, a proper baseline of revenues for these producers would need to be established, including revenues from all production, so that the losses from diminished avocado revenues could be properly analyzed. One way to accomplish this might be to assume that these growers would earn revenues equivalent to the average small farm in California.

Response: In the analysis for the proposed rule, we took note of the large number of very small avocado farms. The 1997 Census of Agriculture data showed over half of the avocado farms that year harvested less than 5 acres. Average 1997 receipts for these farms was about $4,800.

We did not intend to imply that these smaller avocado producers grow other crops, but only that their average annual revenue from avocado production would necessitate other sources of income. We agree that to properly analyze impacts of the rule for small entities, we would need to have data on these other revenue sources, but this information is not available. If all revenue sources for small entity avocado producers could be obtained, it would likely indicate a wide range of income from a variety of sources. We have no basis for assuming that agricultural receipts for California's small entity avocado growers are on average equivalent to revenues earned by other small entity farmers in that State. Other Comments

Comment: In its analysis, APHIS mentions that California, Florida, and Hawaii produce avocados. However, the analysis included in the proposed rule only discusses the impact on California producers. While it is clear that Hawaii produces avocados for intrastate consumption, there should be some discussion of the impact of the rule on Florida producers. For example, the rule should identify the number of producers in Florida and estimate how many are small and thus will be impacted by the rule.

Response: Production of Hass avocados in Florida and Hawaii is negligible, and therefore producers in those States will not be directly affected by the rule. The green-skin avocado varieties grown in Florida and Hawaii and Hass avocados grown in California are weak substitutes for one another and should not be compared, as evidenced by the large difference in their prices. The 2003–2004 average prices per ton were $2,170 for California avocados (where the Hass variety is dominant), $1,240 for Hawaii avocados, and $808 for Florida avocados (USDA NASS, ''Noncitrus Fruits and Nuts 2003 Summary,'' July 2004). In the model, green-skin avocado varieties are included with other goods that compete with Hass avocados for the consumer's dollar. Whatever indirect impacts the rule may have on small entity avocado producers in Florida and Hawaii are expected to be small, all the more so given the 2-year delay of entry of Mexican Hass avocados into those States.

Comment: The permanent reduction in California avocado acreage because of the rule will lead to the loss of open space and costs of urbanization that are not taken into account in the analysis.

Response: Replacement of avocado orchards by housing communities signifies the land acquiring greater value in another use. We acknowledge that non-market valuations may not be fully realized in the transaction. If an avocado orchard, even though privately owned, has additional value to society as open space, then theoretically, publicly allocated resources could be used to maintain the land in that use. It would be very difficult to identify over time the loss of open space and increased urban development attributable specifically to the rule. Even if it were possible, the sale and purchase of land and changes in land use reflect the non-uniform values and personal preferences of society. To speak only of the costs of urbanization neglects the welfare gains of those benefitting from the new communities.

Comment: The following comments concerned zoning restrictions and how they may limit alternative uses of land where avocados are currently grown:

I suggest that an economic impact report be made by a qualified U.S. economist, paid by Mexican growers, to understand the consequences of the elimination of the avocado industry in the San Diego and Ventura Counties, CA. The conclusion may well show that the citrus industry would be affected negatively by putting a crimp on the supporting industries. I am clearly aware that Ventura County has zoning ordinances to minimize development for that very reason. If it is so important to restrict land developments, there must be a very significant reason to maintain viability in the farming industry.

Our county has enacted laws restricting the use of agricultural land for any other purposes. These types of laws have been upheld in court. Because Mexico clearly has cost advantages that cannot be enjoyed in the United States, many of our farms may no longer be economically viable. Our farms cannot be retooled like factories to produce different parts. We have trees that would have to be destroyed and replanted with other crops. Many growers are in situations like mine where the only possible alternate crop is lemons. It would take over 5 years and enormous costs to make that change. Right now that doesn't look like a practical option.

Response: If local governments require that land be kept in agricultural use regardless of its agricultural return, then the land's public value as an agricultural asset or open space may exceed its private productive value. If in such circumstances avocado production for some producers were no longer viable and local land use restrictions would only allow the land to be used in its next best agricultural use, then private and public valuations may well diverge.

Comment: Not only is it unfair to me, but unfair to the general population. Someone is not looking at the big picture. In my community, 80 percent of water usage is agricultural (avocados). This means that the water delivery system is paid for, in large part, by the growers. As soon as this rule takes effect, it no longer makes sense to water and I begin selling firewood. When I stop watering, the 20 percent of water users now have to pay for 100 percent of the delivery system resulting in domestic water rates tripling, or worse.

Response: We can expect the land to be put to productive use, whether to grow avocados or for other agricultural or non-agricultural purposes. Water fees that are charged can be expected to be modified as uses of the land change. To the extent that water delivery costs are principally borne by avocado producers, there could be a cost realignment if land is moved from agricultural to non-agricultural uses.

Comment: I believe the entire issue of ''free trade'' is clouded by the reality that its beneficiaries are often not (as we would hope) independent producers in other countries gaining access, at a reasonable scale, to the U.S. market. Rather, the beneficiaries are more often American or multinational corporations that transfer production (and jobs) offshore on a massive scale to take advantage of relaxed trade rules, along with lower labor costs, more lenient environmental and safety regulations, and avoidance of U.S. taxation. Offshore competition at that scale is bad for everyone except the owners of the corporations involved. American consumers may enjoy lower prices for a while, but at whose expense?

Response: The increase in Mexican avocado imports will benefit U.S. consumers and Mexican producers. Firms involved in the trade, including U.S. handlers and importers, will benefit as well. The range of beneficiaries will extend beyond owners of corporations.

Comment: Imported fruits and vegetables will lower the price of non-organic produce to a degree that California organic farmers will not be able to compete in the marketplace and will be forced to use non-organic techniques to survive financially.

Response: Lower-priced, non-organic imports will reduce demand for organically grown produce to the extent that customers' willingness to forgo organically grown produce is price responsive. The expected increase in Mexican avocado imports because of the rule will lead to lower avocado prices. We cannot comment on whether the price decline will affect demand for organically grown avocados.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be economically significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

This rule amends the regulations to expand the number of States in which fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, may be distributed and to allow the distribution of the avocados during all months of the year. For the first 2 years following the effective date of this rule, those avocados may be distributed in all States except California, Florida, and Hawaii; after 2 years, the avocados may be distributed in all States. We are taking this action in response to a request from the Government of Mexico and based on our finding that the phytosanitary measures described in this final rule will reduce the risk of introducing plant pests associated with Mexican Hass avocados into the United States.

For this rule, we have prepared an economic analysis. The economic analysis contains cost-benefit analysis as required by Executive Order 12866, as well as a final regulatory flexibility analysis that considers the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**. In addition, the full analysis may be viewed on the Internet at *http://www.aphis.usda.gov/ppq/avocados/*.

Summary of Economic Analysis

Impacts are analyzed using a partial equilibrium model. Expected effects of two alternatives are compared: (1) Allowing Hass avocados from Mexico to enter all States year-round except California, Florida, and Hawaii, for which entry would be delayed 2 years (as set forth in the rule); and (2) allowing Hass avocados from Mexico to enter all States year-round with no delay for any States.

The model describes three demand regions and three supply regions for two time periods. The three demand regions are: The 31 northeastern and central States (and the District of Columbia) currently approved to receive Hass avocado imports from Mexico during the 6-month period October 15–April 15 (Region A); 15 Pacific and southern States, excluding California, Florida, and Hawaii, not currently approved to receive Hass avocados from Mexico (Region B); and California, Florida, and Hawaii (Region C). (Mexican Hass avocados have been allowed entry into Alaska since 1993.) The three supply regions in the model are California, Mexico, and Chile. Nearly all U.S. Hass avocado production takes place in

California. Over 96 percent of all Hass avocado imports are supplied by Chile and Mexico. The two time periods specified in the model are the 6-month period during which Hass avocado imports from Mexico are currently allowed, October 15–April 15 (Period 1), and April 16–October 14 (Period 2). Throughout the following discussion, ''avocado'' refers only to fresh Hass avocados unless otherwise indicated.

Currently, Mexico is exporting to the United States a fraction of the avocados that could be exported from approved orchards and municipalities in the State of Michoacan. For the market year 2003/2004, an estimated 479 million pounds of avocados will be produced in certified areas. During the baseline period, October 15, 2001, to October 15, 2003, annual imports from Mexico totaled 58.2 million pounds, or about 12 percent of what currently could be certified for export to the United States. It is apparent that Mexican producers could readily expand avocado exports to the United States at the current price level. Compared to an average wholesale price during the baseline period in the United States for Mexican avocados of $1.08 per pound, the average wholesale price per pound in Mexico was $0.46 in 2001, $0.37 in 2002, and $0.46 in (January through October) 2003.

With respect to pest risks, a systems approach currently in place provides multiple safeguards against pest introduction. Risk mitigation measures include pest field surveys; orchard certification; and packinghouse, packaging, and shipping requirements. Since shipments into the conterminous United States began in 1997, cutting and inspection of over 10 million Mexican Hass avocados has not revealed any quarantine pests.

The pest risk assessment for the rule finds an overall low likelihood of pest introduction, concluding with 95 percent confidence that:

- Fewer than 393 infested avocados will enter the 47 States each year.
- Fewer than seven avocados infested with stem weevil, seed weevils and seed moth will enter avocado producing areas outside of California, Florida, and Hawaii each year.
- Fewer than 98 avocados infested with fruit flies will enter fruit fly susceptible areas outside of California, Florida, and Hawaii each year.
- Fewer than one avocado infested with stem weevil, seed weevils, or seed moth will be discarded in avocado-producing areas outside of California, Florida, and Hawaii each year.
- Fewer than five avocados infested with fruit flies will be discarded in fruit fly susceptible areas outside of California, Florida, and Hawaii each year.

Even if some infested avocados entered the United States, the likelihood of pest establishment and spread would require that: (1) The infested avocados must be in close proximity to host material; (2) the pests must find mates; (3) the pests must successfully avoid predation; (4) the adult pests must find host material; and (5) the climatological and microenvironmental conditions must be suitable. These factors substantially reduce the likelihood of establishment. The degree of pest risk reduction attributable to each of the factors has not been quantified. People generally consume the fruit they purchase and dispose of the waste material in a manner (such as in plastic bags that are land-filled or incinerated) that precludes the release of pests into the environment. The economic analysis examines expected effects of the rule and the no-delay alternative without quantifying the very small risk of pest entry and establishment. The difference in risk between the two alternatives is assumed to be negligible.

The rule includes certain changes from existing risk-mitigating requirements. In the approved orchards in Michoacan, Mexico, surveys for the quarantine pests of concern will be increased from annually to semiannually, since the avocados will be allowed to be imported throughout the year. In the packinghouses, a sample of 300 avocados per consignment currently must be selected, cut, and inspected and found free from pests. APHIS is replacing the specific sample size of 300 fruit with a requirement for a biometric sample at a rate determined by the Agency to be appropriate for the size of the particular consignment.

Currently, handlers and distributors are required to enter into compliance agreements with APHIS, as well as satisfy requirements regarding the repackaging of the avocados after their entry into the United States. These requirements are to ensure that handlers and distributors are familiar with the distribution restrictions and other requirements of the regulations, and to ensure that any boxes used to repackage the avocados in the United States bear the same information that is required to be displayed on the original boxes in which the fruit is packed in Mexico.

The repackaging requirements will be maintained. However, APHIS has decided that requiring compliance agreements for 47 States is both untenable and unnecessary. For the 2 years during which Hass avocados from Mexico will be prohibited from entering California, Florida, and Hawaii, there are appropriate safeguards such as fruit and package labeling, regulatory prohibition from importing into and transiting through these three States, and ample penalties for violation of these regulations under the Plant Protection Act.

Currently, Hass avocados from Mexico may enter the United States only at certain ports. These port-of-entry limitations are intended to work in concert with the shipping area provisions to ensure that the avocados are moved by the most direct route to the approved States where they may be distributed. The port-of-entry limitations will be revised to allow Hass avocados from Mexico to enter all States except California, Florida, and Hawaii. If the avocados are moved by air, the aircraft will not be allowed to land in California, Florida, or Hawaii. Hass avocados as residue cargo on maritime vessels will not be offloaded in California, Florida or Hawaii.

Costs related to any of these changes from the current requirements are expected to be small and not significantly influence the supply of Mexican avocados. Costs associated with risk mitigation changes in Mexico will be borne by Mexican entities.

Alternatives

One alternative would be to leave the regulations unchanged. In this case, access of Mexican avocados would continue to be restricted to the 31 States and the District of Columbia currently approved to receive avocados from Mexico between October 15 and April 15 (and Alaska year-round).

With no rule change, demand for avocados from all three supply regions would continue to increase due to population and income growth, with the relative percentages supplied by California, Chile, and Mexico shifting in response to changes in relative prices and preferences. It is noted that Mexico's avocado exports to the United States have been expanding rapidly (27.9 million pounds in 2001, 58.8 million pounds in 2002, 76.8 million pounds in 2003), as it acquires a larger share of the market in the approved States between October 15 and April 15. During the baseline period (October 15, 2001, to October 15, 2003), more than 68 percent of avocado sales in this region and time period were supplied by Mexico, an increase of nearly 11 percent from its market share between October 15, 2000, and October 15, 2002.

The analysis that follows considers two alternatives to the status quo: The rule, which will allow access of Mexican avocados to all States year-round with a 2-year delay for California,

Florida, and Hawaii, and the alternative of allowing Mexican avocados to enter all States year-round with no delays.

The Model

Both the rule, which includes the 2-year delay in allowing avocados from Mexico into California, Florida, and Hawaii, and the no-delay alternative are compared to the baseline. Initial quantities and prices used as the baseline for the model are averages for the 2-year period October 15, 2001, to October 15, 2003. California producer prices are prices ''out the packinghouse door'' reported by the California Avocado Commission. Chilean and Mexican producer prices are unit import prices reported by USDA's Foreign Agricultural Service.

Wholesale price data are taken from prices reported in Wholesale Market Fruit Reports (various issues), by Market News Archive, USDA Agricultural Marketing Service. Prices for Mexican avocados include costs associated with risk mitigation measures. Changes in Mexican avocado costs that may result because of revised risk mitigation measures, such as the increased frequency of orchard surveys and the larger number of approved ports of entry, are assumed to be minor. A fixed Mexican avocado price is assumed throughout the analysis.

The analysis is based on a set of equations that describe, on the demand side, avocado consumption in the United States, and on the supply side, foreign and domestic avocado production for the U.S. market. Demand for avocados in the model is based on a utility function for a representative consumer. On the supply side, the model captures the option of producers to leave ripe avocados on the tree and vary their sale between time periods as relative prices change.

Shift parameters are used in specifying the model's utility function. The shift parameters can be thought of as reflecting non-price influences on demand. As described in the economic analysis, even if avocados from the three supply regions were equal in price, demand for them would not be the same because of consumers' perceptions and preferences. A decrease in the shift parameter for avocados from any of the three supply regions signifies a decrease in demand relative to the demand for avocados from the other regions, for reasons other than a change in price.

Simulation of the changes in Mexican avocado import restrictions as set forth in the and the no-delay alternative (no delay) requires that the model account for year-round access to the newly approved demand regions. New accessibility is represented by changing the shift parameters for these regions from zero values based on current regulatory restrictions, to non-zero values based on consumer preference.

Effects on Supply and Demand

Expected quantity and price impacts of the rule and the no-delay alternative are shown in table 1. With the rule, avocado consumption is expected to increase by 9 percent, from 581 million pounds to 634 million pounds. Quantities supplied by California and Chile will decline by 7.3 percent and 10.3 percent, respectively, while imports from Mexico will increase to 2.6 times their initial level, from 58 million pounds to 154 million pounds. Prices for California avocados will fall by 12.3 percent at the wholesale level (from $1.63 to $1.43 per pound) and by 20.6 percent at the producer level (from $1.02 to $0.81 per pound).

Under the no-delay alternative, avocado consumption would increase by 13.7 percent, from 581 million pounds to 661 million pounds. Quantities supplied by California and Chile would decline by 12.2 and 16.5 percent, respectively, while imports from Mexico would increase to 209 million pounds, 3.6 times their initial level. California's prices would fall by 20.9 percent at the wholesale level (from $1.63 to $1.29 per pound) and by 34.3 percent at the producer level (from $1.02 to $0.67 per pound). Thus, all impacts would be larger in comparison to expected effects with the rule.

Effects by demand region, supply region, and time period are provided by the model. Because overall demand for avocados from California and Chile will decrease in both time periods, wholesale and producer prices for avocados from California and Chile also will decrease in both time periods. With the rule, 62 percent of avocado imports from Mexico will enter during Period 1. Since imports from Mexico during Period 1 will comprise a larger share of total avocado consumption, they will exert greater downward pressure than during Period 2 on prices of avocados supplied by California and Chile. In Region B during Period 1, avocados from Mexico will displace 32 percent of the avocados that had been supplied by California. During Period 2, Mexican avocados will displace 19.5 percent and 20.6 percent of California avocados in Regions A and B, respectively.

TABLE 1.—SUMMARY OF NEAR-TERM CHANGES IN ANNUAL QUANTITIES AND PRICES [1]

	Initial prices and quantities	With rule [2]	With alternative to rule [3]
	Million pounds		
Quantity:			
Total	581.071	633.542	660.868
Supplied by:			
California	346.011	320.821	303.866
Chile	176.814	158.695	147.695
Mexico	58.247	154.026	209.307
	Dollars per pound		
Wholesale price of avocados supplied by:			
California	$1.63	$1.43	$1.29
Chile	1.29	1.20	1.15
Producer price for:			
California	1.02	0.81	0.67
Chile	0.59	0.49	0.44

[1] Prices weighted by regional and time period quantities. Producer and wholesale prices for avocados from Mexico are assumed constant in the model.
[2] Year-round entry of Hass avocados from Mexico into all States, except California, Florida, and Hawaii.
[3] Year-round entry of Hass avocados from Mexico into all States.

Welfare Effects

Price and quantity changes described by the model translate into the welfare changes for U.S. avocado consumers and producers shown in table 2. A portion of consumer gains may be captured by retailers exerting market power in setting avocado retail prices. To the extent that this occurs, overall welfare gains are slightly overstated and there is a small deadweight loss.

With the rule, the decrease in California avocado prices due to producers' inelastic supply response will result in gains in consumer utility across all regions and time periods of $121.7 million. Not surprisingly, consumers in Region A in Period 1 will gain the least, since this is the region and time period already approved to receive avocados from Mexico. Consumer gains in Region B will be greater than in Region C in both time periods, since Mexican avocados will be restricted from entering Region C. Under the no-delay alternative, consumer gains ($184.5 million) would be over 50 percent greater than with the rule, illustrating the significance of avocado demand in Region C.

Welfare impacts for avocado producers in California and Chile are determined by computing changes in producer surplus based on their avocado factor endowment supply curves. A fall in producer prices will decrease the amount of factor endowment employed in avocado production. Given the decline in producer prices, California avocado producers would experience welfare losses equivalent to $71.4 million with the rule, and $114.4 million under the no-delay alternative.

The net change in U.S. welfare is computed by subtracting losses for California producers from consumer gains. As shown, the net welfare gains would be $50.3 million with the rule and $70.1 million under the no-delay alternative. Although the no-delay alternative is preferable in terms of net benefits, the 2-year delay of entry of Mexican avocados into California, Florida, and Hawaii has been chosen by USDA because it will provide an opportunity for the efficacy of the rule's risk-mitigating safeguards to be demonstrated through year-round distribution to the remaining 47 States, as Mexican avocados currently are only allowed entry during the winter months.

A sensitivity analysis was conducted that considers alternative values for the elasticities of substitution and transformation and California's aggregate supply elasticity in recognition of the uncertainty surrounding the values of these parameters. Because no information is available about their distributions, uniform distributions were assumed. The results of the sensitivity analysis for the welfare effects are given in the standard deviation columns in table 2. As shown, the standard deviations for the changes in consumer welfare are small. The standard deviations for the changes in producer welfare are larger, implying greater variability. This greater variability is largely attributable to the wide distribution assumed for California's aggregate supply elasticity in the sensitivity analysis; there is greater uncertainty with respect to the supply elasticity as compared to the demand-based elasticities of substitution. If the change in producer surplus for California avocado producers is normally distributed, the 95 percent confidence interval for their welfare loss with the rule would be ($45 million, $102 million), and with the alternative to the rule, ($76 million, $158 million).

TABLE 2.—NEAR-TERM WELFARE GAINS AND LOSSES [1]

[Dollars in millions]

	With rule [2]		With alternative to rule [3]	
	Change in welfare	Standard deviation [4]	Change in welfare	Standard deviation
Losses in producer welfare:				
California	−$71.37	$14.27	−$114.39	$20.48
Chile	−15.71	5.29	−24.35	5.79
Gains in consumer welfare:				
Period 1: [5]				
Region A [6]	4.02	0.99	7.84	1.18
Region B [7]	21.92	2.08	29.66	2.34
Region C [8]	14.17	3.34	27.33	2.48
Period 2: [9]				
Region A	24.98	2.70	32.42	4.22
Region B	31.76	3.38	41.08	5.29
Region C	24.81	5.29	46.12	6.34
Total	121.66	3.61	184.45	1.93
Net U.S. welfare change [10]	50.29	14.27	70.06	20.48

[1] The difference between baseline values and (i) values with the rule and (ii) values with the alternative to the rule.
[2] Year-round entry of Hass avocados from Mexico into all States, except California, Florida, and Hawaii.
[3] Year-round entry of Hass avocados from Mexico into all States.
[4] Standard deviations of the sensitivity analysis distributions.
[5] October 15–April 15.
[6] The 31 northeastern and central States (and the District of Columbia) currently approved to receive Hass avocado imports from Mexico during the 6-month period, October 15–April 15. (**Note:** Mexican Hass avocados are allowed to enter Alaska year-round.)
[7] Fifteen Pacific and southern States, excluding California, Florida, and Hawaii, not currently approved to receive Hass avocados from Mexico.
[8] California, Florida, and Hawaii.
[9] April 16–October 14.
[10] The sum of welfare losses for California producers and U.S. consumer welfare gains for all regions and both periods.

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions. U.S. businesses that will be directly affected by the rule are Hass

avocado producers, handlers and importers.

Hass Avocado Producers. An avocado farm is considered small if it has annual receipts of not more than $750,000. (All small-entity definitions in this analysis are provided in Title 13 of the Code of Federal Regulations, Part 121: Small Business Size Regulations.) Based on 2002 Census of Agriculture data, over 97 percent of California avocado farms are small entities (4687 out of a total of 4801 farms). We describe the expected impact of the rule and the no-delay alternative for these small-entity producers in terms of decreases in gross revenue, as derived from the results of the general analysis. The model indicates that with the rule there will be a 26.7 percent decline in gross revenue, assuming the decrease is proportionally spread across all farms (table 3). Under the no-delay alternative, there would be a 42.2 percent decline in gross revenue. The gross revenue declines are attributable more to decreases in price than to decreases in quantity (table 4).

The status quo alternative would be preferable for California's avocado producers, but it would not yield the net benefits to the United States shown to be gained by expanding U.S. access for Mexican avocados. The rule is preferable to the no-delay alternative for California producers. The analysis shows prices for California producers falling by 21 cents per pound and California avocado production decreasing by 25 million pounds under the rule, compared to declines of 35 cents per pound and 42 million pounds if there are no delays (table 1). Producer surplus losses—declines in revenue beyond variable costs—are estimated with the rule to be about $71 million, compared to losses of about $114 million without the 2-year delay (table 2). In all respects, California producers will be harmed less when there is a 2-year delay for California, Florida, and Hawaii.

TABLE 3.—ANNUAL IMPACT ON GROSS REVENUE FOR CALIFORNIA HASS AVOCADO PRODUCERS

[Dollars in millions]

	With rule [1]	With alternative to rule [2]
Initial gross revenue (baseline)	$354.32	$354.32
Gross revenue with the rule or alternative to the rule	259.58	204.73
Decrease in gross revenue incurred by large and small Hass avocado producers	94.74	149.59
Decrease incurred by small-entity avocado producers [3]	59.69	94.24
Decrease as a percentage of initial gross revenue [4]	26.7%	42.2%

[1] Year-round entry of Hass avocados from Mexico into all States, except California, Florida, and Hawaii.
[2] Year-round entry of Hass avocados from Mexico into all States.
[3] Decreases in gross revenue are multiplied by 63 percent, the percentage of the total value produced by farms with less than 100 acres harvested. Hass avocado production is assumed to be proportionally distributed among farms of all sizes.
[4] The decrease in gross revenue is assumed to be proportionally spread across all producers.

TABLE 4.—PERCENTAGE CHANGES IN CALIFORNIA AVOCADO PRODUCER PRICES AND IN QUANTITIES OF AVOCADOS SUPPLIED BY CALIFORNIA

	With rule [1]		With alternative to rule [2]	
	Price	Quantity	Price	Quantity
Period 1 [3]	−20.0%	−6.8%	−37.3%	−14.0%
Period 2 [4]	−21.3%	−16.0%	−33.2%	−19.4%

[1] Year-round entry of Hass avocados from Mexico into all States, except California, Florida, and Hawaii.
[2] Year-round entry of Hass avocados from Mexico into all States.
[3] October 15–April 15.
[4] April 16–October 14.

The past decade has seen a decrease in the number of small-entity California avocado producers and in the number of acres harvested. Revenue declines because of the rule are expected to be large compared to losses that small-entity producers may have experienced because of the industry's contraction and growing concentration. California producers will be harmed by the rule, but we cannot predict that a certain number of firms may fail. Each avocado farm draws upon a unique set of human and capital resources and marketing arrangements that define its financial position and prospects. Firm survival will depend on these specific conditions, but in general those small-entity producers with recent histories of small or negative profit margins will be most at risk.

Handlers. California Hass avocado handlers (firms engaged in post-harvest activities) will be directly affected by the rule. Companies handling avocados are considered small businesses if their annual receipts are not more than $5 million. By this definition, 40 out of 51 firms that will be affected by the rule, are small entities.

The decrease in producers' revenues will mean a decrease in receipts by small-entity handlers as well. Negative impacts may be at least partially alleviated by additional avocado business activities in Mexico in which U.S. handlers may be involved, but it is unlikely that the smaller firms will have this opportunity. Decreased receipts from reduced avocado sales may also be moderated if the firms are engaged in handling produce other than avocados. Like California producers, affected handlers will benefit from the 2-year delay.

Importers. Firms that import avocados are defined as small entities if they have 100 or fewer employees. The annual wholesale value of Hass avocados imported by 52 of the 85 firms expected to be affected by the rule is less than $1 million. We believe these firms are likely to employ fewer than 100 employees, and therefore can be considered will be small entities. As a group, these firms will benefit from the increase in imports of Hass avocados from Mexico (an increase of nearly 96 million pounds with the rule), but gains

will be tempered by reduced imports from Chile (a reduction of about 18 million pounds).

For small-entity Hass avocado importers, the no-delay alternative would be preferable, since it would mean a larger increase in imports (taking into account reduced quantities from Chile): 122 million pounds compared to 78 million pounds with the rule. In either case, importers will benefit compared to leaving the regulations unchanged.

Longer-Term Effects

This analysis describes near-term impacts of two alternatives to current regulations restricting the importation of avocados from Mexico: The rule, which will allow the avocados to enter all States year-round except California, Florida, and Hawaii, for which entry would be delayed two years; and an alternative to the rule, which would allow importation into all States year-round with no delay for any States. The near term may be thought to represent the first year that the rule is in effect. We address here the question of how the alternatives compare in the longer term.

A static, partial equilibrium model is used to depict expected effects of the regulatory change. An initial market equilibrium for avocados was determined based on baseline quantities and prices. Regulatory expansion of access of Mexican avocados into the U.S. market can be thought of as an exogenous shock. The resulting increase in avocado imports from Mexico will lead, in general, to a decline in the prices and quantities of avocados supplied by California and Chile. A new partial equilibrium is attained through regional price and quantity changes, given the parameters of the model. Whether the effects described in the analysis would be fully realized in the first year of the rule is not known. While the sale of Mexican avocados year-round and the addition of 15 States with the rule (or 18 States under the alternative) will have immediate effects, impacts in the first 12 months may or may not match those described by the model. Changes in buyers' perceptions and preferences—the non-price influences represented by the model's shift parameters—will occur over a period of time. The model does not inform as to how long this transition will take.

If we assume that the effects described in this analysis do occur in the first year, and we assume that the changed supply and demand conditions continue into the second year, then by the end of the second year the effects would be twice those reported in the analysis. When compared to the baseline, the net welfare gain attributable to the rule would be about $50 million in Year 2, the same as in Year 1, for an undiscounted net gain of about $100 million over the two years. (The preferred comparison would be one of conditions with and without the rule in Year 2, but the model describes neither of these situations.)

More realistically, by the second year there will be production and marketing responses by California producers to the substantial increase in avocado imports from Mexico. Altered regional marketing strategies and industry promotional activities, for instance, may influence the effects for California producers from Year 1 to Year 2 of the rule (or of the alternative). We do not believe that the new equilibrium described by the model, assumed to be attained in Year 1, will remain unchanged in Year 2.

In Year 3 and afterwards, as long as there are not any pest discoveries that prevent expansion of Mexican avocado imports into California, Florida, and Hawaii, the rule and the alternative are the same. Changes in Year 3 of the rule can be expected to be broadly similar to differences in impact between the rule and the alternative described by the model for Year 1. There will be a further decrease in producer welfare and increase in consumer welfare, with the latter outweighing the former for an overall net increase in U.S. welfare.

We would not expect the changes in Year 3 to be equal to the differences in impact between the rule and the alternative described for Year 1. Inclusion of California, Florida, and Hawaii will take place two years after the year-round and 15-State expansions have occurred. Two years of Mexican avocado imports into southern and western States may result in regional prices and quantities different from those portrayed by the model. The Year 1 difference between the rule and the alternative in net welfare gains is estimated to be about $20 million, but the undiscounted net welfare gain in Year 3 of the rule will probably have a different value.

The analysis shows near-term impacts of the rule and the alternative. The period is assumed to represent the first year that the rule is in effect. Differences in impact between the rule and the alternative will continue during Year 2, but are unlikely to be the same as modeled for the first year. The third-year adjustment, when the rule will allow Mexican avocado imports into all States, will remove all distinctions between the rule and the alternative. Effects in Year 3 will be like those indicated by the Year 1 differences in impact between the rule and the alternative, but the quantity, price, and welfare changes are likely to differ from those described by the model for Year 1.

This rule contains no new information collection requirements. (*See* ''Paperwork Reduction Act'' below.)

Small Business Regulatory Enforcement Fairness Act of 1996

This rule has been designated by the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, as a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801–808). Accordingly, the effective date of this rule has been delayed the required 60 days pending congressional review.

Executive Order 12988

This final rule allows Hass variety avocados to be imported into the United States from Mexico. State and local laws and regulations regarding Hass variety avocados imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this final rule. The assessment provides a basis for the conclusion that the potential environmental impacts associated with the importation of Hass avocados from Mexico under the conditions specified in this rule will not present a risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C.

4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment and finding of no significant impact are available for viewing on the Internet at *www.aphis.usda.gov/ppq/avocados/*. Copies of the environmental assessment and finding of no significant impact are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450 and 7701–7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§ 319.56–2bb [Removed and Reserved]

■ 2. Section § 319.56–2bb is removed and reserved.

■ 3. Section 319.56–2ff is amended as follows:

■ a. By revising the section heading and the introductory text of the section to read as set forth below.

■ b. By revising the introductory text of paragraph (c) and paragraphs (c)(1)(i) and (c)(1)(ii) to read as set forth below.

■ c. By revising the introductory text of paragraph (c)(2) and paragraphs (c)(2)(i) and (c)(2)(v) to read as set forth below.

■ d. By revising the introductory text of paragraph (c)(3) and paragraphs (c)(3)(i), (c)(3)(iv), (c)(3)(vi), and (c)(3)(vii) to read as set forth below.

■ e. By revising paragraphs (d), (e), and (f) to read as set forth below.

■ f. By removing paragraphs (g), (h), and (k) and redesignating paragraphs (i) and (j) as paragraphs (g) and (h), respectively.

■ g. By revising newly redesignated paragraph (g) to read as set forth below.

§ 319.56–2ff Administrative instructions governing movement of Hass avocados from Michoacan, Mexico.

Fresh Hass variety avocados (*Persea americana*) may be imported from Michoacan, Mexico, into the United States only under a permit issued in accordance with § 319.56–3, and only under the following conditions:

(a) * * *

(2) Between January 31, 2005 and January 31, 2007, the avocados may be imported into and distributed in all States except California, Florida, and Hawaii. After January 31, 2007, the avocados may be imported into and distributed in all States.

* * * * *

(c) *Safeguards in Mexico.* The avocados must have been grown in the Mexican State of Michoacan in an orchard located in a municipality that meets the requirements of paragraph (c)(1) of this section. The orchard in which the avocados are grown must meet the requirements of paragraph (c)(2) of this section. The avocados must be packed for export to the United States in a packinghouse that meets the requirements of paragraph (c)(3) of this section. The Mexican national plant protection organization (NPPO) must provide an annual work plan to APHIS that details the activities that the Mexican NPPO will, subject to APHIS' approval of the work plan, carry out to meet the requirements of this section; APHIS will be directly involved with the Mexican NPPO in the monitoring and supervision of those activities. The personnel conducting the trapping and pest surveys must be hired, trained, and supervised by the Mexican NPPO or by the Michoacan State delegate of the Mexican NPPO.

(1) *Municipality requirements.* (i) The municipality must be listed as an approved municipality in the bilateral work plan provided to APHIS by the Mexican NPPO.

(ii) The municipality must be surveyed at least semiannually (once during the wet season and once during the dry season) and found to be free from the large avocado seed weevil *Heilipus lauri,* the avocado seed moth *Stenoma catenifer,* and the small avocado seed weevils *Conotrachelus aguacatae* and *C. perseae.*

* * * * *

(2) *Orchard and grower requirements.* The orchard and the grower must be registered with the Mexican NPPO's avocado export program and must be listed as an approved orchard or an approved grower in the annual work plan provided to APHIS by the Mexican NPPO. The operations of the orchard must meet the following conditions:

(i) The orchard and all contiguous orchards and properties must be surveyed semiannually and found to be free from the avocado stem weevil *Copturus aguacatae.*

* * * * *

(v) Harvested avocados must be placed in field boxes or containers of field boxes that are marked to show the official registration number of the orchard. The avocados must be moved from the orchard to the packinghouse within 3 hours of harvest or they must be protected from fruit fly infestation until moved.

* * * * *

(3) *Packinghouse requirements.* The packinghouse must be registered with the Mexican NPPO's avocado export program and must be listed as an approved packinghouse in the annual work plan provided to APHIS by the Mexican NPPO. The operations of the packinghouse must meet the following conditions:

(i) During the time the packinghouse is used to prepare avocados for export to the United States, the packinghouse may accept fruit only from orchards certified by the Mexican NPPO for participation in the avocado export program.

* * * * *

(iv) Prior to the culling process, a biometric sample, at a rate determined by APHIS, of avocados per consignment must be selected, cut, and inspected by the Mexican NPPO and found free from pests.

* * * * *

(vi) Prior to being packed in boxes, each avocado fruit must be cleaned of all stems, leaves, and other portions of plants and labeled with a sticker that bears the official registration number of the packinghouse.

(vii) The avocados must be packed in clean, new boxes, or clean plastic reusable crates. The boxes or crates must be clearly marked with the identity of the grower, packinghouse, and exporter. Additionally, between January 31, 2005 and January 31, 2007, the boxes or crates must be clearly marked with the statement ''Not for

importation or distribution in CA, FL, and HI.''

* * * * *

(d) *Certification.* All consignments of avocados must be accompanied by a phytosanitary certificate issued by the Mexican NPPO with an additional declaration certifying that the conditions specified in this section have been met.

(e) *Pest detection.* (1) If any of the avocado seed pests *Heilipus lauri, Conotrachelus aguacatae, C. perseae,* or *Stenoma catenifer* are discovered in a municipality during the semiannual pest surveys, orchard surveys, packinghouse inspections, or other monitoring or inspection activity in the municipality, the Mexican NPPO must immediately initiate an investigation and take measures to isolate and eradicate the pests. The Mexican NPPO must also provide APHIS with information regarding the circumstances of the infestation and the pest risk mitigation measures taken. The municipality in which the pests are discovered will lose its pest-free certification and avocado exports from that municipality will be suspended until APHIS and the Mexican NPPO agree that the pest eradication measures taken have been effective and that the pest risk within that municipality has been eliminated.

(2) If the Mexican NPPO discovers the stem weevil *Copturus aguacatae* in an orchard during an orchard survey or other monitoring or inspection activity in the orchard, the Mexican NPPO must provide APHIS with information regarding the circumstances of the infestation and the pest risk mitigation measures taken. The orchard in which the pest was found will lose its export certification immediately and avocado exports from that orchard will be suspended until APHIS and the Mexican NPPO agree that the pest eradication measures taken have been effective and that the pest risk within that orchard has been eliminated.

(3) If the Mexican NPPO discovers the stem weevil *Copturus aguacatae* in fruit at a packinghouse, the Mexican NPPO must investigate the origin of the infested fruit and provide APHIS with information regarding the circumstances of the infestation and the pest risk mitigation measures taken. The orchard where the infested fruit originated will lose its export certification immediately and avocado exports from that orchard will be suspended until APHIS and the Mexican NPPO agree that the pest eradication measures taken have been effective and that the pest risk within that orchard has been eliminated.

(f) *Ports.* The avocados may enter the United States only through a port of entry located in a State where the distribution of the fruit is authorized pursuant to paragraph (a)(2) of this section.

(g) *Inspection.* The avocados are subject to inspection by an inspector at the port of first arrival. At the port of first arrival, an inspector will sample and cut avocados from each consignment to detect pest infestation.

* * * * *

Done in Washington, DC, this 23rd day of November 2004.

Charles D. Lambert,

Acting Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 04–26336 Filed 11–29–04; 8:45 am]

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Federal Register

Tuesday,
November 30, 2004

Part V

Federal Trade Commission

16 CFR Parts 601 and 698

Summaries of Rights and Notices of Duties Under the Fair Credit Reporting Act; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Parts 601 and 698

RIN 3084–AA94

Summaries of Rights and Notices of Duties Under the Fair Credit Reporting Act

AGENCY: Federal Trade Commission.

ACTION: Final Guidance on Model Disclosures.

SUMMARY: The Federal Trade Commission is publishing in final form a number of documents that it is required to issue by the Fair Credit Reporting Act (FCRA), which was significantly amended by the recently enacted Fair and Accurate Credit Transactions Act. These are: A summary of the rights under the FCRA of victims of identity theft; a general summary of consumer rights under the FCRA; a notice of the duties of persons that furnish information to consumer reporting agencies; and a notice of the duties of users of information obtained from consumer reporting agencies. These documents will be distributed by consumer reporting agencies and others to consumers and to businesses that either use information obtained from consumer reporting agencies or furnish information to consumer reporting agencies.

DATES: *Effective Date:* January 31, 2005.

FOR FURTHER INFORMATION CONTACT: For the summary of identity theft rights, contact Monique Einhorn, Attorney, Division of Planning and Information, Federal Trade Commission, 600 Pennsylvania Ave. NW., Washington, DC 20580, 202–326–3228; for the general summary of consumer rights and the furnisher and user notices, contact William Haynes, Attorney, Division of Financial Practices, Federal Trade Commission, 600 Pennsylvania Ave. NW., Washington, DC 20580, 202–326–3224.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission is issuing in final form four documents that describe rights and duties under the Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681 *et seq.* The Commission is issuing these documents because of changes to the FCRA made by the Fair and Accurate Credit Transactions Act of 2003 (FACT Act or Act), Public Law 108–159, 117 Stat. 1952, which was signed into law on December 4, 2003.

The FACT Act amendments directed the Commission to issue, for the first time, a summary of the rights of identity theft victims. The changes made to the FCRA by the FACT Act also rendered obsolete three documents that the Commission issued in 1997: A general summary of the rights of consumers under the FCRA; a notice of the duties under the FCRA of persons that furnish information to consumer reporting agencies; and a notice of the duties under the FCRA of persons that use information obtained from consumer reporting agencies. 62 FR 35586 (1997).

The Commission published proposed versions of all four documents for public comment on July 16, 2004. 69 FR 42616 (2004). The Commission has received numerous comments from consumers and from the following: organizations representing consumer interests (''consumer group commenters''); banks, credit unions, and associations of banks (''finance commenters''); business entities and groups (''business commenters''); and consumer reporting industry members and associations (''industry commenters'').[1] Because many commenters in a particular group raised the same or similar issues, we will refer in this discussion to the commenters by group (*e.g.*, ''finance commenters,'' ''industry commenters'') unless it is useful to identify a commenter by name. Persons interested in reviewing the comments may go to the Commission's Web site (*www.ftc.gov/os/comments/FACTA-summaries/index.htm*).

II. The Summary of Identity Theft Rights

A. Background

Section 609(d) of the FCRA requires the Commission, in consultation with the Federal banking agencies[2] and the National Credit Union Administration, to prepare a model summary of the rights of consumers ''with respect to the procedures for remedying the effects of fraud or identity theft.'' This model summary must be distributed by consumer reporting agencies to any consumer who ''contacts a consumer reporting agency and expresses a belief that the consumer is a victim of fraud or identity theft.'' Section 609(d)(2) provides that consumer reporting agencies' obligation to distribute this summary begins 60 days after the date on which the model summary of rights is prescribed in final form by the Commission.

The proposed summary discussed the major rights of identity theft victims under the FCRA to remedy the effects of fraud or identity theft. These include: the right to obtain free file disclosures, the right to file fraud alerts, the right to obtain documents or information relating to transactions involving the consumers' personal information, the right to block the reporting of information by consumer reporting agencies resulting from identity theft, and the right to prevent persons who furnish information to consumer reporting agencies from reporting information that is the result of identity theft. In preparing both the proposed model summary and the final one, the Commission consulted with the federal banking agencies and the National Credit Union Administration, in accordance with the requirements of Section 609(d).

B. General Issues Raised by Commenters

1. The Distribution of a ''Substantially Similar'' Summary

Section 609(d) requires the Commission to issue a ''model'' summary and requires the consumer reporting agencies to distribute a summary containing ''all of the information required by the Commission.'' In the July 16, 2004, **Federal Register** notice the Commission indicated that summaries issued by consumer reporting agencies would be compliant if they displayed ''the Commission-mandated information 'clearly and prominently' in a form substantially similar to the Commission's model summary.'' 69 FR 42616, 42617.

Consumer group commenters expressed great concern regarding the apparent flexibility permitted under a ''substantially similar'' approach. They suggested that even slight deviations in wording or placement of the rights within a document could allow the meaning of important rights to lose their prominence or lack the required context

[1] Among the commenters were the following: *consumer commenters*—the Consumer Federation of America, Consumers Union, the Electronic Privacy Information Center, the Identity Theft Resource Center, the National Association of Consumer Advocates, the National Consumer Law Center, the National Council of La Raza, the Privacy Rights Clearinghouse, and the U.S. Public Interest Research Group; *finance commenters*—Independent Community Bankers of America, the American Financial Services Association, MBNA, the Mortgage Bankers Association, Visa, MasterCard International, Wells Fargo, the American Bankers Association, America's Community Bankers; *business commenters*—ACA International, the Coalition to Implement the FACT Act (which includes banks, insurance companies, the National Retail Federation, Fannie Mae, and Fair Isaac & Co.); *industry commenters*—the Consumer Data Industry Association, Equifax, Experian, Trans Union, and USIS Commercial Services, Inc.

[2] The Federal banking agencies are: the Federal Reserve Board of Governors, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision.

to make them most apparent to the consumer.

Section 609(d)(2) requires that the identity theft summary provided to consumers by the consumer reporting agencies must contain all of the information contained in the Commission's prescribed summary. Pursuant to this statutory direction, consumer reporting agencies may not eliminate any part of the summary of identity theft rights. By specifying that summaries must be ''substantially similar'' to the Commission's prescribed form, the Commission intends only that consumer reporting agencies have the leeway to make minor changes without being in violation of the FCRA. The Commission has added a definition of ''substantially similar'' to 16 CFR 698.3.[3]

2. Understandability and Outreach

Consumer group commenters suggested that for some consumers (especially those for whom English is not their primary language) the information and procedures discussed in the model summary may be difficult to comprehend. These commenters also pointed to the need for Commission outreach efforts to educate consumers.

The Commission has tried, as much as possible, to use plain language in the summary but agrees that the notices need to be supplemented by outreach efforts and intends to do so. In addition, to better serve that portion of the population that is Spanish-speaking, the Commission has added a Spanish language statement at the top of the summary informing Spanish-speaking consumers where they can obtain more information in Spanish. In addition, the Commission will provide a Spanish translation of the summary, which will be available at the Commission's identity theft Web site, along with other information in Spanish. The Commission has added language to Appendix E of 16 CFR part 698 stating that accurate translations of the identity theft summary for use in providing the summary to speakers of Spanish or another language will be compliant with the disclosure requirement. The Commission will also implement a media and education campaign to inform the public how to prevent identity theft, as required by Section 151(b) of the FACT Act.

C. Specific Issues Raised by Commenters

1. Introductory Paragraph

In the introduction to the proposed summary, the Commission included contact information referencing only the Commission's identity theft Web site address. In response to suggestions from commenters, a Commission mailing address has been added to the introduction of the final summary for consumers who prefer to contact the agency via postal mail, or who do not have Web access. In response to industry, business, and finance commenters, and to improve clarity while maintaining brevity, the Commission also has shortened the general discussion of the FCRA in the introduction. Finally, to reflect changes in the definition of ''identity theft'' made by the Commission's final Identity Theft Rule, the term ''lawful'' has been stricken from the introductory paragraph. See 69 FR 63922, 63924–25.

2. Fraud Alerts

The first section of the final summary (''You have the right to ask that nationwide consumer reporting agencies place ''fraud alerts'' in your file''), discusses the specific procedures that apply when fraud alerts are placed in consumers' files.[4] The language of the Commission's proposal raised a few issues for commenters. One finance commenter suggested that the discussion be clarified to make clear that consumers may request only the initial fraud alert by telephone from the nationwide consumer reporting agencies because the extended alert requires submission of an identity theft report, and thus cannot be requested by telephone. The Commission has declined to adopt this suggestion. Although different procedures may have to be implemented by the nationwide consumer reporting agencies to accommodate the identity theft report requirement for the extended alert, Section 605A(d) requires ''[e]ach consumer reporting agency described in Section 603(p)'' to establish ''procedures that allow consumers and active duty military consumers to request initial, extended, or active duty alerts * * * in a simple and easy manner, including by telephone.''

The Commission has, however, clarified the discussion of fraud alerts to make clear that consumers must contact the ''nationwide consumer reporting agencies'' to request fraud alerts and that the initial alert stays in the consumer's file for ''at least'' 90 days. The summary also contains a fuller explanation of the identity theft report requirement and refers consumers to the Commission's identity theft Website for more detailed information.

The Commission has revised the summary to include placeholders (''1–800–XXX–XXXX'') for nationwide consumer reporting agencies'' toll-free telephone numbers, rather than the current numbers used by those agencies. Although the summary must include these toll-free telephone numbers, they are subject to change, and the Commission thought it advisable to include the placeholders rather than the actual numbers to clarify that the summary must include up-to-date telephone numbers.[5] The Commission notes that the names, Web site addresses, number, and identity of the nationwide consumer reporting agencies also are subject to change over time. To remain in compliance, the summary must accurately reflect changes to information that may change over time.

3. Free File Disclosures from Consumer Reporting Agencies

The discussion of free file disclosures (''You have the right to free copies of the information in your file'') has been modified in response to industry comments that the use of the term ''consumer report'' should be replaced by the term ''file disclosure'' to be more technically precise.

In addition, industry and business commenters and the banking agencies that the Commission consulted suggested that the discussion of free file disclosures in the proposed summary was confusing. In order to resolve any confusion, the Commission has consolidated the discussion of free file disclosures in the second section of the summary: the new Section 605A rights to free file disclosures and the preexisting Section 612(c)(3) right to a free file disclosure now are discussed together.

The Commission has also clarified the discussion to make clear that an extended alert at a nationwide

[3] The Commission has defined ''substantially similar'' to mean ''that all information in the Commission's prescribed model is included in the document that is distributed, and that the document distributed is formatted in a way consistent with the format prescribed by the Commission. The document that is distributed shall not include anything that interferes with, detracts from, or otherwise undermines the information contained in the Commission's prescribed model.'' 16 CFR 698.3.

[4] As proposed in the July 16 **Federal Register** notice, this was the second section of the summary. To improve the clarity of the summary, however, the Commission has moved this discussion to the first section of the final summary, and has consolidated the discussion of free file disclosures in the second section.

[5] This same approach is taken in the general summary of consumer rights with respect to the nationwide consumer reporting agencies' toll-free telephone number for accepting consumers' prescreen opt-out elections under FCRA Section 604(e).

consumer reporting agency entitles the consumer to two free file disclosures in a 12-month period ''following the placing of the alert.'' Finally, this section has also been modified to make clear that consumers have the ability to obtain additional free file disclosures under other provisions of the FCRA. Consumers are directed to *www.ftc.gov/credit* for more detailed information.

4. Obtaining Applications and Business Records Resulting From Identity Theft

The Commission has made a number of modifications to section three of the summary (''You have the right to obtain documents relating to fraudulent transactions made or accounts opened using your personal information''). In response to industry, finance, and business commenters, the Commission has added language to this section that tracks the requirements of Section 609(e) and clarifies that the consumer's request for documents should be in writing, that a business may specify an address for consumers to submit their written requests, and that a business, under certain circumstances, may refuse to provide this material.[6]

5. Blocking Information Relating to Identity Theft in Consumers' Files

The Commission made one substantive change to the fifth section (''If you believe information in your file results from identity theft, you have the right to ask that a consumer reporting agency block that information from your file''). In response to an industry commenter, the Commission has added language to make clear that the block covers any information (not just accounts) in the consumer's file, if the information results from identity theft. This same industry commenter suggested that the Commission expand the discussion of the identity theft report in this section. The Commission has added information about the identity theft report earlier in the summary in the discussion of fraud alerts where the term is first introduced, and has italicized the term ''identity theft report'' throughout the summary for readers'' ease of reference and to make clear that it is a term of art. See *supra*, II.C.2. Because ''identity theft report'' is a complicated definition subject to Commission rulemaking, consumers are further referred to the FTC's Web site for more information.

6. Preventing Businesses From Furnishing Information Resulting From Identity Theft

In response to business and finance commenters, the Commission has added a statement to the sixth section (''You also may prevent businesses from reporting information about you to consumer reporting agencies if you believe the information is a result of identity theft'') explaining that consumers must identify for the furnisher the specific information it should cease reporting.

7. State Laws

Many states have enacted laws relating to identity theft. In the Commission's identity theft publications and in its public outreach efforts, the Commission informs consumers of this fact and suggests that consumers contact the appropriate state and local agencies for more information. Consumer group commenters suggested that the Commission include a statement in the model summary informing consumers that they may have additional rights related to identity theft under state law. The Commission agrees. Accordingly, in the penultimate paragraph of the summary, there is now the statement: ''You may have additional rights under state law. For more information, contact your local consumer protection agency or your state attorney general.''

8. Concluding Paragraphs

In the proposed summary, the Commission included a final section cross-referencing the general FCRA consumer rights. The Commission added this section to provide identity theft victims notice of the broader range of rights provided to them by the FCRA. Consumer group commenters commended the Commission for including a cross-reference to general FCRA rights in the identity theft summary and for cross-referencing identity theft rights in the general summary. Industry and business commenters, however, suggested that the cross-reference to other FCRA rights went beyond the scope of Section 609(d) in discussing more rights than just those that address procedures for remedying fraud or identity theft. The Commission agrees with consumer group commenters that a cross-reference is necessary to ensure that consumers are aware of their full range of rights, and further believes that these more general rights may also be relevant to identity theft victims. Thus, this cross-reference has been retained, but in the final summary the discussion has been shortened. As proposed, the cross-reference briefly enumerated five of consumers' specific rights under the FCRA; it now reads simply: ''In addition to the new rights and procedures to help consumers deal with the effects of identity theft, the FCRA has many other important consumer protections. They are described in more detail at *http://www.ftc.gov/credit*.'' Identity theft victims who need more information on their general rights under the FCRA will be able to obtain it on the Web site. Moreover, identity theft victims who receive a file disclosure from a consumer reporting agency—*e.g.*, after placing a fraud alert or requesting a free file disclosure under FCRA Section 612(c)(3)—will receive a copy of the general summary of consumer rights that describes these provisions in more detail.

III. The General Summary of Consumer Rights

A. Background

Section 609(c) of the FCRA requires the Commission to issue a general summary of consumer rights. This provision was added to the FCRA in the 1996 amendments. After a period for public comment, the Commission issued the general summary in 1997 as a two-page document. 62 FR 35586 (1997).

Section 211(c) of the FACT Act amended Section 609(c) of the FCRA to require the Commission to include in the summary information about consumers' new rights. Section 211(c) also eliminated the requirement that the summary include a number of disclosures such as a list of federal agencies that enforce the FCRA, the statement that the consumer may have additional rights under state law, and the statement that accurate derogatory information does not have to be removed from reports unless it is outdated or cannot be verified. (Consumer reporting agencies now have an independent obligation to provide this information.) Given these changes, the existing general summary is outdated.

Accordingly, the Commission published for comment a substantially revised general summary. The Commission elected to include in the proposed summary the list of federal agencies and the other items of information that are no longer mandated because it believes that this information is helpful to consumers and should be available in one place. In general, industry, finance, and consumer group

[6] FCRA Section 609(e)(5) provides that a business may decline to provide the requested information if, among other things, it does not have ''a high degree of confidence'' that it knows the requester's identity, the request is based on a ''misrepresentation of fact'' by the requester, or the information requested pertains to a person's visit to a Web site or online service.

commenters support the Commission's decision to include these items of information. A number of industry and finance commenters also state that the current version of the summary, which the Commission largely followed in crafting its proposed new general summary, has worked well.

B. General Issues Raised by Commenters

1. FACT Act Mandates

The FACT Act requires the Commission and the banking and credit union regulators to issue rules to implement many of its provisions. Most of these rules have not yet been issued or will not be fully implemented until next year. A number of the rules will provide significant rights to consumers, such as the right to obtain a free file disclosure every twelve months, the right to receive a notice when creditors make decisions based on a risk-based pricing model, and the right to file a dispute directly with a business about information the business has furnished to a consumer reporting agency. The Commission did not include a discussion of these prospective rights in the proposed general summary. The proposed summary, instead, referred consumers to the Commission's Web site for more information.

Consumer group commenters and some finance commenters questioned the Commission's decision not to include a discussion of the prospective rights. The Commission believes that it is difficult to explain these rights briefly and coherently, particularly since the rules implementing these rights are not yet final. Although the Commission has made some minor modifications to the general summary in response to the concerns raised by commenters—including adding a reference to ''additional rights'' at the beginning of the summary that refers consumers to the Commission's Web site—the Commission has decided not to add a detailed discussion of the prospective rights but plans to revise the general summary to reflect these new rights once they are in effect.

2. Length of Consumer Summary and Reference to Web Site

In 1997, the Commission elected to limit the length of the general summary of consumer rights to two pages because a briefer and more pointed summary is more useful to, and more easily understood by, most consumers. In addition, because the two-page summary can be printed on a single sheet of standard-size paper when distributed in paper form, it has helped to control the cost of distribution. Where consumers need more detailed information about specific rights, the Commission has always provided additional resources.

The Commission took the same approach with the proposed revised general summary. A number of industry and finance commenters report that this approach has worked well. Commenters representing consumer groups, however, believe that the proposed summary is dense, lacks detailed information about some rights, and lacks extensive guidance as to how consumers may exercise their rights. These commenters also expressed concern that the reference to the Commission's Web site for more information would be a problem for those consumers without ready access to the Internet.

The Commission will mail all of its relevant credit-related publications to any consumer upon request. The Commission has modified the summary to explain how consumers without access to the Internet may request this information. In addition, the Commission intends to revise the summary once the new FACT Act regulations are in place, and will revisit the length of the consumer summary at that time.

3. Understandability of the General Summary

Although some commenters—particularly business, industry, and finance commenters—believed that the format of the proposed general summary is useful and understandable, the commenters representing consumer groups raised questions about its understandability. Some of these concerns may be the result of the fact that the **Federal Register** did not publish the general summary in the format approved by the Commission. This notice contains the summary formatted correctly.

Although the Commission has tried to use plain language and to express the legal concepts embodied in the FCRA as simply as possible, the Commission intends to publish on its Website an expanded version of the summary of rights that will give more information to consumers. To better serve Spanish-speaking consumers, the Commission's Web site will also include a Spanish translation of the summary, along with other Spanish-language materials, such as an expanded discussion of consumer rights under the FCRA. A statement now appears in Spanish at the top of the summary directing consumers to the FTC to obtain Spanish language information. In addition, the Commission encourages those businesses serving Spanish-speaking consumers to provide the summary in Spanish. Accordingly, the Commission has added language to Appendix F of 16 CFR part 698 stating that accurate translations of the general summary for use in providing the summary to consumers who use Spanish or another language will comply with the disclosure requirement.

4. The Distribution of a ''Substantially Similar'' Summary

As added to the FCRA in the 1996 amendments, Section 609(c) required the Commission to ''prescribe'' the form and content of the general summary and stated that consumer reporting agencies were in compliance if they provided summaries ''substantially similar'' to the Commission's model. As amended by the FACT Act, Section 609(c) requires the Commission to issue a ''model'' summary and requires consumer reporting agencies to distribute the Commission's summary.

Although there is no ''substantially similar'' language in Section 609(c) as amended, the Commission included in the **Federal Register** notice of July 16 a statement that it would consider ''substantially similar'' summaries to be compliant. The Commission interprets the term ''model'' to mean a notice that need not be adhered to in every detail, and does not believe that consumer reporting agencies should be subject to litigation because of minor variations from the model.

Consumer group commenters expressed concern that the inclusion of the ''substantially similar'' language may create a loophole by permitting consumer reporting agencies to remove references to specific rights or to modify the summary in such a way that important rights may be buried in fine print. Such changes would not be acceptable. All of the information in the general summary must be included in order for any summary to comply with the law, and consumer reporting agencies do not have the authority to eliminate or to substantially alter any part of the general summary. By specifying that general summaries must be issued in a form ''substantially similar'' to the Commission's prescribed form, the Commission intends only that consumer reporting agencies have the leeway to make minor changes without being in violation of the FCRA. The Commission has added a definition of ''substantially similar'' to 16 CFR 698.3.

The Commission, has, however, decided to adopt the suggestion of an industry commenter that consumer reporting agencies be permitted to disclose the list of federal regulators

separately if they do so in a ''clear and conspicuous'' way. This approach may benefit consumers by, for example, permitting the general summary to be printed in larger type. The Commission has added a discussion to Appendix F to 16 CFR part 698 stating that the list of federal regulators may be disclosed separately.

5. State Law Rights and Enforcement

Another issue raised by commenters concerns the statement in the general summary that consumers may have additional rights under state law. Consumer group commenters expressed the belief that this statement should be emphasized, while a number of industry and finance commenters took the position that the rights should be downplayed because Section 625 of the FCRA preempts many state laws.

The Commission believes that the additional rights that consumers have under state law and state enforcement of the FCRA are important. Section 609(c) specifically requires that consumers be informed that they have additional rights under state law and that they may wish to contact their state or local consumer protection agency or their state attorney general. Moreover, where state laws provide additional protections to consumers, these may be significant. The Commission has revised the summary by adding (before the box on the second page containing information about federal enforcement agencies) in bold type the following: ''States may enforce the FCRA, and many states have their own consumer reporting laws. In some cases, you may have more rights under state law. For more information, contact your state or local consumer protection agency or your state attorney general.''

Industry and finance commenters also expressed the belief that the Commission should delete the statement in the proposed summary that consumers may sue in state court as well as federal court because of the fact that state court lawsuits may be transferred to the federal court system. The Commission has not accepted this suggestion. The FCRA specifically permits lawsuits in any court of competent jurisdiction, including state courts.

6. Outreach and Education Efforts

A number of consumer group and finance commenters raised the issue that a stand-alone summary of rights will not be particularly helpful to many consumers who find the legal concepts embodied in the FCRA difficult to understand, who lack basic financial literacy, or who find it intimidating to deal with consumer reporting agencies. The Commission recognizes that education and outreach efforts are needed to enable consumers to understand fully their rights under the FCRA. Section 513 of the FACT Act itself includes the Financial Literacy and Education Improvement Act, which establishes the Financial Literacy and Education Commission (''FLEC''). A Commission representative serves on the FLEC, and the Commission will work with the FLEC to educate consumers.

In addition, the Commission is taking a number of steps to educate and to help consumers. The Commission's Web site has been reorganized so that consumers can easily reach credit material (*www.ftc.gov/credit*). Information on how to contact consumer reporting agencies and state agencies will be on the Web site, and many materials will be translated into Spanish. The Commission also intends to conduct outreach to educate the business community about the FCRA.

C. Specific Issues Raised by Commenters

A number of commenters suggested that the summary should be more technically precise, and, in response, the final summary uses the term ''file disclosure'' in place of ''consumer report'' when describing the right of consumers to see the information about them in the files of consumer reporting agencies. In addition, the introductory paragraph to the summary has been modified to incorporate the suggestion that the summary refer to ''specialty'' agencies instead of ''specialized'' agencies and to explain more fully what specialty agencies are.

In response to the issues raised by consumer group commenters, there is now a statement in Spanish at the very top of the summary directing Spanish-speaking consumers to a Spanish version of the summary. In addition, because the model does not summarize every right afforded to consumers by the FCRA, the revised summary states that consumers' ''major rights'' are contained in the summary and that ''additional rights'' are available on the Web site or by writing to the Commission. Finally, the sentence in the introductory paragraph stating that consumers may have additional rights under state law has been moved to the end of the summary where there is now a more detailed discussion of state enforcement.

In the first substantive paragraph (''You must be told if information in your file has been used against you''), the reference to ''consumer reporting agency'' has been modified to more fully explain that credit reports or other consumer reports may be the basis for adverse actions.

The heading of the second paragraph (''You have the right to know what is in your file'') has been modified to aid in comprehension. In addition, a number of commenters felt that the language of this paragraph was too imprecise. It has been modified to express precisely the circumstances in which a consumer may obtain a disclosure of the information in his or her file, and the various rights to free file disclosures are now expressed as separate bulleted paragraphs. The discussion of free file disclosures was modified to state that file disclosures under the Commission's Free Annual File Disclosures Rule, 16 CFR part 610, will not be available for all consumers until September of 2005.

The heading and text of the third paragraph (''You have the right to ask for a credit score'') have also been modified to be more precise. Business, industry, and finance commenters did not like the use of the term ''your credit score'' given the fact that consumers are entitled under Section 609(f) of the FCRA only to an educational score, which may not be the same as the score provided to any particular creditor or other user. The Commission also modified the last sentence to make clear that mortgage lenders (and not consumer reporting agencies) will give consumers credit score information in some circumstances.

The fourth paragraph (''You have the right to dispute incomplete or inaccurate information'') has been expanded to make clear that consumers may dispute both ''incomplete'' and ''inaccurate'' information, and the heading has been revised to aid in comprehension. The fifth paragraph (''Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information'') has been similarly modified. One industry commenter, the Consumer Data Industry Association, suggested adding to this paragraph a discussion of the fact that information removed because it cannot be verified may be reinserted if the furnisher certifies to the consumer reporting agency that the information is correct. Because of its interest in keeping the general summary to two pages, the Commission has decided not to add this reinsertion information to the general summary at this time, but this will be discussed on the Commission's Web site.

The headings of the sixth (''Consumer reporting agencies may not report outdated negative information'') and seventh (''Access to your file is

limited'') paragraphs have been modified to enhance readability, but no substantive changes have been made. An industry commenter suggested that the Commission include in the discussion of access in the seventh paragraph a statement that consumers' rights are limited in certain employee misconduct investigations. Because the exemption in Section 603(x) is narrow and will affect consumers only in limited circumstances, the Commission has determined that it will not address this matter in the general summary, but will make that exception clear in its general consumer education efforts.

The heading of the eighth paragraph (''You must give your consent for reports to be provided to employers'') has been revised, and the paragraph now makes clear that consent is to be given to the employer. A statement has been added at the end of this paragraph pointing out the exception to the requirement for ''written'' permission that applies to the trucking industry. In addition, the reference to ''blanket'' permission has been removed, because the Commission believes that this is a complicated concept to explain to consumers in a concise manner. Additional information is available in the Commission's consumer education publications, and the issue continues to be discussed in the notice of user duties.

The heading of the ninth paragraph (''You may limit 'prescreened' offers of credit and insurance you get based on information in your credit report'') has been modified to improve readability, and the paragraph now makes clear that the opt-out number in the paragraph is only for ''nationwide'' agencies. The tenth paragraph (''You may seek damages from violators'') also has been modified. A number of finance and industry commenters objected to the Commission's proposed language because furnishers and users have limited liability to consumers under the FCRA. The Commission has adopted wording proposed by commenter American Banking Association: ''If a consumer reporting agency, or, in some cases, a user of consumer reports or furnisher of information to a consumer reporting agency violates the FCRA, you may be able to sue in state or federal court.'' The Commission believes that this accurately reflects the statute. As discussed above, the Commission has not adopted the suggestion of a number of industry and finance commenters that the reference in this paragraph to lawsuits in state courts be eliminated.

The discussion of identity theft and active duty military rights in what is now the eleventh paragraph has been shortened to save space. Consumers are referred to the Commission's Web site for more information. Finally, at the bottom of the second page of the summary, the Commission has made significant changes. In response to consumer group commenters who expressed concern that the proposed summary did not adequately alert consumers to rights that they have under state laws, the Commission moved the statement concerning state law rights from the introductory paragraph to this location, added a reference to the fact that states may enforce the FCRA, and now directs consumers to contact their state attorney general or regulator as well as the appropriate federal regulator if they believe law violations have occurred.

IV. Furnisher and User Notices

A. Background

Section 607(d)(1) of the FCRA, which was added in the 1996 amendments to the FCRA, requires consumer reporting agencies to distribute to each person that regularly furnishes information to the agency or that receives information from the agency a notice of the person's responsibilities under the FCRA. The statute requires the Commission to ''prescribe'' the content of model notices that can be used to comply with Section 607(d)(1). In 1997, the Commission issued both the notice explaining the duties of persons furnishing information to consumer reporting agencies (''furnisher notice'') and the notice explaining the duties of persons using information obtained from consumer reporting agencies (''user notice''). 62 FR 35586 (1997).

The FACT Act did not amend Section 607(d), but it did alter in significant ways the duties of furnishers and users. As a result, the Commission published revised furnisher and user notices for comment in the **Federal Register** on July 16. 69 FR 42616 (2004). The comments received by the Commission raised a number of major issues that are discussed below.

B. General Issues Raised by Commenters

1. Distribution of Furnisher and User Notices

The July 16 **Federal Register** notice set forth the Commission's initial position that the revisions to the FCRA by the FACT Act are so significant that consumer reporting agencies must distribute new furnisher and user notices. An industry commenter and some finance commenters objected to this position, primarily citing the cost of providing revised notices.

Consumer reporting agencies are required under Section 607(d) to provide to furnishers and users a complete description of their duties under the FCRA. Section 607(d)(2) provides that they may comply with this obligation by providing furnishers and users with a notice ''substantially similar'' to the model prescribed by the Commission.[7] That is, the Commission's notices are a ''safe harbor.'' The Commission is now substantially changing its model notices, and it believes that consumer reporting agencies wishing to avail themselves of the statute's safe harbor should provide the revised notices to users and furnishers.

The FCRA, as amended by the FACT Act, contains substantial new obligations that have not yet been implemented by rules of the Commission and other agencies. As a result, the Commission intends to revise the model notices again when the relevant rulemaking proceedings are complete. Until that time, the Commission believes that consumer reporting agencies may take advantage of the Section 607(d)(2) safe harbor by delivering the revised ''interim'' notices only to those new users and furnishers who have never before received the notices. Of course, all furnishers and users must comply with every new duty as it becomes effective, without regard to whether they have been notified of the duty by a consumer reporting agency.

2. Information on Rules That Are Not Yet Complete

At the suggestion of business, finance, and industry commenters, the Commission has added a box at the top of both notices that alerts users and furnishers to the fact that some of the regulations required by the FACT Act and discussed in the notice were not issued when the notice was prescribed. Recipients of the notices are directed to the Commission's Web site, where the Commission maintains updated information about the status of the regulations. Furnishers and users regulated by other entities are directed to contact those entities for information about any relevant regulations implementing the FACT Act.

3. Additional Resources

At the suggestion of an industry commenter and for the convenience of users and furnishers, the Commission has added to both notices (1) a list of the United States Code citations that correspond to the FCRA sections discussed in the notice, and (2) a

[7] The Commission has added a definition of ''substantially similar'' to 16 CFR 698.3.

reference to the Commission's Web site for more information about the FCRA, including publications for businesses.

B. Specific Issues Raised by Commenters

The Commission has made a number of other additions and revisions to the furnisher and user notices to reflect suggestions made by commenters. The following discussion describes the significant changes made to the proposed notices.

1. Furnisher Notice

A number of business, finance, and industry commenters suggested that the Commission revise the introductory paragraph of the furnisher notice to identify the specific states (California and Massachusetts) whose ''furnisher'' laws are not preempted by the FCRA. The Commission has not made this change because the preemption provision is unchanged since 1997 and the language in the introductory paragraph has not caused confusion.

In the fourth section (''Duties After Notice of Dispute from Consumer''), the Commission, at the suggestion of several industry and finance commenters, has added a discussion of Section 623(a)(1)(B), which describes the general ''accuracy'' duties that furnishers have when consumers notify them of inaccurate information. ACA International, a major association of debt collectors, requested in its comments that the Commission include a statement that contacts with consumers by debt collectors undertaken in compliance with Section 623(a)(8) (the provision governing consumer disputes made directly to information furnishers) are not communications or attempts to collect debts under the Fair Debt Collection Practices Act, 15 U.S.C. 1601 *et seq.* ACA International is concerned that debt collectors may not be registered to do business in states where consumers who dispute information are located, and that the contacts involved in handling these disputes will trigger state debt collection laws. Because furnishers' new obligations to accept consumer disputes are dependent on rules that have not yet been drafted, it would be premature to address this issue.

The fifth section (''Duties After Notice of Dispute From Consumer Reporting Agency'') has been slightly modified to reflect the statutorily mandated timeline. The seventh section (''Duty to Report Dates of Delinquencies''), which previously referred to ''debt collectors,'' now makes clear that ''any person'' who acquires or is collecting a delinquent debt must comply with the reporting requirements of Section 623(a)(5). This section also has been revised to more closely track the statutory language.

The eighth section (''Duties of Financial Institutions When Reporting Negative Information'') has been revised to make clear that the provision only applies to persons that furnish information to ''nationwide'' consumer reporting agencies as defined in Section 603(p). The reference to the Federal Reserve Board regulations has been revised to reflect the fact that the Board has issued two model disclosures.

The Commission has revised the tenth section (''Duties When ID Theft Occurs'') to include a discussion of Section 623(a)(2), which requires each furnisher to notify all agencies to which it reports when it learns it has furnished inaccurate information. At the suggestion of a number of finance and industry commenters, the last sentence in this paragraph also has been modified to make clear that the prohibition upon selling debts that are linked to identity theft does not apply in certain limited circumstances involving repurchase, securitization, and transfers as the result of corporate mergers, acquisitions, or asset sales.

2. User Notice

The introductory paragraphs of the user notice have been slightly modified by adding, at the suggestion of an industry commenter, a statement directing readers to the end of the notice where there is now a list of the sections of the FCRA with parallel citations to the United States Code. Readers are also referred to the Commission's Web site, where the full text of the FCRA is available.

A number of finance commenters suggested that the statement in the third bullet of Part I.A. (''Users Must Have a Permissible Purpose''), discussing the credit permissible purpose in FCRA Section 604(a)(3)(A), should be broadened to include any credit transaction ''involving'' a consumer. The Commission believes that the only situations where consumer reports may be obtained under this subsection occur when consumers apply for credit, or where a creditor obtains consumer reports for the review or collection of consumers' accounts. Accordingly, the Commission has not changed this section of the notice.

A significant change has been made in the introductory paragraph of Part I.C. (''Users Must Notify Consumers When Adverse Actions Are Taken''). A number of business and finance commenters expressed concerns that the Commission's description of adverse actions did not adequately explain that no adverse action occurs in a credit transaction when a user makes a counteroffer that is accepted by the consumer. The Commission has shortened the explanatory text as a result of these comments, has added ''as defined by Section 603(k) of the FCRA'' in the second sentence, and has added a statement that no adverse action occurs for the purposes of the FCRA where a creditor makes, and the consumer accepts, a counteroffer. Similar changes were made in the first sentence of Part I.C.1.

The discussion in Part I.C.3. (''Adverse Actions Based on Information Obtained From Affiliates'') also has been modified. At the suggestion of industry and finance commenters, who found the discussion confusing, the Commission has eliminated the portion of the parenthetical discussion at the end of the paragraph that discussed the sharing of non-consumer report information among affiliates. This issue is discussed in more detail on the Commission's Web site.

The discussion in Part I.D. (''Users Have Obligations When Fraud and Active Duty Military Alerts are in Files'') has been slightly modified to emphasize that the limitations imposed on users apply only in certain circumstances. Part I.E. (''Users Have Obligations When Notified of an Address Discrepancy''), discussing duties where the user has an address that differs from the address(es) in the information obtained from the consumer reporting agency, has been expanded to make clear that these duties apply only to users who receive address discrepancy notices from nationwide consumer reporting agencies.

The proposed notice included in Part II a description of the requirement in Section 615(h) that users who are creditors must provide a notice to consumers when risk-based pricing systems are used. This statement generated a considerable response from business, industry, and finance commenters. There is no obligation under Section 615(h) until it is implemented by a joint rule of the Federal Reserve Board and the Commission. The Commission has revised this section to include a simple recitation of the statutory language, and will defer consideration of how best to describe this new obligation until the joint rule is complete.

Finally, some minor changes have been made in Parts III.A. (''Employment Other Than in the Trucking Industry'') and VI (''Obligations of Users of Medical Information'') in response to industry and finance commenters. The

discussion of user duties in employment situations in Part III.A. has been expanded to make clear that consumers may give blanket authorization to employers for consumer reports to be obtained during the term of employment. And the discussion in Part VI of the obligations of users of medical information has been revised slightly to specify that regulations issued by the banking and credit union regulators will affect the use of medical data.

V. Repeal of Existing Summaries and Notices

The existing model Summary of Consumer Rights, Notice of Furnisher Duties, and Notice of User Duties are codified at 16 CFR part 601. The Commission is reorganizing Subchapter F of Title 16 of the Code of Federal Regulations to reflect its substantial new rulemaking and other responsibilities under the FACT Act and FCRA. As a part of this general organizational scheme the Commission plans to codify all guidance on model forms and disclosures, including the model Summaries of Rights and Notices of Duties, at 16 CFR part 698. Accordingly, it is repealing the existing notices at 16 CFR part 601, but is reserving that Part for future use. The new and revised model Summaries of Rights and Notices of Duties will be codified at 16 CFR part 698, Appendices E, F, G, and H.

VI. Effective Date

The Commission is setting an effective date for the model summaries and notices of sixty days after publication in the **Federal Register**. The consumer reporting agencies may, of course, begin using the model summaries and notices earlier than that, but the Commission expects that it will take a certain amount of time for the consumer reporting agencies to have their summaries and notices printed and ready for distribution. In addition, the FACT Act specifically states that the consumer reporting agencies have sixty days after the model summary for identity theft rights is prescribed in final form to begin distributing such a summary. Consequently, for ease of administration and convenience, the Commission is establishing one, uniform effective date for all of the summaries and notices.

VII. Final Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (''IRFA'') with any action that may constitute a rule and a final Regulatory Flexibility Analysis (''FRFA'') with the final action, unless the Commission certifies that its action will not have a significant economic impact on a substantial number of small entities (*i.e.*, those with less than $6,000,000 in average annual receipts). 5 U.S.C. 603–605. The Commission stated in its IRFA that it had concluded that this matter will not have a significant economic impact on a substantial number of small entities. The Commission, however, did request public comment on this issue. As discussed below, only one comment specifically addressed the RFA. The Commission hereby certifies that this matter will not have a significant economic impact on a substantial number of small entities.

A. Need for and Objectives of Proceeding

The Fair and Accurate Credit Transactions Act of 2003, Public Law 108–159, 117 Stat. 1952, substantially amended the FCRA. The FACT Act added Section 609(d) of the FCRA, which requires the Commission to prescribe a summary of the rights that identity theft victims have under the FCRA. The FACT Act also amended Section 609(c), which was added in the 1996 amendments to the FCRA and which requires the Commission to prescribe a general summary of consumer rights under the FCRA. Finally, the FACT Act extensively amended many other provisions of the FCRA. As a result, the notices of user and furnisher duties that the Commission is required to prescribe by Section 607(d) of the FCRA are outdated. The Commission is now prescribing all four of these documents in accordance with the requirements of the FCRA as amended by the FACT Act.

B. Significant Issues Raised by Public Comment

The Commission received only one comment specifically focused on the IRFA published by the Commission on July 16. This came from industry commenter Consumer Data Industry Association (CDIA). In its proposal the Commission stated that it believed that the FACT Act's amendments to the FCRA were significant enough to require that revised furnisher and user notices be distributed by consumer reporting agencies to all persons that furnish information to them and that obtain information from them. CDIA stated that it would be burdensome for consumer reporting agencies to have to distribute revised notices to furnishers and users that had already received the Commission's 1997 versions of these documents. CDIA, however, did not provide any information on the number of small entities that would be affected or the costs imposed upon these entities. A number of other commenters, while not directing their comments to the Commission's IRFA, also questioned whether consumer reporting agencies should have to distribute revised furnisher and user notices. As discussed above, the Commission believes that consumer reporting agencies need deliver these ''interim'' revised user and furnisher notices only to new users and furnishers. Existing users and furnishers can be provided new notices when the Commission makes final revisions to the notices, following completion of the FACT Act rulemaking proceedings.

C. Small Entities to Which the Rule Will Apply

The proposed summaries and notices are to be distributed by consumer reporting agencies. The definition of a ''small'' consumer reporting agency is currently one with less than $6 million in average annual receipts (*see http://www.sba.gov/size*). The consumer reporting industry is primarily composed of large national consumer reporting agencies, including the so-called ''nationwide'' consumer reporting agencies and ''nationwide specialty'' consumer reporting agencies, as defined in FCRA Sections 603(p) and 603(w), respectively. The Commission believes that none of these nationwide agencies are ''small'' entities. There are, however, small consumer reporting agencies associated with the nationwide consumer reporting agencies, and there are small independent consumer reporting agencies. Based on the membership of the major consumer reporting agency trade associations, the Commission believes that the total universe of entities potentially covered by the requirement to distribute summaries and notices is between 1000 and 1400. As discussed below, the Commission believes that the large nationwide entities will be responsible for much of the distribution of the summaries and notices. The Commission received no comments on the number of small entities that will be affected.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The Commission's proposal will impose no specific reporting or recordkeeping requirements. Consumer reporting agencies are required by statute, however, to distribute the prescribed summaries and notices. The summary of identity theft rights (Section 609(d)) will be distributed to all consumers who contact the agencies to

report that they may be the victim of fraud or identity theft. The general summary of consumer rights (Section 609(c)) will be distributed with each written file disclosure made by the agencies. Both of these summaries will be distributed to large numbers of consumers each year. By contrast, the notices of user and furnisher duties (Section 607(d)) need be distributed only on a one-time basis to all of the entities that furnish information to a consumer reporting agency or use information obtained from an agency.

The Commission does not believe that the requirements mandated by the FACT Act and discussed in detail in the IRFA analysis will increase in any significant way the burdens already imposed by the FCRA on consumer reporting agencies. Because the Commission is providing the language for the summaries and notices, businesses need not incur legal or other professional costs to develop any written material. The cost of training employees, if any, should be minimal. When the document is distributed electronically, the Commission believes that the distribution costs will be negligible. The Commission believes that the major burden of providing the new summary of identity theft rights will fall upon the nationwide consumer reporting agencies that are not small entities. The Commission received no comments on this issue.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed notices. The Commission received no comments on this issue.

F. Steps Taken To Minimize Significant Economic Impact on Small Entities

The Commission invited comment on suggested alternative methods of compliance. While no commenter specifically addressed this issue, a number of industry and finance commenters expressed concerns that it would be burdensome to redistribute the furnisher and user notices. As discussed above, the Commission believes that consumer reporting agencies need deliver these ''interim'' revised user and furnisher notices only to new users and furnishers. Existing users and furnishers can be provided new notices when the Commission makes final revisions to the notices, following completion of the FACT Act rulemaking proceedings.

VIII. Paperwork Reduction Act

In its initial review of the proposed summaries and notices, the Commission considered whether it was ''sponsoring or conducting'' any ''collection[s] of information'' that would trigger the provisions of the Paperwork Reduction Act, 44 U.S.C. Chapter 35. The Commission concluded that it was not and that the proposed summaries and notices fell within the exception to the definition of a ''collection of information'' as ''[t]he public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public.'' 5 CFR 1320.3(x)(2). Nonetheless, the Commission requested public comment on this matter. No comments were received. Accordingly, the Commission has determined that its actions in this matter will not implicate the Paperwork Reduction Act.

IX. Final Guidance on Model Disclosures

List of Subjects in 16 CFR Parts 601 and 698

Fair Credit Reporting Act, Consumer reports, Consumer reporting agencies, Credit, Trade practices.

■ Accordingly, for the reasons set forth above, the FTC amends title 16, Code of Federal Regulations, as follows:

PART 601—[REMOVED AND RESERVED]

■ 1. Part 601 is removed and reserved.

■ 2. Revise the heading of part 698 to read as follows:

PART 698—MODEL FORMS AND DISCLOSURES

■ 3. The authority for Part 698 is revised to read as follows:

Authority: 15 U.S.C. 1681e, 1681g, 1681j, 1681m, and 1681s; section 211(d), Pub. L. 108–159, 117 Stat. 1952.

■ 4. Revise §§ 698.1 and 698.2 to read as follows:

§ 698.1 Authority and purpose.

(a) *Authority.* This part is issued by the Commission pursuant to the provisions of the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), as amended by the Consumer Credit Reporting Reform Act of 1996 (Title II, Subtitle D, Chapter 1, of the Omnibus Consolidated Appropriations Act for Fiscal Year 1997), Public Law 104–208, 110 Stat. 3009–426 (Sept. 30, 1996), and the Fair and Accurate Credit Transactions Act of 2003, Public Law 108–159, 117 Stat. 1952 (Dec. 4, 2003).

(b) *Purpose.* The purpose of this part is to comply with sections 607(d), 609(c), 609(d), and 612(a) of the Fair Credit Reporting Act, as amended by the Fair and Accurate Credit Transactions Act of 2003, and Section 211 of the Fair and Accurate Credit Transactions Act of 2003.

§ 698.2 Legal effect.

These model forms and disclosures prescribed by the FTC do not constitute a trade regulation rule. The issuance of the model forms and disclosures set forth below carries out the directive in the statute that the FTC prescribe these forms and disclosures. Use or distribution of these model forms and disclosures will constitute compliance with any section or subsection of the FCRA requiring that such forms and disclosures be used by or supplied to any person.

■ 5. Add new § 698.3 to read as follows:

§ 698.3 Definitions.

As used in this part, unless otherwise provided:

(a) *Substantially similar* means that all information in the Commission's prescribed model is included in the document that is distributed, and that the document distributed is formatted in a way consistent with the format prescribed by the Commission. The document that is distributed shall not include anything that interferes with, detracts from, or otherwise undermines the information contained in the Commission's prescribed model.

■ 6. Amend part 698 to add a new Appendix E as follows:

Appendix E to Part 698—Summary of Consumer Identity Theft Rights

The prescribed form for this summary is a disclosure that is substantially similar to the Commission's model summary with all information clearly and prominently displayed. A summary should accurately reflect changes to those items that may change over time (such as telephone numbers) to remain in compliance. Translations of this summary will be in compliance with the Commission's prescribed model, provided that the translation is accurate and that it is provided in a language used by the recipient consumer.

BILLING CODE 6750–01–P

Para informacion en espanol, visite www.consumer.gov/idtheft o escribe a la FTC, Consumer Response Center, Room 130-B, 600 Pennsylvania Avenue, N.W. Washington, D.C., 20580.

Remedying the Effects of Identity Theft

You are receiving this information because you have notified a consumer reporting agency that you believe that you are a victim of identity theft. Identity theft occurs when someone uses your name, Social Security number, date of birth, or other identifying information, without authority, to commit fraud. For example, someone may have committed identity theft by using your personal information to open a credit card account or get a loan in your name. For more information, visit www.consumer.gov/idtheft or write to: FTC, Consumer Response Center, Room 130-B, 600 Pennsylvania Avenue, N.W. Washington, D.C., 20580.

The Fair Credit Reporting Act (FCRA) gives you specific rights when you are, or believe that you are, the victim of identity theft. Here is a brief summary of the rights designed to help you recover from identity theft.

1. **You have the right to ask that nationwide consumer reporting agencies place "fraud alerts" in your file** to let potential creditors and others know that you may be a victim of identity theft. A fraud alert can make it more difficult for someone to get credit in your name because it tells creditors to follow certain procedures to protect you. It also may delay your ability to obtain credit. You may place a fraud alert in your file by calling just one of the three nationwide consumer reporting agencies. As soon as that agency processes your fraud alert, it will notify the other two, which then also must place fraud alerts in your file.

   - Equifax: 1-800-XXX-XXXX; www.equifax.com
   - Experian: 1-800-XXX-XXXX; www.experian.com
   - TransUnion: 1-800-XXX-XXXX; www.transunion.com

   An initial fraud alert stays in your file for at least 90 days. An extended alert stays in your file for seven years. To place either of these alerts, a consumer reporting agency will require you to provide appropriate proof of your identity, which may include your Social Security number. If you ask for an extended alert, you will have to provide an *identity theft report.* An *identity theft report* includes a copy of a report you have filed with a federal, state, or local law enforcement agency, and additional information a consumer reporting agency may require you to submit. For more detailed information about the *identity theft report*, visit www.consumer.gov/idtheft.

2. **You have the right to free copies of the information in your file (your "file disclosure").** An initial fraud alert entitles you to a copy of all the information in your file at each of the three nationwide agencies, and an extended alert entitles you to two free file disclosures in a 12-month period following the placing of the alert. These additional disclosures may help you detect signs of fraud, for example, whether fraudulent accounts have been opened in your name or whether someone has reported a change in your address. Once a year, you also have the right to a free copy of the information in your file

at any consumer reporting agency, if you believe it has inaccurate information due to fraud, such as identity theft. You also have the ability to obtain additional free file disclosures under other provisions of the FCRA. See www.ftc.gov/credit.

3. **You have the right to obtain documents relating to fraudulent transactions made or accounts opened using your personal information.** A creditor or other business must give you copies of applications and other business records relating to transactions and accounts that resulted from the theft of your identity, if you ask for them in writing. A business may ask you for proof of your identity, a police report, and an affidavit before giving you the documents. It also may specify an address for you to send your request. Under certain circumstances, a business can refuse to provide you with these documents. See www.consumer.gov/idtheft.

4. **You have the right to obtain information from a debt collector.** If you ask, a debt collector must provide you with certain information about the debt you believe was incurred in your name by an identity thief – like the name of the creditor and the amount of the debt.

5. **If you believe information in your file results from identity theft, you have the right to ask that a consumer reporting agency block that information from your file.** An identity thief may run up bills in your name and not pay them. Information about the unpaid bills may appear on your consumer report. Should you decide to ask a consumer reporting agency to block the reporting of this information, you must identify the information to block, and provide the consumer reporting agency with proof of your identity and a copy of your *identity theft report*. The consumer reporting agency can refuse or cancel your request for a block if, for example, you don't provide the necessary documentation, or where the block results from an error or a material misrepresentation of fact made by you. If the agency declines or rescinds the block, it must notify you. Once a debt resulting from identity theft has been blocked, a person or business with notice of the block may not sell, transfer, or place the debt for collection.

6. **You also may prevent businesses from reporting information about you to consumer reporting agencies if you believe the information is a result of identity theft.** To do so, you must send your request to the address specified by the business that reports the information to the consumer reporting agency. The business will expect you to identify what information you do not want reported and to provide an *identity theft report*.

To learn more about identity theft and how to deal with its consequences, visit www.consumer.gov/idtheft, or write to the FTC. You may have additional rights under state law. For more information, contact your local consumer protection agency or your state attorney general.

In addition to the new rights and procedures to help consumers deal with the effects of identity theft, the FCRA has many other important consumer protections. They are described in more detail at www.ftc.gov/credit.

■ 7. Amend part 698 to add a new Appendix F as follows:

Appendix F to Part 698—General Summary of Consumer Rights

The prescribed form for this summary is a disclosure that is substantially similar to the Commission's model summary with all information clearly and prominently displayed. The list of federal regulators that is included in the Commission's prescribed summary may be provided separately so long as this is done in a clear and conspicuous way. A summary should accurately reflect changes to those items that may change over time (*e.g.*, dollar amounts, or telephone numbers and addresses of federal agencies) to remain in compliance. Translations of this summary will be in compliance with the Commission's prescribed model, provided that the translation is accurate and that it is provided in a language used by the recipient consumer.

BILLING CODE 6750–01–P

Para informacion en espanol, visite www.ftc.gov/credit o escribe a la FTC Consumer Response Center, Room 130-A 600 Pennsylvania Ave. N.W., Washington, D.C. 20580.

A Summary of Your Rights Under the Fair Credit Reporting Act

The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check writing histories, medical records, and rental history records). Here is a summary of your major rights under the FCRA. **For more information, including information about additional rights, go to www.ftc.gov/credit or write to: Consumer Response Center, Room 130-A, Federal Trade Commission, 600 Pennsylvania Ave. N.W., Washington, D.C. 20580.**

- **You must be told if information in your file has been used against you.** Anyone who uses a credit report or another type of consumer report to deny your application for credit, insurance, or employment – or to take another adverse action against you – must tell you, and must give you the name, address, and phone number of the agency that provided the information.
- **You have the right to know what is in your file.** You may request and obtain all the information about you in the files of a consumer reporting agency (your "file disclosure"). You will be required to provide proper identification, which may include your Social Security number. In many cases, the disclosure will be free. You are entitled to a free file disclosure if:
  - a person has taken adverse action against you because of information in your credit report;
  - you are the victim of identify theft and place a fraud alert in your file;
  - your file contains inaccurate information as a result of fraud;
  - you are on public assistance;
  - you are unemployed but expect to apply for employment within 60 days.

  In addition, by September 2005 all consumers will be entitled to one free disclosure every 12 months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See www.ftc.gov/credit for additional information.
- **You have the right to ask for a credit score.** Credit scores are numerical summaries of your credit-worthiness based on information from credit bureaus. You may request a credit score from consumer reporting agencies that create scores or distribute scores used in residential real property loans, but you will have to pay for it. In some mortgage transactions, you will receive credit score information for free from the mortgage lender.
- **You have the right to dispute incomplete or inaccurate information.** If you identify information in your file that is incomplete or inaccurate, and report it to the consumer reporting agency, the agency must investigate unless your dispute is frivolous. See www.ftc.gov/credit for an explanation of dispute procedures.
- **Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information.** Inaccurate, incomplete or unverifiable information must be removed or corrected, usually within 30 days. However, a consumer reporting agency may continue to report information it has verified as accurate.

- **Consumer reporting agencies may not report outdated negative information.** In most cases, a consumer reporting agency may not report negative information that is more than seven years old, or bankruptcies that are more than 10 years old.
- **Access to your file is limited.** A consumer reporting agency may provide information about you only to people with a valid need -- usually to consider an application with a creditor, insurer, employer, landlord, or other business. The FCRA specifies those with a valid need for access.
- **You must give your consent for reports to be provided to employers.** A consumer reporting agency may not give out information about you to your employer, or a potential employer, without your written consent given to the employer. Written consent generally is not required in the trucking industry. For more information, go to www.ftc.gov/credit.
- **You may limit "prescreened" offers of credit and insurance you get based on information in your credit report.** Unsolicited "prescreened" offers for credit and insurance must include a toll-free phone number you can call if you choose to remove your name and address from the lists these offers are based on. You may opt-out with the nationwide credit bureaus at 1-800-XXX-XXXX.
- **You may seek damages from violators.** If a consumer reporting agency, or, in some cases, a user of consumer reports or a furnisher of information to a consumer reporting agency violates the FCRA, you may be able to sue in state or federal court.
- **Identity theft victims and active duty military personnel have additional rights.** For more information, visit www.ftc.gov/credit.

States may enforce the FCRA, and many states have their own consumer reporting laws. In some cases, you may have more rights under state law. For more information, contact your state or local consumer protection agency or your state Attorney General. Federal enforcers are:

TYPE OF BUSINESS:	CONTACT:
Consumer reporting agencies, creditors and others not listed below	Federal Trade Commission: Consumer Response Center - FCRA Washington, DC 20580 1-877-382-4357
National banks, federal branches/agencies of foreign banks (word "National" or initials "N.A." appear in or after bank's name)	Office of the Comptroller of the Currency Compliance Management, Mail Stop 6-6 Washington, DC 20219 800-613-6743
Federal Reserve System member banks (except national banks, and federal branches/agencies of foreign banks)	Federal Reserve Board Division of Consumer & Community Affairs Washington, DC 20551 202-452-3693
Savings associations and federally chartered savings banks (word "Federal" or initials "F.S.B." appear in federal institution's name)	Office of Thrift Supervision Consumer Complaints Washington, DC 20552 800-842-6929
Federal credit unions (words "Federal Credit Union" appear in institution's name)	National Credit Union Administration 1775 Duke Street Alexandria, VA 22314 703-519-4600
State-chartered banks that are not members of the Federal Reserve System	Federal Deposit Insurance Corporation Consumer Response Center, 2345 Grand Avenue, Suite 100 Kansas City, Missouri 64108-2638 1-877-275-3342
Air, surface, or rail common carriers regulated by former Civil Aeronautics Board or Interstate Commerce Commission	Department of Transportation , Office of Financial Management Washington, DC 20590 202-366-1306
Activities subject to the Packers and Stockyards Act, 1921	Department of Agriculture Office of Deputy Administrator - GIPSA Washington, DC 20250 202-720-7051

■ 8. Amend Part 698 to add a new Appendix G as follows:

Appendix G to Part 698—Notice of Furnisher Responsibilities

The prescribed form for this disclosure is a separate document that is substantially similar to the Commission's model notice with all information clearly and prominently displayed. Consumer reporting agencies may limit the disclosure to only those items that they know are relevant to the furnisher that will receive the notice.

All furnishers subject to the Federal Trade Commission's jurisdiction must comply with all applicable regulations, including regulations promulgated after this notice was prescribed in 2004. Information about applicable regulations currently in effect can be found at the Commission's Web site, www.ftc.gov/credit. Furnishers who are not subject to the Commission's jurisdiction should consult with their regulators to find any relevant regulations.

NOTICE TO FURNISHERS OF INFORMATION: OBLIGATIONS OF FURNISHERS UNDER THE FCRA

The federal Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681-1681y, imposes responsibilities on all persons who furnish information to consumer reporting agencies (CRAs). These responsibilities are found in Section 623 of the FCRA, 15 U.S.C. 1681s-2. State law may impose additional requirements on furnishers. All furnishers of information to CRAs should become familiar with the applicable laws and may want to consult with their counsel to ensure that they are in compliance. The text of the FCRA is set forth in full at the Website of the Federal Trade Commission (FTC): www.ftc.gov/credit. A list of the sections of the FCRA cross-referenced to the U.S. Code is at the end of this document.

Section 623 imposes the following duties upon furnishers:

Accuracy Guidelines

The banking and credit union regulators and the FTC will promulgate guidelines and regulations dealing with the accuracy of information provided to CRAs by furnishers. The regulations and guidelines issued by the FTC will be available at www.ftc.gov/credit when they are issued. Section 623(e).

General Prohibition on Reporting Inaccurate Information

The FCRA prohibits information furnishers from providing information to a CRA that they know or have reasonable cause to believe is inaccurate. However, the furnisher is not subject to this general prohibition if it clearly and conspicuously specifies an address to which consumers may write to notify the furnisher that certain information is inaccurate. Sections 623(a)(1)(A) and (a)(1)(C).

Duty to Correct and Update Information

If at any time a person who regularly and in the ordinary course of business furnishes information to one or more CRAs determines that the information provided is not complete or accurate, the furnisher must promptly provide complete and accurate information to the CRA. In addition, the furnisher must notify all CRAs that received the information of any corrections, and must thereafter report only the complete and accurate information. Section 623(a)(2).

Duties After Notice of Dispute from Consumer

If a consumer notifies a furnisher, at an address specified for the furnisher for such notices, that specific information is inaccurate, and the information is, in fact, inaccurate, the furnisher must thereafter report the correct information to CRAs. Section 623(a)(1)(B).

If a consumer notifies a furnisher that the consumer disputes the completeness or accuracy of any information reported by the furnisher, the furnisher may not subsequently report that information to a CRA without providing notice of the dispute. Section 623(a)(3).

The federal banking and credit union regulators and the FTC will issue regulations that will identify when an information furnisher must investigate a dispute made directly to the furnisher by a consumer. Once these regulations are issued, furnishers must comply with them and complete an investigation within 30 days (or 45 days, if the consumer later provides relevant additional information) unless the dispute is frivolous or irrelevant or comes from a "credit repair organization." The FTC regulations will be available at www.ftc.gov/credit. Section 623(a)(8).

Duties After Notice of Dispute from Consumer Reporting Agency

If a CRA notifies a furnisher that a consumer disputes the completeness or accuracy of information provided by the furnisher, the furnisher has a duty to follow certain procedures. The furnisher must:

- Conduct an investigation and review all relevant information provided by the CRA, including information given to the CRA by the consumer. Sections 623(b)(1)(A) and (b)(1)(B).
- Report the results to the CRA that referred the dispute, and, if the investigation establishes that the information was, in fact, incomplete or inaccurate, report the results to all CRAs to which the furnisher provided the information that compile and maintain files on a nationwide basis. Section 623(b)(1)(C) and (b)(1)(D).
- Complete the above steps within 30 days from the date the CRA receives the dispute (or 45 days, if the consumer later provides relevant additional information to the CRA). Section 623(b)(2).
- Promptly modify or delete the information, or block its reporting. Section 623(b)(1)(E).

Duty to Report Voluntary Closing of Credit Accounts

If a consumer voluntarily closes a credit account, any person who regularly and in the ordinary course of business furnishes information to one or more CRAs must report this fact when it provides information to CRAs for the time period in which the account was closed. Section 623(a)(4).

Duty to Report Dates of Delinquencies

If a furnisher reports information concerning a delinquent account placed for collection, charged to profit or loss, or subject to any similar action, the furnisher must, within 90 days after reporting the information, provide the CRA with the month and the year of the commencement

of the delinquency that immediately preceded the action, so that the agency will know how long to keep the information in the consumer's file. Section 623(a)(5).

Any person, such as a debt collector, that has acquired or is responsible for collecting delinquent accounts and that reports information to CRAs may comply with the requirements of Section 623(a)(5) (until there is a consumer dispute) by reporting the same delinquency date previously reported by the creditor. If the creditor did not report this date, they may comply with the FCRA by establishing reasonable procedures to obtain and report delinquency dates, or, if a delinquency date cannot be reasonably obtained, by following reasonable procedures to ensure that the date reported precedes the date when the account was placed for collection, charged to profit or loss, or subjected to any similar action. Section 623(a)(5).

Duties of Financial Institutions When Reporting Negative Information

Financial institutions that furnish information to "nationwide" consumer reporting agencies, as defined in Section 603(p), must notify consumers in writing if they may furnish or have furnished negative information to a CRA. Section 623(a)(7). The Federal Reserve Board has prescribed model disclosures, 12 CFR Part 222, App. B.

Duties When Furnishing Medical Information

A furnisher whose primary business is providing medical services, products, or devices (and such furnisher's agents or assignees) is a medical information furnisher for the purposes of the FCRA and must notify all CRAs to which it reports of this fact. Section 623(a)(9). This notice will enable CRAs to comply with their duties under Section 604(g) when reporting medical information.

Duties When ID Theft Occurs

All furnishers must have in place reasonable procedures to respond to notifications from CRAs that information furnished is the result of identity theft, and to prevent refurnishing the information in the future. A furnisher may not furnish information that a consumer has identified as resulting from identity theft unless the furnisher subsequently knows or is informed by the consumer that the information is correct. Section 623(a)(6). If a furnisher learns that it has furnished inaccurate information due to identity theft, it must notify each consumer reporting agency of the correct information and must thereafter report only complete and accurate information. Section 623(a)(2). When any furnisher of information is notified pursuant to the procedures set forth in Section 605B that a debt has resulted from identity theft, the furnisher may not sell, transfer, or place for collection the debt except in certain limited circumstances. Section 615(f).

The FTC's Web site, www.ftc.gov/credit, has more information about the FCRA, including publications for businesses and the full text of the FCRA.

Citations for FCRA sections in the U.S. Code, 15 U.S.C. § 1681 et seq.:

Section 602	15 U.S.C. 1681	Section 615	15 U.S.C. 1681m
Section 603	15 U.S.C. 1681a	Section 616	15 U.S.C. 1681n
Section 604	15 U.S.C. 1681b	Section 617	15 U.S.C. 1681o
Section 605	15 U.S.C. 1681c	Section 618	15 U.S.C. 1681p
Section 605A	15 U.S.C. 1681cA	Section 619	15 U.S.C. 1681q
Section 605B	15 U.S.C. 1681cB	Section 620	15 U.S.C. 1681r
Section 606	15 U.S.C. 1681d	Section 621	15 U.S.C. 1681s
Section 607	15 U.S.C. 1681e	Section 622	15 U.S.C. 1681s-1
Section 608	15 U.S.C. 1681f	Section 623	15 U.S.C. 1681s-2
Section 609	15 U.S.C. 1681g	Section 624	15 U.S.C. 1681t
Section 610	15 U.S.C. 1681h	Section 625	15 U.S.C. 1681u
Section 611	15 U.S.C. 1681i	Section 626	15 U.S.C. 1681v
Section 612	15 U.S.C. 1681j	Section 627	15 U.S.C. 1681w
Section 613	15 U.S.C. 1681k	Section 628	15 U.S.C. 1681x
Section 614	15 U.S.C. 1681*l*	Section 629	15 U.S.C. 1681y

■ 9. Amend Part 698 to add a new Appendix H as follows:

Appendix H to Part 698—Notice of User Responsibilities

The prescribed form for this disclosure is a separate document that is substantially similar to the Commission's notice with all information clearly and prominently displayed. Consumer reporting agencies may limit the disclosure to only those items that they know are relevant to the user that will receive the notice.

All users subject to the Federal Trade Commission's jurisdiction must comply with all applicable regulations, including regulations promulgated after this notice was prescribed in 2004. Information about applicable regulations currently in effect can be found at the Commission's Web site, www.ftc.gov/credit. Persons not subject to the Commission's jurisdiction should consult with their regulators to find any relevant regulations.

NOTICE TO USERS OF CONSUMER REPORTS: OBLIGATIONS OF USERS UNDER THE FCRA

The Fair Credit Reporting Act (FCRA),15 U.S.C. 1681-1681y, requires that this notice be provided to inform users of consumer reports of their legal obligations. State law may impose additional requirements. The text of the FCRA is set forth in full at the Federal Trade Commission's Website at www.ftc.gov/credit. At the end of this document is a list of United States Code citations for the FCRA. Other information about user duties is also available at the Commission's Web site. **Users must consult the relevant provisions of the FCRA for details about their obligations under the FCRA.**

The first section of this summary sets forth the responsibilities imposed by the FCRA on all users of consumer reports. The subsequent sections discuss the duties of users of reports that contain specific types of information, or that are used for certain purposes, and the legal consequences of violations. If you are a furnisher of information to a consumer reporting agency (CRA), you have additional obligations and will receive a separate notice from the CRA describing your duties as a furnisher.

I. OBLIGATIONS OF ALL USERS OF CONSUMER REPORTS

A. Users Must Have a Permissible Purpose

Congress has limited the use of consumer reports to protect consumers' privacy. All users must have a permissible purpose under the FCRA to obtain a consumer report. Section 604 contains a list of the permissible purposes under the law. These are:

- As ordered by a court or a federal grand jury subpoena. Section 604(a)(1)
- As instructed by the consumer in writing. Section 604(a)(2)
- For the extension of credit as a result of an application from a consumer, or the review or collection of a consumer's account. Section 604(a)(3)(A)
- For employment purposes, including hiring and promotion decisions, where the consumer has given written permission. Sections 604(a)(3)(B) and 604(b)

- For the underwriting of insurance as a result of an application from a consumer. Section 604(a)(3)(C)

- When there is a legitimate business need, in connection with a business transaction that is initiated by the consumer. Section 604(a)(3)(F)(i)

- To review a consumer's account to determine whether the consumer continues to meet the terms of the account. Section 604(a)(3)(F)(ii)

- To determine a consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status. Section 604(a)(3)(D)

- For use by a potential investor or servicer, or current insurer, in a valuation or assessment of the credit or prepayment risks associated with an existing credit obligation. Section 604(a)(3)(E)

- For use by state and local officials in connection with the determination of child support payments, or modifications and enforcement thereof. Sections 604(a)(4) and 604(a)(5)

In addition, creditors and insurers may obtain certain consumer report information for the purpose of making "prescreened" unsolicited offers of credit or insurance. Section 604(c). The particular obligations of users of "prescreened" information are described in Section VII below.

B. Users Must Provide Certifications

Section 604(f) prohibits any person from obtaining a consumer report from a consumer reporting agency (CRA) unless the person has certified to the CRA the permissible purpose(s) for which the report is being obtained and certifies that the report will not be used for any other purpose.

C. Users Must Notify Consumers When Adverse Actions Are Taken

The term "adverse action" is defined very broadly by Section 603. "Adverse actions" include all business, credit, and employment actions affecting consumers that can be considered to have a negative impact as defined by Section 603(k) of the FCRA – such as denying or canceling credit or insurance, or denying employment or promotion. No adverse action occurs in a credit transaction where the creditor makes a counteroffer that is accepted by the consumer.

1. Adverse Actions Based on Information Obtained From a CRA

If a user takes any type of adverse action as defined by the FCRA that is based at least in part on information contained in a consumer report, Section 615(a) requires the user to notify the consumer. The notification may be done in writing, orally, or by electronic means. It must include the following:

- The name, address, and telephone number of the CRA (including a toll-free telephone number, if it is a nationwide CRA) that provided the report.
- A statement that the CRA did not make the adverse decision and is not able to explain why the decision was made.
- A statement setting forth the consumer's right to obtain a free disclosure of the consumer's file from the CRA if the consumer makes a request within 60 days.
- A statement setting forth the consumer's right to dispute directly with the CRA the accuracy or completeness of any information provided by the CRA.

2. Adverse Actions Based on Information Obtained From Third Parties Who Are Not Consumer Reporting Agencies

If a person denies (or increases the charge for) credit for personal, family, or household purposes based either wholly or partly upon information from a person other than a CRA, and the information is the type of consumer information covered by the FCRA, Section 615(b)(1) requires that the user clearly and accurately disclose to the consumer his or her right to be told the nature of the information that was relied upon if the consumer makes a written request within 60 days of notification. The user must provide the disclosure within a reasonable period of time following the consumer's written request.

3. Adverse Actions Based on Information Obtained From Affiliates

If a person takes an adverse action involving insurance, employment, or a credit transaction initiated by the consumer, based on information of the type covered by the FCRA, and this information was obtained from an entity affiliated with the user of the information by common ownership or control, Section 615(b)(2) requires the user to notify the consumer of the adverse action. The notice must inform the consumer that he or she may obtain a disclosure of the nature of the information relied upon by making a written request within 60 days of receiving the adverse action notice. If the consumer makes such a request, the user must disclose the nature of the information not later than 30 days after receiving the request. If consumer report information is shared among affiliates and then used for an adverse action, the user must make an adverse action disclosure as set forth in I.C.1 above.

D. Users Have Obligations When Fraud and Active Duty Military Alerts are in Files

When a consumer has placed a fraud alert, including one relating to identity theft, or an active duty military alert with a nationwide consumer reporting agency as defined in Section 603(p) and resellers, Section 605A(h) imposes limitations on users of reports obtained from the consumer reporting agency in certain circumstances, including the establishment of a new credit plan and the issuance of additional credit cards. For initial fraud alerts and active duty alerts, the user must have reasonable policies and procedures in place to form a belief that the user knows the identity of the applicant or contact the consumer at a telephone number specified by the consumer; in the case of extended fraud alerts, the user must contact the consumer in accordance with the contact information provided in the consumer's alert.

E. Users Have Obligations When Notified of an Address Discrepancy

Section 605(h) requires nationwide CRAs, as defined in Section 603(p), to notify users that request reports when the address for a consumer provided by the user in requesting the report is substantially different from the addresses in the consumer's file. When this occurs, users must comply with regulations specifying the procedures to be followed, which will be issued by the Federal Trade Commission and the banking and credit union regulators. The Federal Trade Commission's regulations will be available at www.ftc.gov/credit.

F. Users Have Obligations When Disposing of Records

Section 628 requires that all users of consumer report information have in place procedures to properly dispose of records containing this information. The Federal Trade Commission, the Securities and Exchange Commission, and the banking and credit union regulators have issued regulations covering disposal. The Federal Trade Commission's regulations may be found at www.ftc.gov/credit.

II. CREDITORS MUST MAKE ADDITIONAL DISCLOSURES

If a person uses a consumer report in connection with an application for, or a grant, extension, or provision of, credit to a consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that person, based in whole or in part on a consumer report, the person must provide a risk-based pricing notice to the consumer in accordance with regulations to be jointly prescribed by the Federal Trade Commission and the Federal Reserve Board.

Section 609(g) requires a disclosure by all persons that make or arrange loans secured by residential real property (one to four units) and that use credit scores. These persons must

provide credit scores and other information about credit scores to applicants, including the disclosure set forth in Section 609(g)(1)(D) ("Notice to the Home Loan Applicant").

III. OBLIGATIONS OF USERS WHEN CONSUMER REPORTS ARE OBTAINED FOR EMPLOYMENT PURPOSES

A. Employment Other Than in the Trucking Industry

If information from a CRA is used for employment purposes, the user has specific duties, which are set forth in Section 604(b) of the FCRA. The user must:

- Make a clear and conspicuous written disclosure to the consumer before the report is obtained, in a document that consists solely of the disclosure, that a consumer report may be obtained.
- Obtain from the consumer prior written authorization. Authorization to access reports during the term of employment may be obtained at the time of employment.
- Certify to the CRA that the above steps have been followed, that the information being obtained will not be used in violation of any federal or state equal opportunity law or regulation, and that, if any adverse action is to be taken based on the consumer report, a copy of the report and a summary of the consumer's rights will be provided to the consumer.
- **Before** taking an adverse action, the user must provide a copy of the report to the consumer as well as the summary of consumer's rights. (The user should receive this summary from the CRA.) A Section 615(a) adverse action notice should be sent after the adverse action is taken.

An adverse action notice also is required in employment situations if credit information (other than transactions and experience data) obtained from an affiliate is used to deny employment. Section 615(b)(2)

The procedures for investigative consumer reports and employee misconduct investigations are set forth below.

B. Employment in the Trucking Industry

Special rules apply for truck drivers where the only interaction between the consumer and the potential employer is by mail, telephone, or computer. In this case, the consumer may provide consent orally or electronically, and an adverse action may be made orally, in writing, or electronically. The consumer may obtain a copy of any report relied upon by the trucking

company by contacting the company.

IV. OBLIGATIONS WHEN INVESTIGATIVE CONSUMER REPORTS ARE USED

Investigative consumer reports are a special type of consumer report in which information about a consumer's character, general reputation, personal characteristics, and mode of living is obtained through personal interviews by an entity or person that is a consumer reporting agency. Consumers who are the subjects of such reports are given special rights under the FCRA. If a user intends to obtain an investigative consumer report, Section 606 requires the following:

- The user must disclose to the consumer that an investigative consumer report may be obtained. This must be done in a written disclosure that is mailed, or otherwise delivered, to the consumer at some time before or not later than three days after the date on which the report was first requested. The disclosure must include a statement informing the consumer of his or her right to request additional disclosures of the nature and scope of the investigation as described below, and the summary of consumer rights required by Section 609 of the FCRA. (The summary of consumer rights will be provided by the CRA that conducts the investigation.)

- The user must certify to the CRA that the disclosures set forth above have been made and that the user will make the disclosure described below.

- Upon the written request of a consumer made within a reasonable period of time after the disclosures required above, the user must make a complete disclosure of the nature and scope of the investigation. This must be made in a written statement that is mailed, or otherwise delivered, to the consumer no later than five days after the date on which the request was received from the consumer or the report was first requested, whichever is later in time.

V. SPECIAL PROCEDURES FOR EMPLOYEE INVESTIGATIONS

Section 603(x) provides special procedures for investigations of suspected misconduct by an employee or for compliance with Federal, state or local laws and regulations or the rules of a self-regulatory organization, and compliance with written policies of the employer. These investigations are not treated as consumer reports so long as the employer or its agent complies with the procedures set forth in Section 603(x), and a summary describing the nature and scope of the inquiry is made to the employee if an adverse action is taken based on the investigation.

VI. OBLIGATIONS OF USERS OF MEDICAL INFORMATION

Section 604(g) limits the use of medical information obtained from consumer reporting agencies (other than payment information that appears in a coded form that does not identify the

medical provider). If the information is to be used for an insurance transaction, the consumer must give consent to the user of the report or the information must be coded. If the report is to be used for employment purposes – or in connection with a credit transaction (except as provided in regulations issued by the banking and credit union regulators) – the consumer must provide specific written consent and the medical information must be relevant. Any user who receives medical information shall not disclose the information to any other person (except where necessary to carry out the purpose for which the information was disclosed, or as permitted by statute, regulation, or order).

VII. OBLIGATIONS OF USERS OF "PRESCREENED" LISTS

The FCRA permits creditors and insurers to obtain limited consumer report information for use in connection with unsolicited offers of credit or insurance under certain circumstances. Sections 603(l), 604(c), 604(e), and 615(d). This practice is known as "prescreening" and typically involves obtaining from a CRA a list of consumers who meet certain preestablished criteria. If any person intends to use prescreened lists, that person must (1) before the offer is made, establish the criteria that will be relied upon to make the offer and to grant credit or insurance, and (2) maintain such criteria on file for a three-year period beginning on the date on which the offer is made to each consumer. In addition, any user must provide with each written solicitation a clear and conspicuous statement that:

- Information contained in a consumer's CRA file was used in connection with the transaction.
- The consumer received the offer because he or she satisfied the criteria for credit worthiness or insurability used to screen for the offer.
- Credit or insurance may not be extended if, after the consumer responds, it is determined that the consumer does not meet the criteria used for screening or any applicable criteria bearing on credit worthiness or insurability, or the consumer does not furnish required collateral.
- The consumer may prohibit the use of information in his or her file in connection with future prescreened offers of credit or insurance by contacting the notification system established by the CRA that provided the report. The statement must include the address and toll-free telephone number of the appropriate notification system.

In addition, once the Federal Trade Commission by rule has established the format, type size, and manner of the disclosure required by Section 615(d), users must be in compliance with the rule. The FTC's regulations will be at www.ftc.gov/credit.

VIII. OBLIGATIONS OF RESELLERS

A. Disclosure and Certification Requirements

Section 607(e) requires any person who obtains a consumer report for resale to take the following steps:

- Disclose the identity of the end-user to the source CRA.
- Identify to the source CRA each permissible purpose for which the report will be furnished to the end-user.
- Establish and follow reasonable procedures to ensure that reports are resold only for permissible purposes, including procedures to obtain:
  (1) the identity of all end-users;
  (2) certifications from all users of each purpose for which reports will be used; and
  (3) certifications that reports will not be used for any purpose other than the purpose(s) specified to the reseller. Resellers must make reasonable efforts to verify this information before selling the report.

B. Reinvestigations by Resellers

Under Section 611(f), if a consumer disputes the accuracy or completeness of information in a report prepared by a reseller, the reseller must determine whether this is a result of an action or omission on its part and, if so, correct or delete the information. If not, the reseller must send the dispute to the source CRA for reinvestigation. When any CRA notifies the reseller of the results of an investigation, the reseller must immediately convey the information to the consumer.

C. Fraud Alerts and Resellers

Section 605A(f) requires resellers who receive fraud alerts or active duty alerts from another consumer reporting agency to include these in their reports.

IX. LIABILITY FOR VIOLATIONS OF THE FCRA

Failure to comply with the FCRA can result in state government or federal government enforcement actions, as well as private lawsuits. Sections 616, 617, and 621. In addition, any person who knowingly and willfully obtains a consumer report under false pretenses may face criminal prosecution. Section 619.

The FTC's Web site, www.ftc.gov/credit, has more information about the FCRA including publications for businesses and the full text of the FCRA.

Citations for FCRA sections in the U.S. Code, 15 U.S.C. § 1681 et seq.:

Section 602	15 U.S.C. 1681
Section 603	15 U.S.C. 1681a
Section 604	15 U.S.C. 1681b
Section 605	15 U.S.C. 1681c
Section 605A	15 U.S.C. 1681cA
Section 605B	15 U.S.C. 1681cB
Section 606	15 U.S.C. 1681d
Section 607	15 U.S.C. 1681e
Section 608	15 U.S.C. 1681f
Section 609	15 U.S.C. 1681g
Section 610	15 U.S.C. 1681h
Section 611	15 U.S.C. 1681i
Section 612	15 U.S.C. 1681j
Section 613	15 U.S.C. 1681k
Section 614	15 U.S.C. 1681*l*
Section 615	15 U.S.C. 1681m
Section 616	15 U.S.C. 1681n
Section 617	15 U.S.C. 1681o
Section 618	15 U.S.C. 1681p
Section 619	15 U.S.C. 1681q
Section 620	15 U.S.C. 1681r
Section 621	15 U.S.C. 1681s
Section 622	15 U.S.C. 1681s-1
Section 623	15 U.S.C. 1681s-2
Section 624	15 U.S.C. 1681t
Section 625	15 U.S.C. 1681u
Section 626	15 U.S.C. 1681v
Section 627	15 U.S.C. 1681w
Section 628	15 U.S.C. 1681x
Section 629	15 U.S.C. 1681y

By direction of the Commission.

Donald S. Clark,

Secretary.

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Federal Register

Vol. 69, No. 229

Tuesday, November 30, 2004

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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**

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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
68237–68754 24
68755–69268 26
69269–69504 29
69505–69804 30

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
7847 68753
7848 69501
7849 69503

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, 69748
652 69450
905 64641
916 68755
917 68755
955 68759
979 68761
1000 68764
1001 68764
1005 68764
1006 68764
1007 68764
1030 68764
1032 68764
1033 68764
1124 68764
1126 68764
1131 68764
1580 63317
1775 65517
1776 67263
1777 65517
1778 65517
1780 65517
1806 69032
1822 69032
1902 69032
1925 69032
1930 69032
1940 69032
1942 .....65517, 69032
1944 69032
1951 69032
1955 .....65520, 69032
1956 69032
1965 69032
3560 69032
3565 69032
3570 65517
4274 65517
4279 64829

Proposed Rules:
923 63958
946 68819
1005 67670
1006 67670
1007 67670
1260 65386
1717 64689
1782 65546
1951 65546
1955 65546
1956 65546
4280 65554

8 CFR

208 69480
212 69480
215 .....64477, 65508
235 .....64477, 65508, 69480
252 .....64477, 65508
1003 69490
1208 69490
1212 69490
1235 69490
1240 69490

Proposed Rules:
103 .....69546, 69549
204 69549
214 69549
245 69549

245a....69549

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, 68237
102....63919, 68056
104....68056, 68237
106....63919, 68056
109....63919
110....68237
113....68237

12 CFR

5....64478
19....65067
201....67635
327....68068
506....68239
509....64249
516....68239
528....68239
543....68239
544....68239
545....68239
552....68239
559....68239
563....68239
563b....68239
567....68239
574....68239
575....68239
613....68767
614....68767
618....68767
717....69269
748....69269
Proposed Rules:
563e....68257
615....67070
617....67074
701....68829

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, 68251, 68767, 68769, 68771, 68773, 68775, 68777, 68779, 69274, 69277, 69505
71....64656, 65069, 65367, 65368, 67052, 67215, 67638, 67811, 68074, 68782, 68783, 69448, 69506
73....68075
97....63318, 65538, 69507
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, 68265, 68268, 68270, 68272, 68274, 68277
61....67258
71....63970, 63972, 63973, 63974, 63975, 63976, 63978, 65107, 68104, 68105, 69554, 69556
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
801....69508

16 CFR

601....69776
603....63922
613....63922
614....63922
682....68690
698....69776
Proposed Rules:
Ch. I....64698
310....67287

17 CFR

37....67811
38....67811
40....67503
41....67503
145....67503
190....69510
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, 69511
163....69511
178....63445
Proposed Rules:
206....64541
207....64541

20 CFR

404....67018
655....68222
Proposed Rules:
404....64702, 67039

21 CFR

16....68612
180....65540
201....69278
520....69523
522....67817, 67818, 68252, 68253, 69523
556....68783
558....67263, 68783
862....68254
1270....68612
1271....68612
Proposed Rules:
Ch. 1....68831
25....68280
101....67513
341....63482
890....64266

22 CFR

51....67053
171....63934

24 CFR

5....65024
81....63580
92....68850
203....68784
960....68786
966....68786
Proposed Rules:
5....68218
81....63576
203....65324

26 CFR

1....68077
31....67054
Proposed Rules:
1....64546, 65108, 65555, 67075, 67681, 67873, 68110, 68282, 68838, 69557
31....67075

27 CFR

9....69524
24....67639
Proposed Rules:
9....69557

28 CFR

0....65542
2....68791

29 CFR

1910....68712
1960....68793
4022....65543
4044....65543
Proposed Rules:
458....64226
1910....68283, 68706

30 CFR

18....68078
204....68805
914....69280
Proposed Rules:
56....67681
57....67681
58....67681
70....67681
71....67681
72....67681
75....67681
90....67681
870....69348
872....69348
938....68285

33 CFR

110....69527
117....63574, 64494, 64860, 65369, 65371, 67055, 67056, 68079, 69529
165....65373, 68806, 68807
402....64258
403....64258
Proposed Rules:
Ch. I....63979, 65555
110....64546, 64549, 64551
117....64553, 64875, 67294, 69561
165....64555
330....69563

36 CFR

7....65348
Proposed Rules:
7....65556
1195....69244, 69245
1228....67692
1234....63980

37 CFR

2....63320
7....63320
259....69288

39 CFR

20....63946
111....63452
501....67508
Proposed Rules:
111....64877
3001....65563, 67514

40 CFR

51....69290, 69298
52....63321, 63324, 63947, 64259, 64661, 64860, 65069,

65375, 65378, 67058, 67060, 67062, 67645, 67819, 68080, 69304, 69531
63.....63452, 69320
81.....64133, 64860
131.....67218
180 .....63950, 63954, 65073, 65081
239.....65381
258.....65381
268.....67647
271.....64861
355.....68809
Proposed Rules:
9.....68444
52 .....63981, 64703, 65117, 65393, 65394, 67100, 67694, 67880, 69338, 69342, 69567
63.....63489
81.....69338, 69342
122.....68444
123.....68444
124.....68444
125.....68444
136.....64704, 64707
180.....68287
194.....64558, 69569
261.....68851
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, 69536
405.....66236, 69252
410.....66236
411.....66236
412.....66922, 69536
413.....66922, 69536
414.....66236
418.....66236, 69536
419.....65682
424.....66236
447.....68815
460.....69536
480.....69536
482.....69536
483.....69536
484.....66236, 69686
485.....69536
486.....66236
489.....69252, 69536
Proposed Rules:
416.....69178

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, 68859

47 CFR

1.....65544
2.....67823, 67853
13.....64664
22.....67823, 67853
24.....67823, 67853
73 .....63458, 64681, 64682, 65381, 65382, 65545, 67265, 67266, 68256, 68818, 69325
74 .....67823, 67853, 69325
78.....67823, 67853
80.....64664
90.....67823, 67853
Proposed Rules:
2.....65570, 67880
4.....68859
22.....67880
24.....67880
27.....63459, 69572
51.....69573
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
1572.....68720
Proposed Rules:
37.....69246
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

17.....68568
224.....69536
300 .....65382, 67267, 67268
622.....65092
635 .....67268, 68090, 68094, 69537
648 .....63460, 67284, 67780
660 .....63332, 62333, 64501, 65093, 67285, 67508, 67509, 67510
679 .....64683, 67668, 68095
Proposed Rules:
17 .....64710, 64884, 64889, 69578
223.....65127, 68215
229.....65127, 68215
600.....67100
622 .....67104, 67106, 68119
648 .....63341, 63498, 67528
679.....67107, 68865

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 30, 2004

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:
- Nutrition labeling—
  - Multi-serve, meal-type meat and poultry products; nutrient content claims; published 10-1-04

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Marine mammals:
- North Atlantic Right Whates; approach prohibition; published 11-30-04

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:
- Meloxicam; published 11-30-04

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Cessna; published 10-26-04

Standard instrument approach procedures; published 11-30-04

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]

AGRICULTURE DEPARTMENT

Farm Service Agency

Special programs:
- Farm Security and Rural Investment Act of 2002; implementation—
  - Business and industry loans; comments due by 12-9-04; published 11-9-04 [FR 04-24886]

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:
- Ready-to-eat meat and poultry products; listeria monocytogenes control; comments due by 12-8-04; published 6-6-03 [FR 03-14173]

AGRICULTURE DEPARTMENT

Rural Business-Cooperative Service

Special programs:
- Farm Security and Rural Investment Act of 2002; implementation—
  - Business and industry loans; comments due by 12-9-04; published 11-9-04 [FR 04-24886]

AGRICULTURE DEPARTMENT

Rural Housing Service

Special programs:
- Farm Security and Rural Investment Act of 2002; implementation—
  - Business and industry loans; comments due by 12-9-04; published 11-9-04 [FR 04-24886]

AGRICULTURE DEPARTMENT

Rural Utilities Service

Special programs:
- Farm Security and Rural Investment Act of 2002; implementation—
  - Business and industry loans; comments due by 12-9-04; published 11-9-04 [FR 04-24886]

COMMODITY FUTURES TRADING COMMISSION

Commodity Exchange Act:
- Futures commission merchants and introducing brokers; risk disclosure statement distribution; comments due by 12-9-04; published 11-9-04 [FR 04-24949]

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):
- Section 508 micropurchase exemption; comments due by 12-6-04; published 10-5-04 [FR 04-22247]
- Telecommuting for Federal contractors; comments due by 12-6-04; published 10-5-04 [FR 04-22246]

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 quality implementation plans; approval and promulgation; various States:
- Indiana; comments due by 12-8-04; published 11-8-04 [FR 04-24821]
- Wisconsin; comments due by 12-10-04; published 11-10-04 [FR 04-24914]

Environmental statements; availability, etc.:
- Coastal nonpoint pollution control program—
  - Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

Hazardous waste program authorizations:
- Maine; comments due by 12-9-04; published 11-9-04 [FR 04-24920]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Generic pesticide chemical tolerance regulations; update; comments due by 12-7-04; published 10-8-04 [FR 04-22584]

Radiation protection programs:
- Transuranic radioactive waste for disposal at Waste Isolation Pilot Plant; waste characterization program documents availability, Savannah River Site, SC; comments due by 12-6-04; published 11-5-04 [FR 04-24820]

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

Common carrier services:
- Wireless telecommunications services—
  - Advanced wireless services; service rules; comments due by 12-8-04; published 11-30-04 [FR 04-26384]

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):
- Section 508 micropurchase exemption; comments due by 12-6-04; published 10-5-04 [FR 04-22247]
- Telecommuting for Federal contractors; comments due by 12-6-04; published 10-5-04 [FR 04-22246]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Reports and guidance documents; availability, etc.:
- Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]
- 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]
Drawbridge operations:
Iowa; comments due by 12-9-04; published 11-9-04 [FR 04-24972]
Minnesota; comments due by 12-6-04; published 11-5-04 [FR 04-24688]

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—
San Jacinto Valley crownscale; comments due by 12-6-04; published 10-6-04 [FR 04-22395]
San Miguel Island fox, etc.; comments due by 12-6-04; published 10-7-04 [FR 04-22542]
Spreading navarretia; comments due by 12-6-04; published 10-7-04 [FR 04-22541]

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Pennsylvania; comments due by 12-9-04; published 11-24-04 [FR 04-25971]

LABOR DEPARTMENT
Mine Safety and Health Administration
Coal mine safety and health:
Underground mines—
High-voltage continuous mining machines; electrical safety standards; low- and medium-voltage diesel-powered electrical generators; hearings; comments due by 12-10-04; published 8-23-04 [FR 04-19190]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Section 508 micropurchase exemption; comments due by 12-6-04; published 10-5-04 [FR 04-22247]
Telecommuting for Federal contractors; comments due by 12-6-04; published 10-5-04 [FR 04-22246]

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]

PERSONNEL MANAGEMENT OFFICE
Pay administration:
Biweekly pay periods; pay computation; comments due by 12-6-04; published 10-7-04 [FR 04-22530]

POSTAL RATE COMMISSION
Practice and procedure:
Periodic reporting rules; comments due by 12-6-04; published 11-15-04 [FR 04-25298]

POSTAL SERVICE
Domestic Mail Manual:
Address sequencing services; comments due by 12-9-04; published 11-9-04 [FR 04-24887]

SMALL BUSINESS ADMINISTRATION
Disaster loan areas:
Maine; Open for comments until further notice; published 2-17-04 [FR 04-03374]

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
Workplace drug and alcohol testing programs:
Adulterated, substituted, and diluted specimen results; instructions to laboratories and medical review officers; comments due by 12-9-04; published 11-9-04 [FR 04-25025]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Aerospatiale; comments due by 12-10-04; published 11-10-04 [FR 04-25032]
Airbus; comments due by 12-6-04; published 11-4-04 [FR 04-24633]
Boeing; comments due by 12-10-04; published 10-26-04 [FR 04-23931]
Bombardier; comments due by 12-6-04; published 10-6-04 [FR 04-22266]
Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 12-6-04; published 11-4-04 [FR 04-24632]
Gulfstream Aerospace; comments due by 12-10-04; published 11-10-04 [FR 04-25029]
Gulfstream Aerospace LP; comments due by 12-10-04; published 11-10-04 [FR 04-25034]
McDonnell Douglas; comments due by 12-10-04; published 10-26-04 [FR 04-23930]
MD Helicopters, Inc.; comments due by 12-6-04; published 10-6-04 [FR 04-22264]
Raytheon; comments due by 12-7-04; published 10-22-04 [FR 04-23728]

TRANSPORTATION DEPARTMENT
Federal Motor Carrier Safety Administration
Motor carrier safety standards:
Motor carrier, broker, freight forwarder, and hazardous materials proceedings; practice rules; comments due by 12-6-04; published 10-20-04 [FR 04-23393]

TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Pipeline safety:
Gas and hazardous liquid pipelines direct assessment standards; comments due by 12-6-04; published 10-21-04 [FR 04-23551]

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes and procedure and administration:
Stapled foreign corporation; definition and tax treatment; comments due by 12-6-04; published 9-7-04 [FR 04-20244]

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.

S. 2986/P.L. 108–415

To amend title 31 of the United States Code to increase the public debt limit. (Nov. 19, 2004; 118 Stat. 2337)

H.J. Res. 114/P.L. 108–416

Making further continuing appropriations for the fiscal year 2005, and for other purposes. (Nov. 21, 2004; 118 Stat. 2338)

Last List November 9, 2004

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