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Presidential Documents

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The President

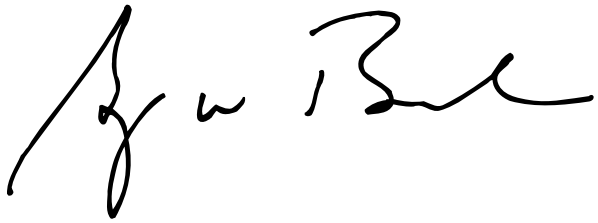
Presidential Determination No. 2005–07 of November 29, 2004

Presidential Determination on Waiver of Conditions on Obligation and Expenditure of Funds for Planning, Design, and Construction of a Chemical Weapons Destruction Facility in Russia

Memorandum for the Secretary of State

Consistent with the authority vested in me by section 1303 of the National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375) (the ''Act''), I hereby certify that waiving the conditions described in section 1305 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65), as amended, is important to the national security interests of the United States, and include herein, for submission to the Congress, the statement, justification, and plan described in section 1303 of the Act. This waiver shall apply through the remainder of calendar year 2004 and for all of calendar year 2005.

You are authorized and directed to transmit this certification, including the statement, justification, and plan, to the Congress and to arrange for the publication of this certification in the **Federal Register**.



THE WHITE HOUSE,
Washington, November 29, 2004.

[FR Doc. 04–27354
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Billing code 4710–10–P

Rules and Regulations

Federal Register

Vol. 69, No. 238

Monday, December 13, 2004

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No.FAA–2004–19332; Airspace Docket No. 04–ACE–61]

Modification of Class E Airspace; Hartington, NE

AGENCY: Federal Aviation Administration, 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 Hartington, NE.

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 29, 2004 (69 FR 63057). 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 December 1, 2004.

Anthony D. Roetzel,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 04–27226 Filed 12–10–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19330; Airspace Docket No. 04–ACE–59]

Modification of Class E Airspace; Hastings, NE

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 Hastings, NE.

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 29, 2004 (69 FR 63061). 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 submiss 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 30, 2004.

Anthony D. Roetzel,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 04–27225 Filed 12–10–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19331; Airspace Docket No. 04–ACE–60]

Modification of Class E Airspace; Harvard, NE

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 Harvard, NE.

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 29, 2004 (69 FR 63059). 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 30, 2004.

Anthony D. Roetzel,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 04–27224 Filed 12–10–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 17

[Docket No. FAA–2004–19333; Airspace Docket No. 04–ACE–62]

Modification of Class E Airspace; Warrensburg, 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 Warrensburg, 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 29, 2004 (69 FR 63063) and subsequently published a correction to the direct final rule on November 16, 2004 (69 FR 67052). 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, 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 30, 2004.

Anthony D. Roetzel

Acting Area Director, Western Flight Services Operations.

[FR Doc. 04–27223 Filed 12–10–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19327; Airspace Docket No. 04–ACE–56]

Modification of Class E Airspace; Scribner, NE

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 Scribner, NE.

EFFECTIVE DATES: 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 26, 2004 (69 FR 62401). 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 30, 2004.

Anthony D. Roetzel,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 04–27222 Filed 12–10–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19329; Airspace Docket No. 04–ACE–58]

Modification of Class E Airspace; Imperial, NE

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 Imperial, NE.

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 26, 2004 (69 FR 62402). 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 30, 2004.

Anthony D. Roetzel,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 04–27221 Filed 12–10–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2004–17773; Airspace Docket No. 04–ASW–11]

RIN 2120–AA66

Modification of Restricted Areas 5103A, 5103B, and 5103C, and Revocation of Restricted Area 5103D; McGregor, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Restricted Areas 5103A (R–5103A), 5103B (R–5103B), and 5103C (R–5103C), and revokes Restricted Area 5103D (R–5103D) at McGregor, NM. The United States Army (U.S. Army) requested that the FAA reduce the size of R–5103A; combine a portion of the area currently designated as R–5103A and a portion of the area currently designated as R–5103D, designating the combined area as a new R–5103B; and combine the areas currently designated as R–5103B and R–5103C, and re-designate the combined area as a new R–5103C. The new R–5103A, B, and C will essentially occupy the same overall boundaries and altitudes as the current R–5103A, B, C, and D; a segment of the western boundary of R–5103C will move approximately one mile to the west; and a portion of the area currently designated as R–5103D will be eliminated. The altitude structure of the new R–5103A will be from the surface to but not including flight level (FL) 180, and R–5103B and R–5103C will be from the surface to unlimited. These modifications will allow the U.S. Army to activate the restricted areas in a manner that is more consistent with the actual utilization of the airspace.

DATES: 0901 UTC, January 20, 2005.

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

SUPPLEMENTARY INFORMATION:

Background

On June 9, 2004, the FAA proposed to revise R–5103A, R–5103B, and R–5103C, and to revoke R–5103D in response to a request from the U.S. Army (69 FR 32296). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. The FAA received no comments in response to the proposal.

The Rule

At the request of the U.S. Army, the FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 73 (part 73) to revise R–5103A, R–5103B, and R–5103C, and to revoke R–5103D. Specifically, R–5103A will be reduced in size, in that, a portion of the area currently designated as R–5103A and a portion of the area currently designated as R–5103D will be combined and re-designated as a new R–5103B. The areas currently designed as R–5103B and R–5103C will be combined and re-designated as a new R–5103C and R–5103D will be revoked. The new R–5103A, B, and C will occupy the same overall boundaries and altitudes as the current R–5103A, B, C, and D with the exception of a segment of the western boundary of R–5103C which will be moved approximately one mile to the west. Also, the portion of the area currently designated as R–5103D that will not be combined into the new R–5103B will be eliminated from the restricted area airspace. The altitude structure for the new R–5103A will be from the surface to, but not including, FL180, and the new R–5103B and R–5103C will be from the surface to unlimited. These modifications will allow the U.S. Army to activate the restricted areas in a manner that is more consistent with the actual utilization of the airspace. This action will not change the times of use, using agency, or controlling agency of these restricted areas.

Section 73.51 of part 73 of Federal Aviations Regulations was republished in FAA Order 7400.8L, Special Use Airspace, dated October 7, 2003.

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with paragraphs 311(c) and 311(d) of FAA Order 1050.1E, Policies and Procedures for Considering Environmental Impacts. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

The Adoption of the Amendment

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

PART 73—SPECIAL USE AIRSPACE

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

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

§ 73.51 (Amended)

■ 2. § 73.51 is amended as follows:

* * * * *

R–5103A McGregor, NM (Amended)

By removing the current boundaries and designated altitudes and substituting the following:

Boundaries. Beginning at lat. 32°03′55″ N., long. 106°10′00″ W.; to lat. 32°03′30″ N., long. 105°53′50″ W.; to lat. 32°00′15″ N., long. 105°56′42″ W.; to lat. 32°00′30″ N., long. 106°10′27″ W.; to the point of beginning.

Designated altitudes. Surface to but not including FL 180.

* * * * *

R–5103B McGregor, NM (Amended)

By removing the current boundaries and designated altitudes and substituting the following:

Boundaries. Beginning at lat. 32°15′00″ N., long. 106°10′02″ W.; to lat. 32°15′00″ N., long. 105°42′02″ W.; to lat. 32°03′30″ N., long. 105°53′50″ W.; to lat. 32°03′55″ N., long. 106°10′00″ W.; to lat. 32°05′02″ N., long. 106°09′22″ W.; to lat. 32°06′00″ N., long. 106°15′32″ W.; to the point of beginning.

Designated altitudes. Surface to unlimited.

* * * * *

R–5103C McGregor, NM (Amended)

By removing the current boundaries and designated altitudes and substituting the following:

Boundaries. Beginning at lat. 32°45′00″ N., long. 105°53′02″ W.; to lat. 32°45′00″ N., long. 105°52′22″ W.; to lat. 32°33′20″ N., long. 105°30′02″ W.; to lat. 32°26′20″ N.,

long. 105°30′02″ W.; to lat. 32°15′00″ N., long. 105°42′02″ W.; to lat. 32°15′00″ N., long. 106°10′02″ W.; to lat. 32°28′00″ N., long. 106°02′00″ W.; to lat. 32°27′00″ N., long. 106°00′02″ W.; to lat. 32°36′00″ N., long. 106°00′00″ W.; to lat. 32°45′00″ N., long. 105°59′02″ W.; to the point of beginning, excluding that airspace within a 2 NM radius of lat. 32°39′00″ N., long. 105°41′00″ W.; from the surface to 1,500' AGL and also excluding that airspace beginning at lat. 32°42′49″ N., long. 105°48′11″ W.; to lat. 32°41′00″ N., long. 105°50′00″ W.; to lat. 32°40′00″ N., long. 105°48′00″ W.; to lat. 32°41′48″ N., long. 105°46′12″ W.; to the point of beginning from the surface to 1,500″ above the surface.

Designated altitudes. Surface to unlimited.

* * * * *

R–5103D McGregor, NM (Revoked)

* * * * *

Issued in Washington, DC, December 2, 2004.

Reginald C. Matthews,

Manager, Airspace and Rules.

[FR Doc. 04–27220 Filed 12–10–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 018–2004]

Privacy Act of 1974; Implementation

AGENCY: Criminal Division, Department of Justice.

ACTION: Final rule.

SUMMARY: The Criminal Division (CRM), Department of Justice (the Department), is exempting the Privacy Act system of records entitled ''Organized Crime Drug Enforcement Task Force Fusion Center System,'' JUSTICE/CRM–028, from the subsections of the Privacy Act listed below, for the reasons set forth in the following text. The system of records was published in the **Federal Register** on October 18, 2004 (69 FR 61403).

DATES: *Effective Date:* This final rule is effective December 13, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Cahill, (202) 307–1823.

SUPPLEMENTARY INFORMATION: The Department is exempting ''Organized Crime Drug Enforcement Task Force Fusion Center System,'' JUSTICE/CRM–028, from 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g), pursuant to the provisions of 5 U.S.C. 552a(j) and/or (k).

On October 18, 2004 (69 FR 61323), a proposed rule was published in the **Federal Register** with an invitation to comment. No comments were received.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, this order will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 16

Administrative Practices and Procedures, Courts, Freedom of Information, Sunshine Act and Privacy.

■ Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, amend 28 CFR part 16 as follows:

PART 16—[AMENDED]

■ 1. The authority citation for Part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), and 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717 and 9701.

■ 2. Section 16.91 is amended by adding paragraphs (u) and (v) as follows:

§ 16.91 Exemption of Criminal Division Systems—limited access, as indicated.

* * * * *

(u) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(j) and/or (k) from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g) of 5 U.S.C. 552a: Organized Crime Drug Enforcement Task Force Fusion Center System (JUSTICE/CRM–028). These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j) and/or (k).

(v) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because to provide the subject with an accounting of disclosures of records in this system could inform that individual of the existence, nature, or scope of an actual or potential law enforcement or counterintelligence investigation by the Organized Crime Drug Enforcement Task Force Fusion Center or the recipient agency, and could permit that individual to take measures to avoid detection or apprehension, to learn the identity of witnesses and informants, or to destroy evidence, and would therefore present a serious impediment to law enforcement or counterintelligence efforts. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record. Moreover, release of an accounting may reveal information that is properly classified pursuant to Executive Order 12958 (or successor or prior Executive Order) or a statute and could compromise the national defense or foreign policy.

(2) From subsection (c)(4) because this subsection is inapplicable to the extent that an exemption is being claimed for subsection (d)(1), (2), (3), and (4).

(3) From subsection (d)(1) because disclosure of records in the system could alert the subject of an actual or potential criminal, civil, or regulatory violation of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his activities, of the identity of confidential witnesses and informants, of the investigative interest of Organized Crime Drug Enforcement Task Force Fusion Center and other intelligence or law enforcement agencies (including those responsible for civil proceedings related to laws against drug trafficking or related financial crimes); lead to the destruction of evidence, improper influencing of witnesses, fabrication of testimony, and/or flight of the subject; reveal the details of a sensitive investigative or intelligence technique, or the identity of a confidential source; or otherwise impede, compromise, or interfere with investigative efforts and other related law enforcement and/or intelligence activities. In addition, disclosure could invade the privacy of third parties and/or endanger the life, health, and physical safety of law enforcement personnel, confidential informants, witnesses, and potential crime victims. Access to records could also result in the release of information properly classified pursuant to Executive Order 12958 (or successor or prior Executive Order) or by statute, thereby compromising the national defense or foreign policy.

(4) From subsection (d)(2) because amendment of the records thought to be incorrect, irrelevant, or untimely would also interfere with ongoing investigations, criminal or civil law enforcement proceedings, and other law enforcement activities and impose an impossible administrative burden by requiring investigations, analyses, and reports to be continuously reinvestigated and revised.

(5) From subsections (d)(3) and (4) because these subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(6) From subsection (e)(1) because, in the course of its acquisition, collation, and analysis of information under the statutory authority granted to it, the Organized Crime Drug Enforcement Task Force Fusion Center will occasionally obtain information concerning actual or potential violations of law that are not strictly within its statutory or other authority or may

compile information in the course of an investigation which may not be relevant to a specific prosecution. It is impossible to determine in advance what information collected during an investigation will be important or crucial to the apprehension of fugitives. In the interests of effective law enforcement, it is necessary to retain such information in this system of records because it can aid in establishing patterns of criminal activity and can provide valuable leads for federal and other law enforcement agencies. This consideration applies equally to information acquired from, or collated or analyzed for, both law enforcement agencies and agencies of the U.S. foreign intelligence community and military community.

(7) From subsection (e)(2) because in a criminal, civil, or regulatory investigation, prosecution, or proceeding, the requirement that information be collected to the greatest extent practicable from the subject individual would present a serious impediment to law enforcement because the subject of the investigation, prosecution, or proceeding would be placed on notice as to the existence and nature of the investigation, prosecution, and proceeding and would therefore be able to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Moreover, thorough and effective investigation and prosecution may require seeking information from a number of different sources.

(8) From subsection (e)(3) (to the extent applicable) because the requirement that individuals supplying information be provided a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants and endanger their lives, health, and physical safety. The individual could seriously interfere with undercover investigative techniques and could take appropriate steps to evade the investigation or flee a specific area.

(9) From subsection (e)(5) because the acquisition, collation, and analysis of information for law enforcement purposes from various agencies does not permit a determination in advance or a prediction of what information will be matched with other information and thus whether it is accurate, relevant, timely and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can often only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators, intelligence analysts, and government attorneys to exercise their judgment in collating and analyzing information and would impede the development of criminal or other intelligence necessary for effective law enforcement.

(10) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement by revealing investigative techniques, procedures, evidence, or interest and interfering with the ability to issue warrants or subpoenas, and could give persons sufficient warning to evade investigative efforts.

(11) From subsection (g) because this subsection is inapplicable to the extent that the system is exempt from other specific subsections of the Privacy Act.

(12) In addition, exemption is claimed for this system of records from compliance with the following provisions of 5 U.S.C. 552a pursuant to the provisions of 5 U.S.C. 552a(k): subsections (c)(3), (d), (e)(1), to the extent that the records contained in this system are specifically authorized to be kept secret in the interests of national defense and foreign policy.

Dated: December 6, 2004.

Paul R. Corts,

Assistant Attorney General for Administration.

[FR Doc. 04–27237 Filed 12–10–04; 8:45 am]

BILLING CODE 4410–14–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA155–5081; FRL–7847–4]

Approval and Promulgation of Air Quality Implementation Plans; Virginia NO_X RACT Determinations for Two Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia (Virginia or the Commonwealth). The revisions consist of reasonably available control technology (RACT) determinations for the control of nitrogen oxides (NO_X) from two individual sources located in Fairfax County, Virginia; namely, the Central Intelligence Agency (CIA), and the National Reconnaissance Office (NRO). EPA is approving these revisions to establish and impose RACT requirements in accordance with the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on January 12, 2005.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

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

SUPPLEMENTARY INFORMATION:

I. Background

On April 19 and 21, 2004, the Virginia Department of Quality (DEQ) submitted formal SIP revisions to establish RACT for two individual sources of NO_X located in Fairfax County, Virginia. The Virginia DEQ determined and imposed RACT under the Commonwealth's SIP-approved generic NO_X RACT regulations, 9 VAC 5–40–310 and 9 VAC 5–40–311. Generic RACT regulations are regulations that do not, themselves, specifically define RACT for a source or source category but instead establish procedures for imposing case-by-case RACT determinations. The Commonwealth's SIP-approved generic NO_X RACT regulations consist of the procedures DEQ uses to establish and impose RACT for subject sources of NO_X. Pursuant to the SIP-approved generic RACT rules, DEQ imposes RACT on each subject source in an enforceable document, usually a permit or order. The Commonwealth then submits these permits or orders to EPA for approval as source-specific SIP revisions. EPA approved Virginia's generic NO_X RACT regulations on April 28, 1999 (64 FR 22792).

On September 9, 2004 (69 FR 54574), EPA published a direct final rule (DFR) approving as SIP revisions DEQ-issued operating permits which establish and require RACT for the CIA (Operating Permit Registration No. 71757), and the NRO (Operating Permit Registration No. 71988). A detailed description of the RACT determinations and EPA's rationale for approving them were provided in the September 9, 2004 DFR and will not be restated herein. In accordance with direct final rulemaking procedures, on September 9, 2004 (69

FR 54600), EPA also published a companion notice of proposed rulemaking on these SIP revisions inviting interested parties to comment on the DFR. On October 12, 2004, EPA received adverse comment on its proposed approval. On November 4, 2004 (69 FR 64259), due to receipt of the adverse comment, EPA published a withdrawal of the DFR. A summary of the comment received and EPA's response to the comment are provided in section II of this document.

II. Public Comment and EPA Responses

Comment: The commenter, Clean Fuels Technology, Inc., submitted a spreadsheet with source testing data indicating that Alternative Diesel Oil Emulsion fuels can produce NO_X emission limits lower than those imposed by the DEQ for the CIA in Operating Permit Registration No. 71757, and the NRO in Operating Permit Registration No. 71988. The commenter states that the power levels of the test units are very similar to the units located at the CIA and NRO facilities in Fairfax County, Virginia. The commenter suggests in light of the information in the spreadsheet and the cost savings that could accrue to the use of fuels less costly than natural gas, that Alternative Diesel Oil Emulsion fuels be considered an applicable RACT for the control of NO_X emissions at the cited sources.

Response: EPA disagrees with the commenter. The CAA requires that a state determine and impose RACT for existing major sources of NO_X and VOCs located in ozone nonattainment areas and the Ozone Transport Region. Those RACT requirements are then to be submitted to EPA for approval into the SIP. EPA can only take action on a SIP revision as submitted by a state, and cannot, through its rulemaking action on a SIP revision, alter the state's submission to make its requirements more (or less) stringent. Therefore, even if EPA agreed that the commenter submitted convincing evidence that the SIP revision submitted by Virginia are not RACT for these facilities, EPA could not modify the SIP revision as requested by the commenter, but instead could only disapprove the SIP revision submitted by the Commonwealth.

With regard to the criteria EPA uses to determine whether to approve or disapprove RACT SIP revisions submitted by the Virginia DEQ pursuant to 9 VAC 5–40–310 and 9 VAC 5–40–311 we look to the requirements of the CAA and relevant EPA guidance.

In approving Virginia's NO_X RACT regulations, 9 VAC 5–40–310 and 9 VAC 5–40–311 (RACT Guidelines for Stationary Sources of NO_X), EPA, thereby, approved the definitions, provisions and procedures contained within those regulations under which the Commonwealth would require and impose RACT. In accordance with 9 VAC 5–40–310, subject facilities are required to submit a RACT plan proposal to the DEQ. The DEQ then evaluates that RACT plan and determines and imposes RACT. The DEQ submits each RACT determination to EPA for approval as a SIP revision. Pursuant to CAA requirements for SIP revisions, the DEQ conducts a public comment period and public hearing on its proposed SIP revision prior to submittal of the revisions to EPA. EPA reviews the case-by-case RACT plan approvals and/or permits submitted as individual SIP revisions by the Commonwealth to verify and determine if they are consistent with the RACT requirements of the CAA and any relevant EPA guidance. Then EPA reviews the technical and economic analyses conducted by the source and the state. If EPA believes additional information may further support or would undercut the RACT analyses submitted by the state, then we may add additional EPA-generated analyses to the record of our rule to approve or disapprove the SIP revision. EPA's review of the Commonwealth of Virginia's submission of its RACT determination for the two individual sources imposed in DEQ operating permits indicate that the requirements of its SIP-approved NO_X RACT regulations 9 VAC 5–40–310 and 9 VAC 5–40–311 have been met.

While the commenter provides a spreadsheet of testing data from source testing performed at other units which indicates lower emission rates at those test units, and asserts that the test units' power levels are similar to the CIA's and NRO's Virginia-based units, the commenter did not submit any additional technical information regarding the comparability of the test units to the CIA's and NRO's units (*e.g.*, age, specific design, required operating schedules, comparison of emissions rates between the test units and the Virginia-based units when the later are burning natural gas versus diesel oil) to support its suggestion that Diesel Oil Emulsion fuels be considered RACT for the specific units located at the CIA's and NRO's Fairfax County, Virginia facilities. Nor did the commenter provide any information as to the availability and supply of Diesel Oil Emulsion fuels to these facilities. The commenter provided no data or information of any kind to support the comment that cost savings could accrue to the use of fuels less costly than natural gas. Finally, the commenter did not submit any justification or analysis to suggest that the RACT limits imposed by the Commonwealth are inconsistent with the its SIP-approved generic RACT regulations, the CAA or EPA guidance. Because the commenter has submitted no new information that would cause us to reconsider our analysis that accompanied the proposed rule, we continue to believe that analysis supports our approval of the NO_X RACT determinations imposed by the Virginia DEQ for the CIA's and NRO's facilities located in Fairfax County, Virginia.

III. Final Action

EPA is approving the Virginia DEQ's NO_X RACT requirements for the two individual sources located in Fairfax County, Virginia, namely, the Central Intelligence Agency, and the National Reconnaissance Office. EPA is approving these SIP revisions because DEQ established and imposed these RACT requirements in accordance with the criteria set forth in the SIP-approved RACT regulations applicable to these sources. The DEQ has also imposed record keeping, monitoring, and testing requirements on the two individual sources sufficient to determine compliance with the applicable RACT determinations.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995

(Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (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 today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for two individual sources.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 11, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to the Virginia NO_X RACT Determinations for the Central Intelligence Agency and the National Reconnaissance Office, 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: December 6, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (d) is amended by adding entries for Central Intelligence Agency (CIA), George Bush Center for Intelligence and National Reconnaissance Office, Boeing Service Center at the end of the table to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(d) * * *

EPA—APPROVED SOURCE SPECIFIC REQUIREMENTS

Source name	Permit/order or registration number	State effective date	EPA approval date	40 CFR part 52 citation
*	*	*	*	*
Central Intelligence Agency (CIA), George Bush Center for Intelligence.	Registration No. 71757	04/16/04	12/13/04 [Insert page number where the document begins].	52.2420(d)(6)
National Reconnaissance Office, Boeing Service Center.	Registration No. 71988	04/16/04	12/13/04 [Insert page number where the document begins].	52.2420(d)(6)

[FR Doc. 04–27260 Filed 12–10–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NY70–279, FRL–7845–8]

Approval and Promulgation of Implementation Plans; New York State Implementation Plan Revision; 1-Hour Ozone Control Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the New York State Implementation Plan (SIP) for ozone concerning the control of volatile organic compounds. The SIP revision consists of amendments to title 6 of the New York Codes, Rules and Regulations, part 205, ''Architectural and Industrial Maintenance Coatings.'' This SIP revision consists of a control measure needed to meet the shortfall emissions reduction identified by EPA in New York's 1-hour ozone attainment demonstration SIP. The intended effect of this action is to approve a control strategy required by New York's SIP which will result in emission reductions that will help achieve attainment of the national ambient air quality standard for ozone.

EFFECTIVE DATE: This rule will be effective January 12, 2005.

ADDRESSES: A copy of the New York's submittal is available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New York State Department of Environmental Conservation, Division of Air Resources, 625 Broadway, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3381 or *Wieber.Kirk@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What Is Required by the Clean Air Act and How Does It Apply to New York?

Section 182 of the Clean Air Act (the Act) specifies the mandatory State Implementation Plan (SIP) submittal requirements for areas classified as nonattainment for the 1-hour ozone national ambient air quality standards (NAAQS) and when SIP submissions must be made to EPA by the states. The specific requirements vary depending upon the severity of the ozone problem. The New York–Northern New Jersey–Long Island area is classified as a severe 1-hour ozone nonattainment area. Under section 182, severe ozone nonattainment areas were required to submit demonstrations of how they would attain the 1-hour standard. On December 16, 1999 (64 FR 70364), EPA proposed approval of New York's 1-hour ozone attainment demonstration SIP for the New York–Northern New Jersey–Long Island nonattainment area. In that rulemaking, EPA identified an emission reduction shortfall associated with New York's 1-hour ozone attainment demonstration SIP, and required New York to address the shortfall. In a related matter, the Ozone Transport Commission (OTC) developed six model rules which identified control measures for a number of source categories and estimated emission reduction benefits from implementing these model rules. These model rules were designed for use by states in developing their own regulations to achieve additional emission reductions to close emission shortfalls.

On February 4, 2002 (67 FR 5170), EPA approved New York's 1-hour ozone attainment demonstration SIP. This approval included an enforceable commitment submitted by New York to adopt additional control measures to close the shortfall identified by EPA for attainment of the 1-hour ozone standard.

EPA is aware that concerns have been raised about the achievability of VOC content limits of some of the product categories. Although we are approving this rule today, the Agency is concerned that if the rule limits make it impossible for manufacturers to produce coatings that are desirable to consumers, there is a possibility that users may misuse the products by adding additional solvent, thereby circumventing the rule's intended VOC emission reductions. We intend to work with the states and manufacturers to explore ways to ensure that the rules achieve the intended VOC emission reductions, and we intend to address this issue in evaluating the amount of VOC emission reduction credit attributable to the rules.

II. What Was Included in New York's Submittal?

On November 4, 2003 Carl Johnson, Deputy Commissioner, New York State Department of Environmental Conservation (NYSDEC), submitted to EPA a revision to the SIP which included revisions to title 6 of the New York Codes, Rules and Regulations (NYCRR), part 205, ''Architectural and Industrial Maintenance (AIM) Coatings.'' It was supplemented on November 21, 2003. The revisions to part 205 (also referred to as the New York AIM coatings rule) will provide volatile organic compound (VOC) emission reductions to address, in part, the shortfall identified by EPA. New York used the OTC model rule as a guideline to develop part 205.

On January 13, 2004, EPA determined that the SIP revision submitted by New York containing revisions to part 205 was administratively complete pursuant to the criteria found in title 40, part 51, appendix V of the Code of Federal Regulations. On January 16, 2004 (69 FR 2557), EPA proposed approval of part 205. For a detailed discussion on the content and requirements of the revisions to New York's part 205, the reader is referred to EPA's proposed rulemaking action.

III. What Comments Did EPA Receive in Response to Its Proposal?

In response to EPA's January 16, 2004 proposed rulemaking action, EPA received comments from two interested parties; (1) Richard M. Cogen, Nixon Peabody LLP, on behalf of the Sherwin-Williams Company, and (2) James Sell, on behalf of the National Paint and Coating Association. A summary of the comments received and EPA's responses are as follows:

A. Comment: The New York AIM Coatings Rule Is Based on Flawed Data

A commenter asserts that the New York AIM coatings rule is based on flawed data and that the use of this data violates the Data Quality Objectives Act (''DQOA'') (section 515(a) of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554; H.R. 5658)). The data at issue is contained in what the commenter has characterized as ''a study prepared by E.H. Pechan and Associates'' (''Pechan Study'') in 2001. The alleged flaws relate to emissions reductions calculated in the Pechan Study; certain of the underlying data and data analyses are allegedly ''unreproduceable.'' Further, the commenter asserts that if better data were used, the OTC model AIM coatings rule would achieve greater VOC emissions reductions, relative to the Federal AIM coatings rule, than was calculated in the Pechan Study (51 percent reduction versus 31 percent reduction), even if certain source categories were omitted from regulation under the OTC rule. For these reasons, the commenter states that EPA must not

approve the New York AIM coatings rule as a revision to the SIP.[1]

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

Section 110 of the Act provides the statutory framework for approval/disapproval of SIP revisions. Under the Act, EPA establishes NAAQS for certain pollutants. The Act establishes a joint Federal and state program to control air pollution and to protect public health. States are required to prepare SIPs, for each designated ''air quality control region'' within their borders. The SIP must specify emission limitations and other measures necessary for that area to meet and maintain the required NAAQS. Each SIP must be submitted to EPA for its review and approval. EPA will review and must approve the SIP revision if it is found to meet the minimum requirements of section 110 of the Act. See also *Union Electric Co.* v. *EPA,* 427 U.S. 246, 265, 96 S.Ct. 2518, 49 L.Ed.2d 474 (1976). The Act expressly provides that the states may adopt more stringent air pollution control measures than the Act requires with or without EPA approval. See section 116 of the Act. EPA only has the authority to disapprove specific SIP revisions that are less stringent than a standard or limitation provided by Federal law (Section 110(k) of the Act). See also *Duquesne Light* v. *EPA,* 166 F.3d 609 (3d Cir. 1999).

The Pechan Study is not part of New York's submission in support of its AIM coatings rule. Because New York at this time is not claiming a specific amount of emissions reductions, the level of emissions reductions rightly or wrongly calculated by the Pechan Study, is irrelevant to whether EPA can approve this SIP revision.[2] The only relevant inquiry at this time is whether this SIP revision meets the minimum criteria for approval under the Act, including the requirement that the State AIM coatings rule be at least as stringent as the Federal AIM coatings rule set forth at 40 CFR 59.400.

As set forth above, EPA has concluded that the New York AIM coatings rule meets the criteria for approvability. It is worth noting that EPA agrees with the commenter's conclusion that the New York AIM coatings rule is more stringent than the Federal AIM coatings rule, though not for the reasons given by the commenter (*i.e.*, that its ''better'' data demonstrates that OTC model AIM coatings rule achieves a 51 percent, as opposed to the Pechan Study's 31 percent reduction in VOC emissions beyond that required by the Federal AIM coatings rule). Rather, the New York AIM coatings rule is, on its face, more stringent. The preamble of the New York AIM coatings rule states: ''The revisions set specific VOC limits (in grams per liter) for 52 coating categories and require compliance with those limits by January 1, 2005. These new limits are more stringent than the Federal AIM coatings rule for 40 categories and more stringent than the current State rule for 31 categories (page 4, New York State Register, Rule Making Activities, November 12, 2003).'' Examples of where New York's AIM coatings rule is facially more stringent than the Federal AIM coatings rule include, but are not limited to, the VOC content limit for non-flat high gloss coatings and antifouling coatings. The Federal AIM coatings rule VOC content limit for non-flat high gloss coatings is 380 grams/liter while the New York AIM coatings rule's limit is 250 grams/liter, and the Federal AIM coatings rule's VOC content limit for anti-fouling coatings is 450 grams/liter while the New York AIM coatings rule is 400 grams/liter. An example of where the New York AIM coatings rule is as stringent, but not more stringent, than the Federal AIM coatings rule is the VOC content limit for antenna coatings and low-solids coatings. In both the State and Federal rules, the VOC content limits for these categories is 530 grams/liter and 120 grams/liter, respectively. Thus, on a category by category basis, the New York AIM coatings rule is as stringent or more stringent than the Federal AIM coatings rule. Further, EPA has received no comments that the New York AIM coatings rule is less stringent than the Federal rule.

B. Comment: Approval of the New York AIM Coatings Rule as a SIP Revision Violates Sections 110(a)(2)(A) and 110(a)(2)(E) of the Clean Air Act

With respect to sections 110(a)(2)(A) and 110(a)(2)(E) of the Act, the commenter asserts that New York cannot give the assurances required by these provisions of the Act since each provision requires that a state be able to assure that a SIP revision meets applicable requirements of the Act, and that no ''Federal or State law'' prohibits the state from ''carrying out such implementation plan or portion thereof.'' Such assurance cannot be given, the commenter alleges, the New York AIM coatings rule violates the DQOA, sections 183(e)(9), and 184(c) of the Act, the New York State Environmental Quality Review Act, the New York State Administrative Procedures Act and the New York Environmental Conservation Law.

Response: For the reasons set forth in responses to comments A, C, D, E and F, EPA disagrees that the New York AIM coatings rule violates the DQOA, the Act, the New York State Environmental Quality Review Act, the New York State Administrative Procedures Act, and the New York Environmental Conservation Law. Therefore, nothing prevents New York from giving the assurances under sections 110(a)(2)(A) and (a)(2)(E) of the Act.

C. Comment: The New York AIM Coatings Rule Was Adopted in Violation of Section 183(e)(9) of the Clean Air Act

A commenter states that in 1998, after a seven-year rule development process, EPA promulgated its nationwide regulations for AIM coatings pursuant to section 183(e) of the Act. The commenter notes that New York's AIM coatings rule imposes numerous VOC emission limits that will be more stringent than the corresponding limits in EPA's regulation. The commenter asserts that section 183(e)(9) requires that any state which proposes regulations to establish emission standards other than the Federal standards for products regulated under Federal rules shall first consult with the EPA Administrator. The commenter believes that New York failed to engage in that required consultation, and therefore, (1) New York violated section 183(e)(9) in its adoption of the New York AIM coatings rule, and (2) EPA

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

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

approval of this rule would violate, and be prohibited by sections 110(a)(2)(A) and (a)(2)(E) of the Act.

Response: EPA disagrees with this comment. Contrary to the implication of the commenter, section 183(e)(9) does not require states to seek EPA's permission to regulate consumer products. By its explicit terms, the statute contemplates consultation with EPA only with respect to ''whether any other state or local subdivision has promulgated or is promulgating regulations on any products covered under [section 183(e)].'' The commenter erroneously construes this as a requirement for permission rather than informational consultation. Further, the final Federal architectural coatings regulations at 40 CFR 59.410, explicitly provides that states and their political subdivisions retain authority to adopt and enforce their own additional regulations affecting these products. *See also* 63 FR 48848, 48884. In addition, as stated in the preamble to the final rule for architectural coatings, Congress did not intend section 183(e) of the Act to preempt any existing or future state rules governing VOC emissions from consumer and commercial products. *See* 63 FR 48848, 48857. Accordingly, NYSDEC retains authority to impose more stringent limits for architectural coatings as part of its SIP, and its election to do so is not a basis for EPA to disapprove the SIP. *See, Union Electric Co.* v. *EPA,* 427 U.S. 246, 265–66 (1976). EPA favors national uniformity in consumer and commercial product regulation, but recognizes that some localities may need more stringent regulations to combat more serious and more intransigent ozone nonattainment problems.

Further, there was ample consultation with EPA prior to the State's adoption of its AIM coatings rule. On March 28, 2001, the OTC adopted a Memorandum of Understanding (MOU) on regional control measures, signed by all the member states of the OTC, including New York, which officially made available the OTC model rules, including the AIM model rule. See the discussion of this MOU in the Report of the Executive Director, OTC, dated July 24, 2001, a copy of which has been included in administrative record of this final rulemaking. It should also be noted that the March 28, 2001 MOU, was transmitted to Robert Brenner, Assistant Administrator for the Office of Air and Radiation of EPA, and to various EPA Regional offices, as was the July 24, 2001 Report of the Executive Director. That MOU includes the following text: ''WHEREAS after reviewing regulations already in place in OTC and other States, reviewing technical information, consulting with other states and Federal agencies, consulting with stakeholders, and presenting draft model rules in a special OTC meeting, OTC developed model rules for the following source categories * * * architectural and industrial maintenance coatings * * *'' (a copy of the signed March 28, 2001 MOU has been placed in the administrative record of this final rulemaking).

Moreover, NYSDEC provided EPA Region 2 the opportunity to review and comment on the New York AIM coatings rule in its draft and proposed versions. Given all of the above, there is no validity to the commenter's assertion that New York failed to consult with EPA in the adoption of its AIM coatings rule. EPA was fully cognizant of the requirements of the New York AIM coatings rule before its formal adoption by the State.[3] For all of the above mentioned reasons, EPA disagrees that New York violated section 183(e)(9) in its adoption of its AIM coatings rule, and disagrees that approval of the New York AIM coatings rule by EPA is in violation of or prohibited by sections 110(a)(2)(A) and (a)(2)(E) of the Act.

D. Comment: The New York AIM Coatings Rule Was Adopted in Violation of Section 184(c) of the Clean Air Act, and Approval of the SIP Revision Would, Itself, Violate That Section

The commenter believes the OTC violated section 184(c)(l) of the Act by failing to ''transmit'' its recommendations to the Administrator, and that the OTC's violation was compounded by the Administrator's failure to review the model rule through the notice, comment and approval process required by section 184(c)(2)–(4) of the Act. These alleged violations of the Act should have prevented New York from adopting its AIM coatings rule, and now prevent EPA from validly approving them as a revision to the New York SIP.

Response: EPA disagrees with this comment. Section 184(c)(1) of the Act states that ''the Commission (OTC) may, after notice and opportunity for public comment, develop recommendations for additional control measures to be applied within all or a part of such transport region if the commission determines such measures are necessary to bring any area in such region into attainment by the dates provided by this subpart.'' It is important to note that the OTC model AIM coatings rule was not developed pursuant to section 184(c)(1), which provision is only triggered ''Upon petition of any State within a transport region established for ozone * * *'' No such petition preceded the development of the model AIM coatings rule. Nor, for that matter, was development of a rule upon State petition under section 184(c)(1) meant to be the exclusive mechanism for development of model rules within the OTC. Nothing in section 184 prevents the voluntary development of model rules without the prerequisite of a state petition. This provision of the Act was not intended to prevent OTC's development of model rules which states may individually choose to adapt and adopt on their own, as New York did, basing its AIM coatings rule on the model developed within the context of the OTC. In developing its State rule from the OTC model, New York was free to adapt that rule as it saw fit (or to leave the OTC model rule essentially unchanged), so long as its rule remained at least as stringent as the Federal AIM coatings rule.

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

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

E. Comment: The New York AIM Coatings Rule Was Adopted in Violation of Section 19–0303 of the New York Environmental Conservation Law (ECL)

The Commenter asserts that NYSDEC violated section 19–0303(3) of the ECL

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

because the New York AIM coatings rule applies statewide even though additional control measures are needed only for the New York City metropolitan area. The commenter contends that by failing to adequately consider comments which suggested that the rules could be tailored more closely to that metropolitan area, the State failed to observe the law's requirement to ''give due recognition to the fact that'' relevant differences in air quality or emission characteristics among geographical areas in the State may call for differential applicability of emission reduction requirements among differing geographical areas.

The commenter also asserts that NYSDEC violated section 19–0303(4) of the ECL because it failed to prepare a sufficient regulatory impact assessment. Specifically, the commenter contends that among other failings, New York relied upon grossly inadequate data as discussed above, failed to perform any State-specific cost or impact studies, and failed to analyze the cost-effectiveness of any reasonably available alternatives to the New York AIM coatings rule.

In addition, the commenter asserts that NYSDEC violated section 19–0303(5) of the ECL because it failed to provide notice in the State Environmental Notice Bulletin of the OTC's March 2001 recommendation with respect to the OTC model rule on which the New York AIM coatings rule is closely based, or to solicit public review of the model rule.

Response: EPA disagrees with this comment. The New York final AIM coatings rule was adopted by the State pursuant to the provisions of sections 1–0101, 3–0301, 19–0103, 19–0105, 19–0301, and 19–0305 of the ECL, which grants the NYSDEC the authority to adopt regulations for the prevention, control, reduction and abatement of air pollution. NYSDEC has found that this regulation is necessary for the State to attain ambient air quality standards (New York State Register, Rule Making Activities, March 19, 2003, page 8 and New York State Register, Rule Making Activities, November 12, 2003, page 7, both of which are part of NYSDEC's AIM coatings rule SIP revision submittal). With respect to the commenter's assertion that the AIM coatings rule was only needed for the New York City metropolitan area, it is the State's prerogative as to whether it adopts a rule applicable statewide or nonattainment area specific. New York adopted its AIM coatings rule to achieve VOC emission reductions necessary to attain the 1-hour ozone standard in the New York—Northern New Jersey—Long Island nonattainment area, but also, New York adopted its AIM coatings rule applicable statewide in order to make progress towards reducing 8-hour ozone levels in recently designated nonattainment areas located in New York State that are outside of the New York City metropolitan area. See New York State Register, Rule Making Activities, March 19, 2003, page 8.

In addition, though the State could have decided to limit the application of the rule to selected areas of the State, it elected to apply its AIM coatings rule statewide. Rather than opting for a county by county variation in regulatory limits affecting the sales and use of products, New York opted for a unitary system. Doing so may reduce the burden on manufacturers to have to track the point of sale and use of products and enhances the effectiveness and enforceability of the rule by helping to minimize the opportunity for use of noncomplying products within nonattainment areas. We do not consider the State's decision to opt for statewide applicability of the limits unreasonable. In any event, New York's decision to implement its AIM coatings rule with wider geographic scope than that of a specific nonattainment area is simply not a grounds for EPA to disapprove the regulation under section 110 of the Act. As explained elsewhere, states retain the ability under the Act to regulate such products so long as they at least meet the requirements of the Federal AIM rule.

With respect to the commenter's assertion concerning the need for a regulatory impact statement, EPA disagrees. NYSDEC did prepare a regulatory impact statement which included a cost impact study. Since in most respects the New York AIM coatings rule is very similar to the California Air Research Board (CARB) ''Suggested Control Measure for Architectural Coatings,'' NYSDEC utilized the cost information that supported the CARB action. Though NYSDEC undertook no independent cost analysis, it reviewed and analyzed the information used by CARB and included this information in its regulatory impact statement. The CARB cost information reflects information supplied by manufacturers who market AIM coatings nationally. These manufacturers are representative of those affected by the New York AIM coatings rule. Therefore, EPA has determined that the analysis and conclusions provided for the CARB action are sufficient for the New York AIM coatings rule.

With respect to the comment concerning the OTC model rule, EPA does not agree that New York should have solicited public review of the OTC model rule. In development of the model rule, the OTC Stationary and Area Sources Committee met with numerous stakeholders on several occasions (*See* EPA's response to Comment D) to discuss and to solicit comments on specific aspects of the control measures being considered, including the AIM model rule. It is also important to note that the NYSDEC held public hearings on April 28, 2003, April 30, 2003, and May 2, 2003, for the proposed New York AIM coatings rule.

In addition, in its review of the SIP revision submission of the New York AIM coatings rule, EPA has found no reason to indicate that the review performed by NYSDEC's Counsel's Office, as to the legality of its AIM coatings rule under State law, is insufficient. Therefore, EPA has determined, pursuant to section 110(a)(2)(E) of the Act and 40 CFR part 51, appendix V, that New York has provided the necessary assurances that it has adequate authority to implement the SIP revision and that it has followed all the procedural requirements of the New York constitution and laws in adopting the SIP revision submitted to EPA.

F. Comment: The State Violated the State Administrative Procedure Act (SAPA) and State Environmental Quality Review Act (SEQRA) in Its Adoption of the New York AIM Coatings Rule

The commenter states that NYSDEC's adoption of the New York AIM coatings rule was subject to SAPA. Section 202(5)(b) of the SAPA requires that NYSDEC publish and make available to the public an assessment of public comment on the proposed rule, including a summary and analysis of the issues raised by the comments and significant alternatives suggested in the comments. Section 202(5)(b) of the SAPA also required that the assessment include a statement of the reasons why any significant alternatives were not incorporated into the rule. The commenter stated that NYSDEC violated section 202(5)(b) of the SAPA because its assessment of public comments (the ''Response to Comments'' document) failed completely to identify or respond to a number of comments and failed to provide a statement as to why several alternatives suggested by the commenter and others were not incorporated into the rule.

Section 202–a(1) of the SAPA requires that, in promulgating the New York AIM coatings rule, NYSDEC consider utilizing approaches designed to avoid

undue deleterious economic effects or overly burdensome impacts on affected persons. The commenter stated that NYSDEC violated section 202–a(1) of the SAPA by failing to give adequate consideration to approaches suggested by the commenters that would have avoided undue deleterious economic effect and other undue impacts on the regulated community.

SEQRA requires that agencies in New York review the environmental impact of actions that they propose to take ''as early as possible in the formulation of a proposal for actions.'' Section 8–0109(4) of the ECL. Such review must evaluate whether the proposed action ''may have a significant effect'' on the environment. To fulfill its obligations under SEQRA, State agencies in New York must take a ''hard look'' at the potential environmental impact of their proposals and make a reasoned elaboration of the basis for their impact determination.

The commenter stated that in promulgating the New York AIM coatings rule, NYSDEC violated these basic requirements of SEQRA. The commenter contends that NYSDEC failed to review the impact of the rule early enough in its rulemaking process. The commenter further asserted that NYSDEC should have performed, but failed to perform, an environmental impact analysis, and should have rendered a determination of significance at the point at which it endorsed a proposal for action in March 2001 (when it approved the OTC's MOU, committing to pursue adoption of the OTC model rule). The commenter went on to state that NYSDEC compounded this ''violation'' by failing to perform an adequate evaluation of the environmental impacts of the New York AIM coatings rule either at the time that it formally proposed them or at the time of adoption. It contends that NYSDEC's failings in that regard included, but were not limited to, its failure to obtain or consider any State-specific information, its failure to assess the impacts of requiring use of products that will not be suitable for their intended purpose, the reliance on data of insufficient quality, and its failure to reasonably consider available alternatives. It is the commenter's position that these violations of SAPA and SEQRA are grounds to invalidate the New York AIM coatings rule under State law and cause the State to be without sufficient authority to implement them.

Response: EPA disagrees with the commenter's assertion concerning SAPA. New York did in fact include an assessment of public comments in its November 4, 2003, SIP revision submittal which was also included in the November 12, 2003, New York State Register for the State's final approval of the New York AIM coatings rule. This assessment included responses to specific comments and to comments in general. Failure to quote comments provided to NYSDEC verbatim does not constitute failure to respond to such comments. After review of the comments and NYSDEC's responses, EPA has determined that the NYSDEC responses are sufficient. In addition, NYSDEC does not have to consider every conceivable alternative to the rulemaking proposal (McKinney's section 8–0109, subdivisions 2(d), 4 of the ECL; 6 NYCRR section 617.14(f)(5)), but can focus on those alternatives which can be implemented and which are consistent with the objectives of the rulemaking.

EPA also disagrees with the commenter's assertion concerning SEQRA. SEQRA requires that ''all agencies determine whether the actions they directly undertake, fund or approve may have a significant impact on the environment, and, if it is determined that the action may have a significant adverse impact, prepare or request an environmental impact statement.'' Adoption of the New York AIM coatings rule will result in a positive impact to the environment by achieving VOC emission reductions necessary to attain the 1-hour standard in the New York-Northern New Jersey-Long Island nonattainment area and will also make progress towards reducing 8-hour ozone levels statewide. Therefore, since the impact will not be adverse, an environmental impact statement was not necessary.

As stated earlier, in its review of the SIP revision submission of the New York AIM coatings rule, EPA has found no reason to indicate that the review performed by NYSDEC's Counsel's Office, as to the legality of its AIM coatings rule under State law, is insufficient. Therefore, EPA has determined, pursuant to section 110(a)(2)(E) of the Act and 40 CFR part 51, appendix V, that New York has provided the necessary assurances that it has adequate authority to implement the SIP revision and that it has followed all the procedural requirements of the New York constitution and laws in adopting the SIP revision submitted to EPA.

G. Comment: The New York AIM Coatings Rule Violates the Equal Protection Clause of the U.S. Constitution

A commenter claimed that the New York AIM coatings rule violates The Equal Protection Clause of the United States Constitution because the Equal Protection Clause entitles persons, including corporate entities, to equal protection under the law. The New York AIM coatings rule allows only ''small manufacturers'' (defined as those who manufacture less than 3,000,000 gallons per year) to seek a limited short-term exemption from the rules based on an inability to meet the VOC content limits due to economic and/or technical infeasibility. This exemption would provide small manufacturers with additional time to acquire the technology for producing compliant coatings. The commenter contends that this exemption, which is not available to large manufacturers (even if they could satisfy the economic and/or technical infeasibility requirement) is not rationally related to any legitimate legislative purpose. The commenter further states that it also is unconstitutionally protectionist and discriminates against both large manufacturers and out-of-state manufacturers. It is the commenter's position that large manufacturers, like small manufacturers, should not be required to comply with infeasible limits, and should be provided with equal protection under the law. The commenter suggested that EPA should disapprove the New York AIM coatings rule SIP revision because of this alleged abridgment of its Constitutional rights.

Response: EPA disagrees with the commenter's allegations that the New York AIM coatings rule violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. The mere fact that the State has elected to treat ''small'' and ''large'' manufacturers of coatings differently does not, in and of itself, constitute a violation of the Constitution.

The Equal Protection Clause provides, inter alia, that ''[n]o State shall * * * deny to any person within its jurisdiction the equal protection of the laws.'' U.S. Const. amend XIV section 1. This clause is generally understood to mean that similar persons will be dealt with in a similar fashion under a state law. This does not mean, however, that a government may never classify persons and treat them differently. The ability of a state to differentiate between persons depends upon the nature of the classification scheme and the nature of

the rights at issue. The New York AIM coatings rule does not affect fundamental rights and it does not adversely affect suspect classes. In the case of state statute that relates solely to matters of economics or general social welfare, the statute need only rationally relate to a legitimate governmental purpose.

It is primarily the role of the courts to decide when a state action is rationally related to a legitimate governmental purpose. Nevertheless, based upon the administrative record for the New York AIM coatings rule, EPA believes that the State would pass that test. First, the State had a legitimate interest in drawing a distinction between large and small manufacturers. Its stated purpose for treating small manufacturers differently was to provide them with assistance to comply with the rule. See, ''Assessment of Public Comments on Proposed Revisions to 6 NYCRR part 205, Architectural and Industrial Maintenance (AIM) Coatings,'' Response #48.

The State explained that it is obligated, by State law, to: ''consider implementation approaches that will minimize adverse impacts * * * on small businesses * * * including establishing different compliance or reporting requirements or timetables that take into account the resources available to small businesses * * * and exempt such entities from compliance with the rule so long as the public health, safety, or general welfare is not endangered.'' Id., (explaining requirements of section 202–b of the New York Administrative Procedures Act). Following this statutory requirement, the State indicated that it had identified the small manufacturers in the State, evaluated their product lines, and targeted the regulatory exemption in such a way that it would provide necessary relief to small businesses, yet not undermine the overall VOC emission reduction objectives of the New York AIM coatings rule.

The State noted that it elected to create the exemption in order: ''To ensure that those businesses which have limited product lines and little if any research and development resources do not face crippling financial impacts from the adoption of the rule and have an opportunity and sufficient time to come into compliance.'' In addition, the State also explained why it decided not to extend the exemption to all manufacturers, regardless of size and economic resources: ''[t]he effect of adopting such a broad based exemption would be to swallow the whole rule. The [state] could not rely on any VOC reductions from the adoption of the proposed rule if every manufacturer could apply for an exemption that would never expire.'' Id. The State thus has a number of legitimate interests in creation of the small business exemption, including: (i) Compliance with State law; (ii) assuring that small manufacturers are not unnecessarily put out of business with the attendant economic and social costs; and (iii) assuring the overall effectiveness of the rule to achieve the intended VOC emission reduction goals for protection of public health.

To achieve these legitimate goals, EPA believes that the State has chosen an approach that is rationally related to the intended effect. The State targeted the exemption to what it decided were companies that would have more limited research and development resources. It made the exemption temporary so that these small companies would eventually manufacture coatings that would meet the VOC limits. One might disagree with the approach that the State has taken, but EPA concludes that the approach is rationally related to the intended goals. Courts have required that a such law need only have such a rational basis to pass muster under the Equal Protection Clause, not that it be perfect. *See, NPCA* v. *City of Chicago,* 45 F.3d 1124, 1127–28 (7th Cir. 1994), cert. denied, 515 U.S. 1143 (1995) (local restriction on sales of paints used by graffiti artists may not be the most effective means, but also not irrational to meet the objective).

In addition, EPA believes the commenter has not shown that there is no rational basis for this distinction. The commenter simply asserts that larger manufacturers should be treated in the same way as smaller manufacturers and that the provision is not related to any legitimate legislative purpose. EPA notes, however, that Congress and EPA have drawn distinctions in control requirements applicable under the Act based on the size of the entities subject to the requirements and either exempted smaller entities or subjected them to less stringent requirements. See, *e.g.*, section 182(b)(3) of the Act which provides exempting smaller service stations from certain requirements; 40 CFR 86.708–94(a)(1)(i)(B)(1)(iv) which provides for exemptions for small volume motor vehicle manufacturers from certain requirements. EPA also notes that the Regulatory Flexibility Act requires Federal agencies to examine the impacts of regulations on small entities, including small businesses, and determine whether small businesses should be subject to different and less burdensome regulatory requirements than larger entities. Consequently, there is a rational basis for a distinction between larger and smaller entities.

Finally, EPA notes that the commenter asserts without any justification that this provision of the New York AIM coatings rule discriminates against out-of-state manufacturers. EPA does not believe that this provision does so. The New York AIM coatings rule's limited short-term exemption provision applies to small manufacturers, as defined by the rule, regardless of whether they are located within or outside of New York State.

Given the legitimate interest of the State, and the rational relationship between the goals and the State's approach, EPA concludes that it should not disapprove the New York AIM coatings rule based upon the Equal Protection Clause.

H. Comment: The New York AIM Coatings Rule Violates the Commerce Clause of the U.S. Constitution

The commenter claimed that the New York AIM coatings rule violates the Commerce Clause of Article I, section 8, of the U.S. Constitution, because it imposes an unreasonable burden on interstate commerce. The commenter asserted that because the New York AIM coatings rule contains VOC limits and other provisions that differ from the Federal AIM coatings rule in 40 CFR 59.400, the rule causes an unreasonable restriction on coatings in interstate commerce. The commenter further asserted that the burdens of the New York AIM coatings rule are excessive and outweigh the benefits of the rule. The commenter suggested that EPA should disapprove the SIP revision on this basis.

Response: EPA agrees that AIM coatings are products in interstate commerce and that state regulations on coatings therefore have the potential to violate the Commerce Clause. EPA understands the commenter's practical concerns caused by differing state regulations, but disagrees with the commenter's view that the New York AIM coatings rule impermissibly impinges on interstate commerce.

A state law may violate the Commerce Clause in two ways: (i) by explicitly discriminating between interstate and intrastate commerce; or (ii) even in the absence of overt discrimination, by imposing an incidental burden on interstate commerce that is markedly greater than that on intrastate commerce. The New York AIM coatings rule does not explicitly discriminate against interstate commerce, because it

applies evenhandedly to all coatings manufactured or sold for use within the state. The New York AIM coatings rule's limited short-term exemption provision applies to small manufacturers, as defined by the rule, regardless of whether they are located within or outside of New York State. In the case of incidental impacts, the Supreme Court has applied a balancing test to evaluate the relative impacts of a state law on interstate and intrastate commerce. See, *Pike* v. *Bruce Church, Inc.,* 397 U.S. 137 (1970). Courts have struck down even nondiscriminatory state statutes, when the burden on interstate commerce is ''clearly excessive in relation to the putative local benefits.'' Id. at 142.

At the outset, EPA notes that it is unquestionable that the State has a substantial and legitimate interest in obtaining VOC emissions reductions for the purpose of attaining the Ozone NAAQS. The adverse health consequences of exposure to ozone are well known and well established and need not be repeated here. See, *e.g.*, National Ambient Air Quality Standards for Ozone: Final Response to Remand, 68 FR 614620–61425 (January 6, 2003). Thus, the New York AIM coatings rule is protective of the public health of the citizens of New York State. The courts have recognized a presumption of validity where the state statute affects matters of public health and safety. *See, e.g.*, *Kassel* v. *Consolidated Freightways Corp. of Delaware,* 450 U.S. 662, 671 (1980). Moreover, even where the state statute in question is intended to achieve more general environmental goals, courts have upheld such statutes notwithstanding incidental impacts on out of state manufacturers of a product. *See, e.g*, *Minnesota* v. *Clover Leaf Creamery, et al.*, 449 U.S. 456 (1981) (upholding state law that banned sales of milk in plastic containers to conserve energy and ease solid waste problems).

The commenter asserts, without reference to any facts, that the New York AIM coatings rule imposes burdens and has impacts on consumers that are ''clearly excessive in relation to the purported benefits * * *'' By contrast, EPA believes that the burdens of the New York AIM coatings rule are not so overwhelming as to trump the State's interest in the protection of public health. First, the New York AIM coatings rule does not restrict the transportation of coatings in commerce itself, only the sale of nonconforming coatings within the State's own boundaries. The State's rule excludes coatings sold or manufactured for use outside the State or for shipment to others. New York AIM Coatings, subpart 205.1(b). The New York AIM coatings rule cannot be construed to interfere with the transportation of coatings through the State en route to other states. As such, EPA believes that the cases concerning impacts on the interstate modes of transportation themselves are inapposite. *See, e.g.*, *Bibb* v. *Navajo Freight Lines,* 359 U.S. 520 (1938).

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

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

In addition, EPA notes that courts have not found violations of the Commerce Clause in situations where states have enacted state laws with the authorization of Congress. *See, e.g.*, *Oxygenated Fuels Assoc., Inc.* v. *Davis,* 63 F. Supp. 1182 (E.D. Cal. 2001) (state ban on MTBE authorized by Congress); *NEMA* v. *Sorell,* 272 F.3d 104 (2nd Cir. 2000) (RCRA's authorization of more stringent state regulations confers a ''sturdy buffer'' against Commerce Clause challenges). Section 183(e) of the Act governs the Federal regulation of VOCs from consumer and commercial products, such as coatings covered by the New York AIM coatings rule. EPA has issued a Federal regulation that provides national standards, including VOC content limits, for such coatings. *See* 40 CFR 59.400 *et seq.* Congress did not, however, intend section 183(e) to pre-empt additional state regulation of coatings, as is evident in section 183(e)(9) which indicates explicitly that states may regulate such products. EPA's regulations promulgated pursuant to the Act recognized that states might issue their own regulations, so long as they meet or exceed the requirements of the Federal regulations. *See*, *e.g.*, the National Volatile Organic Compound Emission Standards for Architectural Coatings, 40 CFR 59.410, and **Federal Register** which published the standards, 63 FR 48848, 48857 (September 11, 1998). Thus, EPA believes that Congress has clearly provided that a state may regulate coatings more stringently than other states.

In section 116 of the Act, Congress has also explicitly reserved to states and their political subdivisions the right to adopt local rules and regulations to impose emissions limits or otherwise abate air pollution, unless there is a specific Federal preemption of that authority. When Congress intends to create such Federal preemption, it does so through explicit provisions. *See*, *e.g.*, section 209(a) of the Act which pertains to state or local emissions standards for motor vehicles; section 211 of the Act which pertains to fuel standards. Moreover, the very structure of the Act is based upon ''cooperative federalism,'' which contemplates that each state will develop its own state implementation plan, and that states retain a large degree of flexibility in choosing which

sources to control and to what degree in order to attain the NAAQS by the applicable attainment date. *See Union Electric Co.* v. *EPA,* 427 U.S. 246 (1976). Given the structure of the Act, the mere fact that one state might choose to regulate sources differently than another state is not, in and of itself, contrary to the Commerce Clause.

Finally, EPA understands that there may be a practical concern that a plethora of state regulations could create a checkerboard of differing requirements that might not be the simplest approach to regulating VOCs from AIM coatings or other consumer products. Greater uniformity of standards does have beneficial effects in terms of more cost effective and efficient regulations. As EPA noted in its own AIM coatings rule, national uniformity in regulations is also an important goal because it will facilitate more effective regulation and enforcement, and minimize the opportunities for undermining the intended VOC emission reductions. 63 FR 48856–48857. However, EPA also recognizes that New York and other states with longstanding ozone nonattainment problems have local needs for VOC reductions that may necessitate more stringent coatings regulations. Under section 116 of the Act, states clearly have the authority to do so. New York may have additional burdens to insure compliance with its rule, but for purposes of this action EPA presumes that the State will take appropriate actions to enforce it as necessary. Because the New York AIM coatings rule meets the requirements of section 110(a)(2) of the Act, EPA has an obligation to approve the rule. EPA has no grounds for disapproval of the New York AIM coatings rule based upon the commenters commerce clause comment.

I. Comment: The Emission Limits and Compliance Schedule in the New York AIM Coatings Rule Are Neither Necessary Nor Appropriate to Meet Applicable Requirements of the Clean Air Act

The commenter claims that the New York AIM coatings rule is not ''necessary or appropriate'' for inclusion in the New York SIP, because EPA did not direct New York to achieve VOC reductions through the AIM coatings rule, but left it to the State to decide how such reduction can be achieved. The commenter further asserts that the New York AIM coatings rule is also not necessary or appropriate for inclusion in the New York SIP because of the numerous procedural and substantive failings on the part of NYSDEC in promulgating the rule.

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

In this particular instance, EPA identified an emission reduction shortfall associated with New York's 1-hour ozone attainment demonstration SIP, and required New York to address the shortfall. See, 64 FR 70364 and 67 FR 5170. It is the State's prerogative to develop whatever rule or set of rules it deems necessary or appropriate such that the rule or rules will collectively achieve the additional emission reductions for attainment of the 1-hour ozone standard as identified by EPA.

As stated previously, the State's November 4, 2003, SIP revision submittal provides evidence that it has the legal authority to adopt the New York AIM coatings rule and that it has followed all of the requirements in the State's law and constitution that are related to adoption of the New York AIM coatings rule.

J. Comment: Comments Submitted to the NYSDEC on New York's Proposal of Its AIM Coatings Rule Are Incorporated by Reference in Sherwin-Williams' Letter to EPA Submitted as Comment to EPA's January 16, 2004 Proposed Approval of the New York AIM Coatings Rule

In its February 17, 2004, letter submitted to EPA as comment to EPA's proposed approval of the New York AIM Coatings Rule, the commenter incorporated by reference a ''Statement on behalf of the Sherwin-Williams Company on proposed 6 NYCRR Part 205'' presented to the NYSDEC at the Legislative Public Hearing, dated May 2, 2003 and ''Comments of the Sherwin-Williams Company'' to the NYSDEC, dated May 12, 2003. The following summarizes the comments that were presented to the NYSDEC and thereby incorporated by reference by the commenter:

(1) The commenter has significant concerns with the proposed standards for interior wood clear and semi-transparent stains, interior wood varnishes, interior wood sanding sealers, exterior wood primers, and floor coatings. The commenter asserts that New York's proposed AIM coatings rule is based upon the inaccurate assumption that compliant coatings are available or can be developed which will satisfy customer requirements and meet all of the performance requirements of these categories. The commenter contends that such coatings are not effectively within the limits of current technology and that this ''inaccurate assumption'' will result in increased and earlier repainting which can damage floors in New York due to seasonal variations in temperature and humidity.

(2) The commenter contends that NYSDEC has not considered the increase in emissions resulting from the performance issues and repainting.

(3) The commenter has suggested changes to the VOC standards for only a few of the 52 product categories proposed by New York in its AIM coatings rule, and claims that the version of the AIM coatings rule it counter-proposes will achieve significant reductions beyond the National AIM coatings rule.

(4) The commenter states that New York's proposed AIM coatings rule will

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

have a significant adverse impact on the commenter and the NYSDEC can issue another regulation that achieves substantial VOC reductions beyond the Federal AIM coatings rule without causing serious adverse impact on potential sales of certain products.

(5) The commenter contends that the reporting requirements and related compliance provisions of New York's proposed AIM coatings rule are unreasonable.

(6) The commenter states that New York's proposed AIM coatings rule is arbitrary and capricious because it does not include reasonable alternatives and because the small business limited short-term exemption provision should be available to all manufacturers.

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

(8) The commenter has indicated that both the Consumer Products regulation and AIM coatings rule proposed by New York are based on rulemakings in California. However, New York's proposal includes the California averaging provision for consumer products but does not do so for AIM. The commenter asserts that failure to include the California averaging provisions in the New York AIM coatings rule is arbitrary and capricious, and places an unequal burden on the architectural coating industry.

(9) The commenter also submitted comments to NYSDEC regarding it proposed AIM coatings rule challenging that the NYSDEC does not have authority under the State ECL to adopt the proposed AIM coatings rule.

Response: As previously stated in this document, EPA disagrees with the commenter's assertion that the adoption of the AIM coatings regulation by the NYSDEC is in violation of the ECL. Please see EPA's response to Comment E. With regard to the other comments submitted by the commenter to the NYSDEC on its proposed AIM coatings rule that it has incorporated by reference in its comments to EPA on EPA's February 16, 2004, proposed approval, EPA's response is that , it is important to understand EPA's role and responsibilities with regard to the review and approval, or disapproval, of rules submitted as SIP revisions. Prior to approving a state submitted SIP revision, pursuant to section 110(a) of the Act, EPA reviews the submission to ensure that the state provided the opportunity for comment and held a hearing(s) on the state regulation that is at issue in the proposed SIP revision. In this case, New York's November 4, 2003, SIP submittal and its November 21, 2003, supplemental SIP submittal to EPA, of its AIM coatings rule include the necessary documentation to demonstrate that it met these requirements. New York's SIP revision submissions are included in the docket of this rulemaking.

A complete SIP revision submission from a state includes copies of timely comments properly submitted to the state on the proposed SIP revision and the state's responses to those comments. New York's November 4, 2003, submission of its AIM coatings rule as a SIP revision to EPA properly includes both the comments submitted on its proposed AIM coatings rule and the States responses to those comments. See both the documents entitled, Assessment of Public Comments on Proposed Revisions to 6 NYCRR part 205, Architectural and Industrial Maintenance (AIM) Coatings and New York State Register, Rule Making Activities, Notice of Adoption, pg. 2, November 12, 2003.

The New York SIP revision submission of its AIM coatings rule does not request that EPA approve a specific amount of VOC emission reduction credit. As such, the comments regarding the State's emission reduction calculations are not germane to EPA's current rulemaking to approve New York's November 4, 2003, and the supplemental November 21, 2003, SIP revision. The State's responses to the comments made by the commenter in its May 12, 2003, letter submitted to the NYSDEC as part of its timely comments on the proposed New York AIM coatings rule are included in the States' submission to EPA for approval of the SIP revision. (Comments were to be submitted to the NYSDEC on its proposed SIP revision by May 12, 2003).

The cost per ton figure determined by New York in its regulatory impact statement, its decision to rely upon information from California, its decision on whether to include reasonable alternatives, its choice not to include averaging provisions in its AIM coatings rule, its choice of reporting requirements and its choice to include a small business limited short-term exemption are all decisions which fall within the State's purview, and issues regarding those decisions are rightfully raised by interested parties to the State during its regulatory adoption process. Therefore, it was appropriate that the commenter comment to the State on these matters during the adoption of its AIM coatings rule. EPA has reviewed the SIP revision submitted and has determined that the commenter's comments on those issues it has incorporated by reference in this rulemaking, along with the NYSDEC's responses to those issues, are included therein. In the context of a SIP approval, EPA's review of state decisions is limited to whether the rule meets the minimum criteria of the Act. Provided that the rule adopted by the state satisfies this criteria, EPA must approve such plans. See, *Union Electric Co.* v. *EPA*.

With regard to the commenter's comments concerning the availability of complying coatings and the ability to develop complying coatings that can meet customer requirements and performance requirements, EPA notes that NYSDEC addressed these comments in its Assessment of Public Comments document. NYSDEC researched various AIM coatings surveys and performance studies which ''demonstrate the technical feasibility of the proposed limits and that coatings reformulated to meet these limits perform as expected.'' NYSDEC determined that quality AIM coatings are available in all categories which comply with the VOC content limits specified in the proposed New York AIM coatings rule, and therefore, New York adopted the proposed limits into its final AIM coatings rule. It is the State's prerogative to impose more stringent limits for architectural coatings as part of its SIP, and its election to do so is not a basis for EPA to disapprove the SIP. EPA has determined that New York's SIP revision was complete in that it included the commenter's comments and NYSDEC sufficiently responded to them. EPA has also determined that this SIP revision meets the minimum criteria for approval under the Act, including the requirement that the revision be at least as stringent as the Federal AIM coatings rule set forth at 40 CFR 59.400.

IV. What Is EPA's Conclusion?

EPA has determined that the comments, received in response to the January 16, 2004 proposed rulemaking action, do not alter its proposed determination that the SIP revision submitted by New York is fully approvable. EPA has evaluated New York's submittal for consistency with the Act, EPA regulations, and EPA

policy. EPA has determined that the revisions made to title 6 of the New York Codes, Rules and Regulations, part 205, entitled, ''Architectural and Industrial Maintenance Coatings'', effective November 22, 2003, meet the SIP revision requirements of the Act and, therefore, EPA has made the final determination that New York's AIM coatings rule is approvable.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 11, 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 23, 2004.

Kathleen Callahan,

Acting Regional Administrator, Region 2.

■ 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 HH—New York

■ 2. Section 52.1670 is amended by adding new paragraph (c)(105) to read as follows:

§ 52.1670 Identification of plans.

* * * * *

(c) * * *

(105) Revisions to the State Implementation Plan submitted on November 4, 2003 and supplemented on November 21, 2003, by the New York State Department of Environmental Conservation, which consists of a control strategy that will achieve volatile organic compound emission reductions that will help achieve attainment of the national ambient air quality standard for ozone.

(i) Incorporation by reference:

(A) Regulation Part 205, ''Architectural and Industrial Maintenance Coatings.'' of title 6 of the New York Code of Rules and Regulations, filed on October 23, 2003, and effective on November 22, 2003.

■ 3. In § 52.1679, the table is amended by revising the entry under title 6 for part 205 to read as follows.

§ 52.1679 EPA-approved New York State regulations.

New York State regulation	State effective date	Latest EPA approval date	Comments
Title 6:			
* * *	*	* *	*
Part 205, Architectural and Industrial Maintenance Coatings.	11/22/2004	12/13/2004 and FR page citation.	

New York State regulation			State effective date	Latest EPA approval date		Comments
*	*	*	*	*	*	*

[FR Doc. 04–27261 Filed 12–10–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–P–7640]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Map(s) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Mitigation Division Director of the Emergency Preparedness and Response Directorate reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and record keeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas: Washington (Case No.: 04–06–1740P).	City of Fayetteville	Nov. 23, 2004, Nov. 30, 2004, *Northwest Arkansas Times*.	The Honorable Dan Coody, Mayor, City of Fayetteville, 113 W. Mountain, Fayetteville, AR 72701.	Nov. 12, 2004	050216
Illinois:					
McClean (Case No.: 04–05–0891P).	City of Bloomington.	Nov. 12, 2004, Nov. 19, 2004, *The Pantagraph*.	The Honorable Judy Markowitz, Mayor, City of Bloomington, 109 East Olive Street, Suite 200, Bloomington, IL 61701.	Feb. 18, 2005	170490
Cook (Case No.: 03–05–5180P).	Unincorporated Areas.	Oct. 21, 2004, Oct. 28, 2004, *Orland Township Messenger*.	The Honorable John H. Stroger, Jr., President, Cook County, Board of Commissioners, 69 West Washington, Suite 2830, Chicago, IL 60602–3169.	Jan. 27, 2004	170054
Cook (Case No.: 04–05–4062P).	Unincorporated Areas.	Oct. 13, 2004, Oct. 20, 2004, *The Chicago Tribune*.	The Honorable John H. Stroger, Jr., President, Cook County, Board of Commissioners, 118 North Clark Street, Room 537, Chicago, IL 60602.	Oct. 1, 2004	170054
Kane (Case No.: 04–05–2895P).	Unincorporated Areas.	Nov. 10, 2004, Nov. 17, 2004, *Kane County Chronicle*.	The Honorable Michael McCoy Chairman, Kane County Board, Kane County Government Center, 719 South Batavia Avenue, Bldg. A, Geneva, IL 60134.	Feb. 16, 2005	170896
Kane (Case No.: 04–05–2895P).	Unincorporated Areas.	Nov. 10, 2004, Nov. 17, 2004, *Kane County Chronicle*.	The Honorable Michael McCoy, Chairman, Kane County Board, Kane County Government Center, 719 South Batavia Avenue, Bldg. A, Geneva, IL 60134.	Feb. 16, 2005	170896
Kane and Kendall (Case No.: 04–05–0087P).	Village of Montgomery.	Nov. 17, 2004, Nov. 24, 2004, *Aurora Beacon News*.	The Honorable Marilyn Michelini, President, Village of Montgomery, 1300 South Broadway, Montgomery, IL 60538.	Nov. 8, 2004	170328
Cook (Case No.: 03–05–5180P).	Village of Orland Park.	Oct. 21, 2004, Oct. 28, 2004, *Orland Township Messenger*.	The Honorable Daniel McLaughlin, Mayor, Village of Orland Park, 14700 S. Ravinia Avenue, Orland Park, IL 60462.	Jan. 27, 2004	170140
Will County (Case No.: 04–05–3541P).	Unincorporated Areas.	Nov. 12, 2004, Nov. 19, 2004, *The Herald News*.	The Honorable Joseph L. Mikan, Will County Executive, Will County Office Building, 302 North Chicago Street, Joliet, IL 60432.	Oct. 19, 2004	170695
Indiana: Marion (Case No.: 04–05–0895P).	City of Indianapolis	Nov. 12, 2004, Nov. 19, 2004, *The Indianapolis Star*.	The Honorable Bart Peterson, Mayor, City of Indianapolis, 2501 City-County Building, 200 E. Washington Street, Indianapolis, IN 46204.	Feb. 18, 2005	180159
Iowa: Johnson (Case No.: 04–07–047P).	City of North Liberty.	Oct. 20, 2004, Oct. 27, 2004, *North Liberty Leader*.	The Honorable Clair Mekota, Mayor, City of North Liberty, 35 Vixen Lane, North Liberty, IA 52317.	Oct. 5, 2004	190630
New Mexico: Torrance (Case No.: 04–06–674P).	City of Moriarty	Oct. 14, 2004, Oct. 21, 2004, *Mountain View Telegraph*.	The Honorable Adan M. Encinias, Mayor, City of Moriarty, P.O. Drawer 130, Moriarty, NM 87035.	Jan. 20, 2005	350083
Ohio:					
Greene (Case No.: 03–05–3977P).	City of Beaver Creek.	Oct. 22, 2004, Oct. 29, 2004, *Beavercreek News-Current*.	The Honorable Robert Glaser, Mayor, City of Beaver Creek, 1368 Research Park Drive, Beavercreek, OH 45432.	Jan. 28, 2005	390876
Butler (Case No.: 03–05–5177P).	Unincorporated Areas.	Oct. 21, 2004 Oct. 28, 2004, *The Journal-News*.	The Honorable Charles R. Furmon, President, Butler County, Board of Commissioners, 315 High Street, 4th Floor, Government Services Center, Hamilton, OH 45011.	Jan. 27, 2004	390037
Greene (Case No.: 03–05–3977P).	Unincorporated Areas.	Oct. 22, 2004, Oct. 29, 2004, *Xenia Daily Gazette*.	The Honorable Jeff Gilbert, Chairman, Green County Board, County Courthouse, 519 North Main Street, Carrollton, OH 62016.	Jan. 28, 2005	390193
Summit (Case No.: 04–05–0770P).	Village of Hudson	Oct. 20, 2004, Oct. 27, 2004, *Hudson Hub-Times*.	The Honorable William A. Currin, Mayor, Village of Hudson, 27 East Main Street, Hudson, OH 44236–3099.	Jan. 26, 2005	390660

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Lucas (Case No.: 04–05–4066P).	Unincorporated Areas.	Oct. 19, 2004, Oct. 26, 2004, *Farmland News*.	The Honorable Harry Barlos, President, Lucas County, Board of Commissioners, One Government Center, Suite 800, Toledo, OH 43604.	Sept. 30, 2004	390539
Oklahoma: Cleveland (Case No.: 04–06–1915P).	City of Moore	Nov. 23, 2004, Nov. 30, 2004, *The Moore American*.	The Honorable Glenn Lewis, Mayor, City of Moore, 301 North Broadway, Moore, OK 73160.	Nov. 9, 2004	400044
Texas:					
Tarrant (Case No.: 04–06–1903P).	City of Arlington ...	Nov. 12, 2004, Nov. 19, 2004, *Northeast Tarrant County Morning News*.	The Honorable Dr. Robert Cluck, Mayor, City of Arlington, 101 W. Abram Street, Arlington, TX 76004–0231.	Oct. 29, 2004	485454
Brazos (Case No.: 04–06–1025P).	City of Bryan	Oct. 5, 2004, Oct. 12, 2004, *The Eagle*.	The Honorable Ernie Wentrcek, Mayor, City of Bryan, P.O. Box 1000, Bryan, TX 77805.	Jan. 11, 2005	480082
Collin (Case No.: 04–06–1470P).	Unincorporated Areas.	Oct. 20, 2004, Oct. 27, 2004, *Plano Star Courier*.	The Honorable Ron Harris, Judge, Collin County, 210 South McDonald Street, #626, Wylie, TX 75098.	Jan. 26, 2005	480130
Denton (Case No.: 04–06–1464P).	Town of Double Oak.	Nov. 23, 2004, Nov. 30, 2004, *Denton Record Chronicle*.	The Honorable Richard P. Cook, Mayor, Town of Double Oak, 320 Waketon Road, Double Oak, TX 75077.	Mar. 1, 2005	481516
El Paso (Case No.: 04–06–1606P).	City of El Paso	Nov. 12, 2004, Nov. 19, 2004, *El Paso Times*.	The Honorable Joe Wardy, Mayor, City of El Paso, 2 Civic Center Plaza, El Paso, TX 79901–1196.	Oct. 29, 2004	480214
Fort Bend (Case No.: 04–06–2155P).	Unincorporated Areas.	Oct. 20, 2004, Oct. 27, 2004, *Fort Bend Star*.	The Honorable Robert E. Hebert, Judge, Fort Bend County, 301 Jackson Street, Richmond, TX 77469.	Jan. 27, 2005	480228
Tarrant (Case No.: 04–06–1741P).	City of Fort Worth	Oct. 6, 2004, Oct. 13, 2004, *The Star Telegram*.	The Honorable Michael Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	Sept. 20, 2004	480596
Tarrant (Case No.: 04–06–858P).	City of Hurst	Oct. 1, 2004, October 8, 2004, *The Star Telegram*.	The Honorable Richard Ward, Mayor, City of Hurst, 1505 Precinct Line Road, Hurst, TX 76054.	Oct. 7, 2004, ...	480601
Collin (Case No.: 04–06–1002P).	City of McKinney ..	Oct. 7, 2004, Oct. 14, 2004, *McKinney Courier-Gazette*.	The Honorable Bill Whitfield, Mayor, City of McKinney, 222 N. Tennessee Avenue, McKinney, TX 75069.	Jan. 13, 2005	480135
Fort Bend (Case No.: 04–06–2155P).	City of Missouri City.	Oct. 21, 2004, Oct. 28, 2004, *Fort Bend Mirror*.	The Honorable Allen Owen, Mayor, City of Missouri City, 1522 Texas Parkway, Missouri City, TX 77489.	Jan. 27, 2005	480304
Denton (Case No.: 04–06–1180P).	City of Oak Point ..	Nov. 23, 2004, Nov. 30, 2004, *Denton Record Chronicle*.	The Honorable Duane E. Olson, Mayor, City of Oak Point, 100 Naylor Road, Oak Point, TX 75068.	Nov. 9, 2004	481639
Williamson (Case No.: 03–06–1540P).	City of Round Rock.	Oct. 12, 2004, Oct. 19, 2004, *Round Rock Leader*.	The honorable Nyle Maxwell, Mayor, City of Round Rock, 221 East Main, Round Rock, TX 78664.	Jan. 19, 2005	481048
Williamson (Case No.: 03–06–1540P).	Williamson County	Oct. 13, 2004, Oct. 20, 2004, *Williamson County Sun*.	The Honorable John C. Doerfler, Judge, Williamson County, 710 Main Street, Suite 201, Georgetown, TX 78626.	Jan. 19, 2005	481079
Collin (Case No.: 04–06–1470P).	City of Wylie	Oct. 20, 2004, Oct. 27, 2004, *The Wylie News*.	The Honorable John Mondy, Mayor, City of Wylie, 2000 State Highway 78 North, Wylie, TX 75098.	Jan. 26, 2005	480759
Wisconsin: Waupaca (Case No.: 04–05–4068P).	City of Clintonville	Sept. 23, 2004, Sept. 30, 2004 *Tribune Gazette*.	The Honorable Richard K. Beggs, Mayor, City of Clintonville, 50 10th Street, Clintonville, WI 54929.	Sept. 17, 2004	550494

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: December 7, 2004.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 04–27249 Filed 12–10–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations and modified Base Flood Elevations (BFEs) are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below for the BFEs and modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and 44 CFR Part 67.

The Federal Emergency Management Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and record keeping requirements.

■ Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

■ 1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) modified. ♦Elevation in feet (NAVD) modified
Arkansas	Arkadelphia (City) Clark County (FEMA Docket No. P7649).	Mill Creek	Approximately 1,820 feet downstream of North Eighth Street.	*193
			Approximately 2,800 feet upstream of 26th Street.	*245
	(FEMA Docket No. P7649)	Maddox Branch	Approximately 25 feet downstream of Union Pacific Railroad.	*186

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) modified. ♦Elevation in feet (NAVD) modified
			Approximately 425 feet upstream of South 12th Street.	*207
Maps are available for inspection at the Town Hall, 700 Clay Street, 121, Arkadelphia, Arkansas.				
Louisiana	Jonesville (Town) Catahoula Parish (FEMA Docket No. P7649).	Black River	Approximately 4,100 feet downstream of U.S. Highway 84.	*63
			At the confluence of Little River	*63
		Little River	At the confluence with Black River	*63
			Approximately 100 feet upstream of the divergence of Airport Canal.	*63
Ohio	Chagrin Falls (Village) Cuyahoga County (FEMA Docket No. P7653).	Chagrin River	At the downstream corporate limit, approximately 4,735 feet downstream of Miles Road.	*838
			Just downstream of the corporate limit, approximately 5,100 feet upstream of the dam.	*969
Maps are available for inspection at the Village Hall, 21 W. Washington Street, Chagrin Falls, Ohio.				
Ohio	Lake County (Unincorporated Areas) (FEMA Docket No. P7655).	Red Creek	Just upstream of CSX Railroad	*677
			Approximately 700 feet upstream of Farm Road.	*696
		Red Mill Creek	A reach approximately 1,200 feet south of Norfolk Southern Railroad.	*704
			Area east of the Main Street and 700 feet south of Norfolk Southern Railroad.	*#2
Maps are available for inspection at the Lake County Engineers Office, 550 Blackbrook Road, Painesville, Ohio.				
Ohio	Perry Lake (Village) Lake County (FEMA Docket No. P7655).	Red Creek		*699
	Red Mill Creek	Area east of Main Street and approximately 1,300 feet south of Norfolk Southern Railroad.	*710.	
Maps are available for inspection at the Village of Perry Municipal Center, 3758 Center Road, Perry, Ohio.				
Oklahoma	Tuttle (Town) Grady County (FEMA Docket No. P7647).	Coal Creek—Lower Reach	Approximately 200 feet upstream of the confluence with the Canadian River.	*1,197
			Approximately 0.5 mile upstream of North Sarah Road.	*1,235
		Coal Creek Tributary—Lower Reach.	At the confluence with Coal Creek—Lower Reach.	*1,221
			Approximately 0.6 mile upstream of the confluence with Coal Creek—Lower Reach.	*1,232
	Tuttle (Town) Lake County (Cont'd) (FEMA Docket No. P7647).	Worley Creek—Lower Reach	Approximately 1,530 feet downstream of East Silver City Ridge Road.	*1,204
			Approximately 140 feet upstream of State Highway 37.	*1,243
Maps are available for inspection at the Town Hall, 301 West Main Street, Tuttle, Oklahoma.				

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: December 7, 2004.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 04–27248 Filed 12–10–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket No. 2001–11213, Notice No. 4]

RIN 2130–AA81

Alcohol and Drug Testing: Determination of Minimum Random Testing Rates for 2005

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of determination.

SUMMARY: Using data from Management Information System annual reports, FRA has determined that the 2003 rail industry random testing positive rate was 0.93 percent for drugs and 0.18 percent for alcohol. Since the industry-wide random drug testing positive rate continues to be below 1.0 percent, the Federal Railroad Administrator (Administrator) has determined that the minimum annual random drug testing rate for the period January 1, 2005 through December 31, 2005 will remain at 25 percent of covered railroad employees. Since the random alcohol testing violation rate has remained below 0.5 percent for the last two years, the Administrator has determined that the minimum random alcohol testing rate will remain at 10 percent of covered railroad employees for the period January 1, 2005 through December 31, 2005.

DATES: This notice is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Lamar Allen, Alcohol and Drug Program Manager, Office of Safety Enforcement, Mail Stop 25, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20005, (202) 493–6313); or Kathy Schnakenberg, FRA Alcohol/Drug Program Specialist, (816) 561–2714.

SUPPLEMENTARY INFORMATION:

Administrator's Determination of 2005 Random Drug and Alcohol Testing Rates

In a final rule published on December 2, 1994 (59 FR 62218), FRA announced that it will set future minimum random drug and alcohol testing rates according to the rail industry's overall positive rate, which is determined using annual railroad drug and alcohol program data taken from FRA's Management Information System. Based on this data, the Administrator publishes a **Federal Register** notice each year, announcing the minimum random drug and alcohol testing rates for the following year (*see* 49 CFR 219.602, 608).

Under this performance-based system, FRA may lower the minimum random drug testing rate to 25 percent whenever the industry-wide random drug positive rate is less than 1.0 percent for two calendar years while testing at 50 percent. (For both drugs and alcohol, FRA reserves the right to consider other factors, such as the number of positives in its post-accident testing program, before deciding whether to lower annual minimum random testing rates). FRA will return the rate to 50 percent if the industry-wide random drug positive rate is 1.0 percent or higher in any subsequent calendar year.

FRA implemented a parallel performance-based system for random alcohol testing. Under this system, if the industry-wide violation rate is less than 1.0 percent but greater than 0.5 percent, the rate will be 25 percent. FRA will raise the rate to 50 percent if the industry-wide violation rate is 1.0 percent or higher in any subsequent calendar year. FRA may lower the minimum random alcohol testing rate to 10 percent whenever the industry-wide violation rate is less than 0.5 percent for two calendar years while testing at a higher rate.

In this notice, FRA announces that the minimum random drug testing rate will remain at 25 percent of covered railroad employees for the period January 1, 2005 through December 31, 2005, since the industry random drug testing positive rate for 2003 was 0.93 percent. Since the industry-wide violation rate for alcohol has remained below 0.5 percent for the last two years, FRA is maintaining the minimum random alcohol testing rate at 10 percent of covered railroad employees for the period January 1, 2005 through December 31, 2005. Railroads remain free, as always, to conduct random testing at higher rates.

Issued in Washington, DC on December 2, 2004.

Betty Monro,

Acting Administrator.

[FR Doc. 04–27214 Filed 12–10–04; 8:45 am]

BILLING CODE 4910–06–P

Proposed Rules

Federal Register
Vol. 69, No. 238
Monday, December 13, 2004

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19522; Directorate Identifier 2004–CE–36–AD]

RIN 2120–AA64

Airworthiness Directives; CENTRAIR 101 Series Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain CENTRAIR 101 series gliders. This proposed AD would require you to replace non-strengthened rudder pedals with reinforced rudder pedals. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. We are issuing this proposed AD to replace the non-strengthened rudder pedals, to prevent failure of the rudder controls. This failure could lead to loss of directional control of the glider.

DATES: We must receive any comments on this proposed AD by January 14, 2005.

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

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

To get the service information identified in this proposed AD, contact CENTRAIR, Aerodome B.P.N. 44, 36300 Le Blanc, France; telephone: 02.54.37.07.96; facsimile: 02.54.37.48.64.

To view the comments to this proposed AD, go to *http://dms.dot.gov.* This is docket number FAA–2004–19522.

FOR FURTHER INFORMATION CONTACT: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include the docket number, ''FAA–2004–19522; Directorate Identifier 2004–CE–36–AD'' at the beginning of your comments. We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA–2004–19522. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

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

Docket Information

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

Discussion

What events have caused this proposed AD? The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified FAA that an unsafe condition may exist on certain CENTRAIR 101 series gliders. The DGAC reports finding previously undetected cracks or poorly repaired cracks on several CENTRAIR 101 series gliders at the weld seam between the hinge tube and the vertical tube of the rudder pedal. The rupture of this weld could lead to failure of the rudder controls.

What is the potential impact if FAA took no action? Failure of the rudder controls could lead to loss of directional control of the glider.

Is there service information that applies to this subject? CENTRAIR has issued Société Nouvelle Centrair Service Bulletin No. 101–24, dated March 5, 2003 (this is the date of the French AD 2003–095(a) that transmitted the service bulletin).

What are the provisions of this service information? The service bulletin includes procedures for:

—Immediately inspecting (using dye penetrant) the weld between the hinge tube and the vertical tube on both rudder pedals for any cracks;
—Immediately replacing any rudder pedal if a crack is found; and
—Eventually replacing any non-strengthened rudder pedals with a reinforced rudder pedal.

What action did the DGAC take? The DGAC classified this service bulletin as mandatory and issued French AD Number 2003–095(A), dated March 5, 2003, to ensure the continued airworthiness of these gliders in France.

Did the DGAC inform the United States under the bilateral airworthiness agreement? These CENTRAIR 101 series gliders are manufactured in France and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Under this bilateral airworthiness agreement, the DGAC has kept us informed of the situation described above.

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? We have examined the DGAC's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other CENTRAIR 101 series gliders of the same type design that are registered in the United States, we are proposing AD action to replace the non-strengthened rudder pedals, which could result in failure of the rudder controls. This failure could lead to loss of directional control of the glider.

What would this proposed AD require? This proposed AD would require you to replace non-strengthened rudder pedals with reinforced rudder pedals, part number (P/N) $Y185A for the left-hand rudder pedal and P/N $Y196A for the right-hand rudder pedal.

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

Costs of Compliance

How many gliders would this proposed AD impact? We estimate that this proposed AD affects 56 gliders in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected gliders? We estimate the following costs to do this proposed rudder pedal replacement. We have no way of determining the number of gliders that may need this rudder pedal replacement:

Labor cost per rudder pedal	Parts cost	Total cost per glider
4 workhours × $65 per hour = $260	$162 (for each rudder pedal) × 2 = $324	$584

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket FAA–2004–19522; Directorate Identifier 2004–CE–36–AD'' in your request.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this AD.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

CENTRAIR: Docket No. FAA–2004–19522; Directorate Identifier 2004–CE–36–AD.

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

(a) We must receive comments on this proposed airworthiness directive (AD) by January 14, 2005.

What Other ADs Are Affected by This Action?

(b) None.

What Gliders Are Affected by This AD?

(c) This AD affects Models 101, 101A, 101AP, and 101P gliders, serial numbers 101xx001 through 101xx285 and 101D0501 through 101D0530, certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. We are issuing this AD to replace the non-strengthened rudder pedals, and prevent failure of the rudder controls. This failure could lead to loss of directional control of the glider.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Replace any non-strengthened rudder pedals with reinforced rudder pedals: (i) The left-hand reinforced rudder pedal is part number (P/N) $Y185A; and (ii) The right-hand reinforced rudder pedal is P/N $Y196A.	Within the next 25 hours time-in-service (TIS) after the effective date of this AD, unless already done.	Follow Société Nouvelle Centrair Service Bulletin No. 101–24, dated March 5, 2003 (this is the date of the French AD 2003–095(a) that transmitted the service bulletin). The applicable glider maintenance manual also addresses this issue.
(2) Do not install any non-strengthened rudder pedal as specified in paragraphs (e)(1)(i) and (e)(1)(ii) of this AD.	As of the effective date of this AD	Not Applicable.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

Is There Other Information That Relates to This Subject?

(g) French AD 2003–095(A), dated March 5, 2003, also addresses the subject of this AD.

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

(h) To get copies of the documents referenced in this AD, contact CENTRAIR, Aerodome B.P.N. 44, 36300 Le Blanc, France; telephone: 02.54.37.07.96; facsimile: 02.54.37.48.64. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov*. This is docket number FAA–2004–19522.

Issued in Kansas City, Missouri, on December 6, 2004.

Scott L. Sedgwick,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–27197 Filed 12–10–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19616; Directorate Identifier 2004–CE–38–AD]

RIN 2120–AA64

Airworthiness Directives; CENTRAIR 101 Series Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all CENTRAIR 101 series gliders with other than elevator or aileron part number (P/N) SY991A hinge pins installed. This proposed AD would require you to replace any installed elevator or aileron hinge pins that are not P/N SY991A hinge pins with P/N SY991A pins. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. We are issuing this proposed AD to replace incorrectly heat-treated elevator or aileron hinge pins, which could result in failure of the elevator or ailerons. Such failure during takeoff, landing, or flight operations could lead to loss of glider control.

DATES: We must receive any comments on this proposed AD by January 14, 2005.

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

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

To get the service information identified in this proposed AD, contact CENTRAIR, Aerodome B.P.N. 44, 36300 Le Blanc, France; telephone: 02.54.37.07.96; facsimile: 02.54.37.48.64.

To view the comments to this proposed AD, go to *http://dms.dot.gov.* This is docket number FAA–2004–19616.

FOR FURTHER INFORMATION CONTACT: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include the docket number, ''FAA–2004–19616; Directorate Identifier 2004–CE–38–AD'' at the beginning of your comments. We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA–2004–19616. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

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

Docket Information

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

Discussion

What events have caused this proposed AD? The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified FAA that an unsafe condition may exist on all CENTRAIR 101 series gliders. The DGAC reports occurrences of improperly heat-treated aileron and elevator hinge pins installed on the CENTRAIR 101 series gliders. Incorrectly heat-treated elevator or aileron hinge pins could result in longitudinal cracks that cause failure of the elevator or ailerons. CENTRAIR has made available new hinge pins (part number (P/N) SY991A) to replace any incorrectly heat-treated elevator or aileron hinge pins or hinge pins with longitudinal cracks.

What is the potential impact if FAA took no action? Failure of the elevator or ailerons during takeoff, landing, or flight operations could lead to loss of glider control.

Is there service information that applies to this subject? CENTRAIR has issued Société Nouvelle Centrair Service Bulletin No. 101–22, dated March 13, 2001.

What are the provisions of this service information? The service bulletin includes procedures for:

—Immediately inspecting (visually and with dye penetrant) the aileron and elevator hinge pins for cracks;
—Immediately replacing any hinge pins found with longitudinal cracks as a result of the above inspection; and
—Eventually replacing any installed elevator or aileron hinge pins that are not P/N SY991A hinge pins with P/N SY991A pins.

What action did the DGAC take? The DGAC classified this service bulletin as mandatory and issued French AD Number 2001–247(A), dated June 27, 2001, to ensure the continued airworthiness of these gliders in France.

Did the DGAC inform the United States under the bilateral airworthiness agreement? These CENTRAIR 101 series gliders are manufactured in France and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Under this bilateral airworthiness agreement, the DGAC has kept us informed of the situation described above.

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? We have examined the DGAC's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other CENTRAIR 101 series gliders of the same type design that are registered in the United States, we are proposing AD action to replace incorrectly heat-treated elevator or aileron hinge pins, which could result in failure of the elevator or ailerons. Such failure during takeoff, landing, or flight operations could lead to loss of glider control.

What would this proposed AD require? This proposed AD would require you to replace with P/N SY991A hinge pins any installed elevator or aileron hinge pins that are not P/N SY991A hinge pins.

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

Costs of Compliance

How many gliders would this proposed AD impact? We estimate that this proposed AD affects 57 gliders in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected gliders? We estimate the following costs to do this proposed elevator and aileron hinge pin replacement. We have no way of determining the number of gliders that may need this hinge pin replacement. However, we have presented the costs to reflect all 57 gliders needing the mandatory replacement:

Labor cost	Parts cost	Total cost per	Total cost on U.S. operators
4 workhours × $65 per hour = $260	$1	$261	$261 × 57 = $14,877

Regulatory Findings

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

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

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

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket FAA–2004–19616; Directorate Identifier 2004–CE–38–AD'' in your request.

This proposed rulemaking is promulgated under the authority in subtitle VII, part A, subpart III, section 44701, General requirements. Under that section, the FAA is charged with prescribing minimum standards required in the interest of safety for the design of aircraft. This proposed regulation is within the scope of that authority since it corrects an unsafe

condition in the design of the aircraft caused by incorrectly heat-treated elevator or aileron hinge pins, which could result in failure of the elevator or ailerons. Such failure during takeoff, landing, or flight operations could lead to loss of glider control.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

CENTRAIR: Docket No. FAA–2004–19616; Directorate Identifier 2004–CE–38–AD

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

(a) We must receive comments on this proposed airworthiness directive (AD) by January 14, 2005.

What Other ADs Are Affected by This Action?

(b) None.

What Gliders Are Affected by This AD?

(c) This AD affects Models 101, 101A, 101AP, and 101P gliders, all serial numbers, without elevator and aileron part number SY991A hinge pins installed, certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified in this AD are intended to replace incorrectly heat-treated elevator or aileron hinge pins, which could result in failure of the elevator or ailerons. Such failure during takeoff, landing, or flight operations could lead to loss of glider control.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Replace any installed elevator and aileron hinge pins that are not part number (P/N) SY991A hinge pins with P/N SY991A hinge pins.	Within the next 25 hours time-in-service (TIS) after the effective date of this AD, unless already done.	Follow Société Nouvelle Centrair Service Bulletin No. 101–22, dated March 13, 2001.
(2) Do not install any elevator and aileron hinge pins that are not P/N SY991A hinge pins as specified in paragraph (e)(1) of this AD.	As of the effective date of this AD	Not Applicable.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

Is There Other Information That Relates to This Subject?

(g) French AD Number 2001–247(A), dated June 27, 2001, also addresses the subject of this AD.

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

(h) To get copies of the documents referenced in this AD, contact CENTRAIR, Aerodome B.P.N. 44, 36300 Le Blanc, France; telephone: 02.54.37.07.96; facsimile: 02.54.37.48.64. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov.* This is docket number FAA–2004–19616.

Issued in Kansas City, Missouri, on December 6, 2004.

Scott L. Sedgwick,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–27196 Filed 12–10–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–127]

RIN 2115–AE47

Drawbridge Operation Regulations; Shrewsbury River, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the drawbridge operating regulations governing the operation of the Route 36 Bridge, mile 1.8, across the Shrewsbury River at Highlands, New Jersey. This proposed change to the drawbridge operation regulations would allow the bridge owner to require an advance notice for bridge openings during periods the bridge has received few requests to open from 11 p.m. to 7 a.m., each day, and all day during the winter months December 1 through March 31. This action is expected to help relieve the bridge owner from the burden of crewing the bridge at all times while continuing to meet the present needs of navigation.

DATES: Comments must reach the Coast Guard on or before February 11, 2005.

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

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

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–04–127), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this 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 First Coast Guard District, Bridge Branch, 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

The Route 36 Bridge, mile 1.8, across the Shrewsbury River at Highlands, New Jersey, has a vertical clearance of 35 feet at mean high water and 39 feet at mean low water.

The existing regulations listed at 33 CFR 117.755, require the Route 36 Bridge to open on signal; except that, from May 15 through October 15, 7 a.m. to 8 p.m., the draw need open only on the hour and half hour.

The bridge owner, New Jersey Department of Transportation (NJDOT), requested a change to the drawbridge operation regulations that govern the Route 36 Bridge to allow the bridge owner to require a 4-hour advance notice for bridge openings from 11 p.m. to 7 a.m., each day, and all day from December 1 through March 31. The bridge rarely opens after 11 p.m. and during the winter months. This proposed rule, if adopted, would help relieve the bridge owner from the burden of crewing the bridge during time periods when the bridge has had few requests to open.

Discussion of Proposal

This proposed change would amend 33 CFR 117.755(a) by revising paragraph (a), which lists the Route 36 Bridge drawbridge operation regulations. This proposed change would allow the Route 36 Bridge to open on signal after a 4-hour advance notice is given from 11 p.m. to 7 a.m., each day, and all day, from December 1 through March 31.

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 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 regulatory policies and procedures of DHS, is unnecessary.

This conclusion is based on the fact that the bridge will continue to open for vessel traffic at all times after the advance notice is given.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we 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 section 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 conclusion is based on the fact that the bridge will continue to open for vessel traffic at all times after the advance notice is given.

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 us in writing at, Commander (obr), First Coast Guard District, Bridge Branch, 408 Atlantic Avenue, Boston, MA. 02110–3350. The telephone number is (617) 223–8364. 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 would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would 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 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 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. 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 rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environment documentation because it has been determined that the promulgation of operating regulations or procedures for drawbridges are categorically excluded.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 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 117.755 is amended by revising paragraph (a) to read as follows:

§117.755 Shrewsbury River.

(a) The Route 36 Bridge, mile 1.8, at Highlands, New Jersey, shall open on signal; except that:

(1) From 11 p.m. to 7 a.m. the draw shall open on signal after at least a 4-hour advance notice is given.

(2) From May 15 through October 15, 7 a.m. to 8 p.m., the draw need open on the hour and half hour only.

(3) From December 1 through March 31, the draw shall open on signal at all times after at least a 4-hour advance notice is given.

(4) The owners of the bridge shall provide and keep in good legible condition, two clearance gauges, with figures not less than eight inches high, designed, installed, and maintained according to the provisions of § 118.160 of this chapter.

* * * * *

Dated: November 29, 2004.

David P. Pekoske,

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

[FR Doc. 04–27217 Filed 12–10–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 93

[OAR–2003–0049; FRL–7847–2]

Options for $PM_{2.5}$ and PM_{10} Hot-Spot Analyses in the Transportation Conformity Rule Amendments for the New $PM_{2.5}$ and Existing PM_{10} National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rule.

SUMMARY: This supplemental proposal follows EPA's recent final rule that includes most of the transportation conformity requirements for the new 8-hour ozone and fine particulate matter ($PM_{2.5}$) national ambient air quality standards. In today's action, EPA is requesting further comment on options for consideration of localized emissions impacts of individual transportation projects in particulate matter ($PM_{2.5}$ and PM_{10}) nonattainment and maintenance areas. The Clean Air Act requires federally supported highway and transit projects to be consistent with (''conform to'') the purpose of a state air quality implementation plan. EPA has consulted with the Department of Transportation (DOT), and DOT concurs with this supplemental proposal.

DATES: Written comments on this supplemental proposal must be received on or before January 12, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2003–0049 by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- *E-mail:* a-and-r-docket@epa.gov.
- *Fax:* 202–566–1741.
- Mail: Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460, Attention Docket ID No. OAR–2003–0049.
- Hand Delivery: EPA Docket Center, room B102, EPA West Building, 1301 Constitution Avenue NW, Washington DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2003–0049. EPA's

policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102). For additional instructions on submitting comments, go to Unit I.C. of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Rudy Kapichak, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, e-mail address: *kapichak.rudolph@epa.gov,* telephone number: (734) 214–4574, fax number 734–214–4052; or Laura Berry, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, e-mail address: *berry.laura@epa.gov*, telephone number: (734) 214–4858, fax number 734–214–4052.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

I. General Information
II. Background
III. $PM_{2.5}$ Hot-Spot Analyses
IV. PM_{10} Hot-Spot Analyses
V. Minor Change for Compliance With $PM_{2.5}$ SIP Control Measures
VI. Statutory and Executive Order Reviews

I. General Information

A. Does This Action Apply to Me?

Entities potentially regulated by the conformity rule are those that adopt, approve, or fund transportation plans, programs, or projects under title 23 U.S.C. or title 49 U.S.C. Regulated categories and entities affected by today's action include:

Category	Examples of regulated entities
Local government	Local transportation and air quality agencies, including metropolitan planning organizations (MPOs).
State government	State transportation and air quality agencies.
Federal government	Department of Transportation (Federal Highway Administration (FHWA) and Federal Transit Administration (FTA)).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this supplemental proposal. This table lists the types of entities of which EPA is aware that potentially could be regulated by the conformity rule. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability requirements in § 93.102 of the transportation conformity rule. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What Should I Consider as I Prepare My Comments for EPA?

1. Submitting CBI

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as ''CBI only'' to the following address: Attention: Joe Pedelty, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, Docket ID No. OAR–2003–0049. 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 publicly 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 indicating 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 Joe Pedelty. He can be contacted at: Joe Pedelty, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, e-mail address: *pedelty.joe@epa.gov*, telephone number: (734) 214–4410, fax number (734) 214–4052.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- 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.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

3. Docket Copying Costs

You may pay a reasonable fee for copying docket materials.

C. 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.'' Although EPA is not required to consider these late comments, we may do so as appropriate, considering time and volume constraints.

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. You should 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. However, if EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to further 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–2003–0049. 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 Air Docket ID No. OAR–2003–0049. 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 are thus made available in EPA's electronic public docket.

iii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section I.C.2. These electronic submissions will be accepted only in either WordPerfect or ASCII file format. Please avoid the use of special characters and any form of encryption, as this may adversely affect our ability to read these submissions.

2. By Mail

Send two copies of your comments to: Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460, Attention Docket ID No. OAR–2003–0049.

3. By Hand Delivery or Courier

Deliver two copies of your comments to: EPA Docket Center, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC., Attention Air Docket ID No. OAR–2003–0049. Such deliveries can only be accepted during the Docket's normal hours of operation as identified in Section I.B.1.

4. By Facsimile

Fax your comments to: (202) 566–1741, Attention Docket ID. No. OAR–2003–0049.

D. How Can I Get Copies of This Document?

1. Docket

EPA has established an official public docket for this action under Docket ID No. OAR–2003–0049. 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 Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

2. Electronic Access

You may access this **Federal Register** document electronically through EPA's Transportation Conformity Web site at *http://www.epa.gov/otaq/transp/traqconf.htm*. You may also access this document electronically 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 for which disclosure is restricted by statute is not included in the official public docket and will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Section I.B.1. above. EPA intends to work towards providing electronic access in the future 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 for which 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.

II. Background

A. What Is Transportation Conformity?

Transportation conformity is required under Clean Air Act section 176(c) (42 U.S.C. 7506(c)) to ensure that federally supported highway and transit project activities are consistent with (''conform to'') the purpose of the state air quality implementation plan (SIP). Conformity currently applies to areas that are designated nonattainment, and those redesignated to attainment after 1990 (''maintenance areas'' with plans developed under Clean Air Act section 175A) for the following transportation-related criteria pollutants: ozone, particulate matter ($PM_{2.5}$ and PM_{10}),[1] carbon monoxide (CO), and nitrogen dioxide (NO_2). Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant national ambient air quality standards (NAAQS or ''standards''). EPA's transportation conformity rule establishes the criteria and procedures for determining whether transportation activities conform to the SIP.

EPA first promulgated the transportation conformity rule on November 24, 1993 (58 FR 62188), and subsequently published a comprehensive set of amendments on August 15, 1997 (62 FR 43780) that clarified and streamlined language from the 1993 rule. EPA has made other smaller amendments to the rule both before and after the 1997 amendments.

Most recently, on July 1, 2004, EPA published a final rule (69 FR 40004) that amends the current conformity rule to accomplish three objectives. The final rule:

- Provides conformity procedures for state and local agencies under the new ozone and $PM_{2.5}$ air quality standards;
- Incorporates existing EPA and DOT federal guidance into the conformity rule consistent with a March 2, 1999 U.S. Court of Appeals decision; and
- Streamlines and improves the conformity rule.

The July 1, 2004 final conformity rule incorporated most of the provisions from the November 5, 2003 proposal for conformity under the new ozone and $PM_{2.5}$ standards (68 FR 62690). EPA is conducting its conformity rulemakings for the new standards in the context of EPA's broader strategies for implementing the new ozone and $PM_{2.5}$ standards.

The final rule also incorporated all of the amendments resulting from a separate June 30, 2003 proposal (68 FR 38974). This proposal addressed the March 2, 1999 court ruling by the U.S. Court of Appeals for the District of Columbia Circuit (*Environmental Defense Fund* v. *EPA, et al.*, 167 F. 3d 641, D.C. Cir. 1999), and incorporated existing federal guidance consistent with the court decision.

B. Why Are We Issuing This Supplemental Proposal?

In the November 2003 proposal, EPA presented several options concerning hot-spot analyses in $PM_{2.5}$ and PM_{10} nonattainment and maintenance areas. EPA received substantial comment on this portion of the November 2003 proposal. After considering these comments, EPA, in consultation with the Department of Transportation (DOT), has decided to request further public comment through this supplemental proposal on $PM_{2.5}$ and PM_{10} hot-spot analyses, including additional options for $PM_{2.5}$ and PM_{10} hot-spot requirements and those options presented in the November 2003 proposal. EPA is not requesting today further comment on any other issues raised in the November 2003 proposal or the July 1, 2004 final rule.

EPA will address all comments received on $PM_{2.5}$ and PM_{10} hot-spot analysis requirements both in response to the November 2003 proposal as well as this supplemental proposal in a final rulemaking after the close of the comment period. EPA intends to complete its rulemaking on $PM_{2.5}$ and PM_{10} hot-spot requirements before $PM_{2.5}$ nonattainment designations become effective. The existing PM_{10} hot-spot conformity requirements are not affected by today's supplemental proposal, and continue to apply in PM_{10} nonattainment and maintenance areas unless and until EPA makes any final rule changes in response to this supplemental proposal.

EPA has consulted with DOT, our federal partners in implementing the transportation conformity regulation, in developing this supplemental proposal, and DOT concurs with its content.

[1] Section 93.102(b)(1) of the conformity rule defines $PM_{2.5}$ and PM_{10} as particles with an aerodynamic diameter less than or equal to a nominal 2.5 and 10 micrometers, respectively.

III. $PM_{2.5}$ Hot-Spot Analyses

A. What Are We Proposing?

1. Background

EPA is proposing several additional options for hot-spot analyses for project-level conformity determinations in $PM_{2.5}$ nonattainment and maintenance areas. Some options were proposed in the November 5, 2003 proposal, and other options are being newly proposed today. Comments can be submitted on all $PM_{2.5}$ hot-spot options during the comment period for this supplemental proposal. The options below are listed in terms of what would be required for project-level conformity determinations before and after a $PM_{2.5}$ SIP is submitted in a given $PM_{2.5}$ nonattainment or maintenance area. Today's proposed regulatory text combines various $PM_{2.5}$ and PM_{10} hot-spot options as illustrative examples, since common sections and paragraphs of the conformity rule would be affected under the supplemental proposal. However, EPA believes that any combination of the proposed $PM_{2.5}$ or PM_{10} hot-spot options could be included in the final rule.

A hot-spot analysis is defined in § 93.101 of the conformity rule for CO and PM_{10} areas as an estimation of likely future localized pollutant concentrations and a comparison of those concentrations to the relevant air quality standard. In general, a quantitative or qualitative hot-spot analysis must show that a given project does not cause or contribute to any new violations of the air quality standard or increase the frequency or severity of existing violations. A hot-spot analysis assesses impacts on a scale smaller than an entire nonattainment or maintenance area, including for example, congested roadway intersections and highways or transit terminals.

The existing conformity rule requires a hot-spot analysis for all Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) funded or approved non-exempt transportation projects in CO and PM_{10} nonattainment and maintenance areas (*see* 40 CFR 93.116 and 93.123). This requirement applies for all project-level conformity determinations that occur both before and after a SIP is submitted for the CO or PM_{10} air quality standard.

The type of hot-spot analysis—quantitative or qualitative—varies depending on the type of project involved. The current conformity rule requires quantitative hot-spot analyses for projects of most concern in CO and PM_{10} areas. For example, § 93.123(b)(1) currently requires quantitative PM_{10} hot-spot analyses for the following types of transportation projects in PM_{10} areas:

- Projects which are located at sites at which violations have been verified by monitoring data;
- Projects which are located at sites which have vehicle and roadway emission and dispersion characteristics that are essentially identical to those of sites with verified violations (including sites near one at which a violation has been monitored); and
- New or expanded bus and rail terminals and transfer points which increase the number of diesel vehicles congregating at a single location.

Section 93.123(b)(4) of the conformity rule clarifies that the requirements for PM_{10} hot-spot quantitative analysis will not take effect until EPA releases modeling guidance and announces in the **Federal Register** that these requirements are in effect. Quantitative hot-spot analyses use dispersion modeling to determine the effects of motor vehicle emissions associated with a highway or transit project on air quality. Qualitative reviews are required for all other non-exempt projects in CO and PM_{10} areas. Qualitative reviews are more streamlined and consider local factors, such as local monitoring data near a proposed project rather than dispersion modeling. See Section IV. of this notice for further information regarding EPA's proposed options for retaining or changing the current conformity rule's PM_{10} hot-spot analysis requirements.

In the November 5, 2003 proposal, EPA presented two options for hot-spot analyses for project-level conformity determinations in $PM_{2.5}$ nonattainment and maintenance areas. Under the first option (Option 1), hot-spot analyses would not be required for any FHWA/FTA non-exempt projects in $PM_{2.5}$ nonattainment and maintenance areas at any time. Under the second option (Option 2), quantitative $PM_{2.5}$ hot-spot analyses would only be required for FHWA/FTA projects at certain types of locations if the $PM_{2.5}$ SIP for an area identified such locations. Under Option 2, $PM_{2.5}$ hot-spot analyses would not be required for any projects prior to the submission of a SIP and then only if the $PM_{2.5}$ SIP in a given nonattainment area identified susceptible types of project locations. See the November 5, 2003 proposal (68 FR 62712–62713) for further information. These options are also repeated below along with the additional options EPA is proposing today.

2. $PM_{2.5}$ Hot-Spot Analyses Before SIP Submission

EPA is proposing the following $PM_{2.5}$ hot-spot options for project-level conformity determinations that occur prior to the submission of a $PM_{2.5}$ SIP:

- *Options 1 and 2:* Do not apply any $PM_{2.5}$ hot-spot analysis requirements for any $PM_{2.5}$ area before the submission of the $PM_{2.5}$ SIP, as described in the November 2003 proposal;
- *Option 3:* Apply the existing conformity rule's PM_{10} hot-spot analysis requirements with respect to $PM_{2.5}$ in all $PM_{2.5}$ areas;
- *Option 4:* Apply the existing conformity rule's PM_{10} hot-spot analysis requirements with respect to $PM_{2.5}$, unless the EPA Regional Administrator or state air agency finds that localized $PM_{2.5}$ violations are not a concern for a given $PM_{2.5}$ area; or
- *Option 5:* Apply the existing conformity rule's PM_{10} hot-spot analysis requirements with respect to $PM_{2.5}$, if the EPA Regional Administrator or state air agency finds that localized $PM_{2.5}$ violations are a concern for a given $PM_{2.5}$ area.

For Options 4 and 5, EPA intends localized $PM_{2.5}$ concentrations to be a concern if the Clean Air Act requirements for projects are not met, that is, if projects create new violations, increase the severity or frequency of existing violations, or delay timely attainment of the $PM_{2.5}$ standard. Please note that Options 3–5 would extend the existing PM_{10} hot-spot requirements with respect to the $PM_{2.5}$ standard, subject to the conditions outlined in the options. EPA is not proposing to require PM_{10} hot-spot analyses in $PM_{2.5}$ areas. Although EPA has not proposed specific language in § 93.123(b) for Options 4 and 5, EPA has described these options sufficiently in this preamble to include either or both of them in the final rule, if selected.

EPA requests comments on all of these options. Specifically, EPA invites commenters to submit any data as well as argument regarding the relevant statutory authority in support of their preferred option(s). EPA requests commenters to submit any information that exists that would support Options 1, 2, or 3. In addition, for Options 4 and 5 above, EPA requests comment today on whether state and local agencies will have information available to make findings prior to $PM_{2.5}$ SIP submission, and what type of information will be available during this time period.

An EPA or state air agency finding that $PM_{2.5}$ localized violations are or are not a concern (*i.e.*, a ''hot-spot finding'') prior to $PM_{2.5}$ SIP submission would be

based on a case-by-case review of local factors for a given $PM_{2.5}$ area. For example, such a review could consider the following local factors: $PM_{2.5}$ monitoring data and proximity to the $PM_{2.5}$ standard, future modeling projections and likelihood of new or worsening localized $PM_{2.5}$ violations at transportation-related project locations, the prevalence of heavy-duty diesel vehicles at certain types of locations (*e.g.*, highly congested intersections or large transit stations where significant traffic and engine idling occurs), site-specific terrain, meteorology, etc. As noted in the November 2003 proposal, since secondary particles take several hours to form in the atmosphere giving emissions time to disperse beyond the immediate area of concern, hot spot findings under options 4 and 5 would be based on direct particulate emissions that are attributable to an individual project.

If EPA finalizes an option under which hot-spot findings would be made, such findings would be made only after discussions among federal, state, and local air quality and transportation agencies through the interagency consultation process for a given $PM_{2.5}$ nonattainment area. A hot-spot finding would be made through a letter to the relevant state and local air quality and transportation agencies, MPO(s), FHWA, FTA, and EPA (in the case of a state air agency finding).

EPA notes that a hot-spot finding under Options 4 and 5 would not be completed through EPA's adequacy process for submitted SIPs with motor vehicle emissions budgets. Hot-spot findings would be done prior to a SIP's submission and would not affect the development of future SIPs and budgets for use in regional emissions analyses for conformity determinations.

3. $PM_{2.5}$ Hot-Spot Analyses After SIP Submission

EPA is proposing the following $PM_{2.5}$ hot-spot options for project-level conformity determinations that occur after the submission of a $PM_{2.5}$ SIP:

- *Option A:* Do not apply any $PM_{2.5}$ hot-spot analysis requirements for any $PM_{2.5}$ area (*i.e.*, Option 1 from the November 2003 proposal);
- *Option B:* Only require quantitative $PM_{2.5}$ hot-spot analyses for projects at those types of locations that the $PM_{2.5}$ SIP for a given area identifies as a localized $PM_{2.5}$ air quality concern (*i.e.*, Option 2 from the November 2003 proposal). No quantitative or qualitative analyses would be required for projects in other types of locations, or in $PM_{2.5}$ areas where the SIP does not identify types of locations as a localized $PM_{2.5}$ air quality concern; or
- *Option C:* Apply the existing conformity rule's PM_{10} hot-spot analysis requirements with respect to $PM_{2.5}$ for all projects in $PM_{2.5}$ areas with one minor addition, as described below.

Under Option B, $PM_{2.5}$ hot-spot analyses would only be required for projects at the types of locations identified in the $PM_{2.5}$ SIP; no qualitative hot-spot analyses would be done for any other projects. Option B would not require hot-spot analyses for all FHWA/FTA non-exempt projects in the $PM_{2.5}$ nonattainment or maintenance areas, as is proposed under Option C and currently required for CO and PM_{10} nonattainment and maintenance areas.

If EPA finalizes Option B, we would provide guidance on how to identify locations where transportation-related $PM_{2.5}$ hot-spots may exist. Examples of types of possible project locations include:

- Highly congested intersections,
- Large transit stations where significant traffic and engine idling occurs,
- Projects involving long or steep grades, or
- Monitors where the $PM_{2.5}$ standard has been exceeded or violated.

EPA requests comment on the above examples, and requests further information regarding other types of project locations that should be considered in possible future guidance on potential $PM_{2.5}$ hot-spots in a given area. Any future guidance would be available for use when states prepare their $PM_{2.5}$ SIPs.

Minor change to quantitative hot-spot requirements: For Option C, EPA is proposing one minor change to the existing rule's PM_{10} requirements for when quantitative analyses are required in $PM_{2.5}$ areas. As applied to $PM_{2.5}$ hot-spot analyses, the proposal would require that quantitative analyses be performed in those types of project locations that the $PM_{2.5}$ SIP identifies as a $PM_{2.5}$ hot-spot concern, in addition to the three types of projects where quantitative analysis would always be required, as outlined in Section III.A.1. This criterion would only be relevant after the $PM_{2.5}$ SIP is submitted. If EPA finalizes this minor change, we propose that it would apply to both $PM_{2.5}$ and PM_{10} hot-spot analyses. This change is described in greater detail in Section IV. of today's supplemental proposal relating to PM_{10} and the reader should refer to that section for further details. Regulatory text for this minor change is in § 93.123(b)(1) of today's action.

EPA also proposes to make a minor change to § 93.123(b)(1)(iii) to clarify that quantitative analyses would be required for such projects that *significantly* increase the number of diesel vehicles, so that quantitative analyses are not required for insignificant vehicle increases with *de minimis* localized emissions increases. The proposed change may also cover the cases where the number of vehicles increases but emissions do not increase because the added vehicles are cleaner (*e.g.*, retrofitted diesel vehicles).

4. Quantitative $PM_{2.5}$ Hot-Spot Analyses and Future EPA Guidance

For options that would require quantitative hot-spot analyses, EPA proposes to extend the current rule's § 93.123(b)(3) and (b)(4) requirements with respect to $PM_{2.5}$. Section 93.123(b)(3) currently requires that the consultation process be used to identify the specific cases in a given nonattainment or maintenance area under which PM_{10} quantitative hot-spot analyses are performed, and addresses categorical conformity determinations for certain transit projects and FTA actions in PM_{10} areas. A categorical conformity determination under the existing conformity rule and this proposal allows FTA to determine that a quantitative hot-spot analysis is not needed for a particular project if there is modeling that shows that such a project will not cause or contribute to new or worsening localized violations. Today's action would also propose to extend this sub-paragraph for $PM_{2.5}$ and allow DOT to choose to make a categorical conformity determination for $PM_{2.5}$ on bus and rail terminals or transfer points based on appropriate modeling of various terminal sizes, configurations, and activity levels. Today's proposal does not substantively change § 93.123(b)(3) for FTA actions on certain transit projects, and EPA is not requesting comment on this existing flexibility.

However, the proposal would modify § 93.123(b)(3) to allow FHWA to make a categorical conformity determination for $PM_{2.5}$ and PM_{10} on certain roadways and intersections based on appropriate modeling of various configurations and activity levels. As described above, the current rule provides for such FTA categorical conformity determinations for only certain transit projects in PM_{10} areas.

We request comment on allowing FHWA to make a categorical determination for hot-spot analyses in appropriate cases if it believes that Clean Air Act requirements are met without additional $PM_{2.5}$ hot-spot analyses. EPA also requests information on what types of roadway and

intersection projects would be appropriately covered by this aspect of today's proposal. If finalized, EPA and DOT would consult on the development of additional guidance on the implementation of such a provision.

Under the proposal, the modeled scenarios used to make the categorical determinations would need to be derived in consultation with EPA, and more refined analyses would be necessary for projects which do not meet the parameters of the modeled scenario. See EPA's January 11, 1993 proposal (58 FR 3780) for further information on the current rule's requirements.

Similar to § 93.123(b)(4) of the current rule for PM_{10} areas, EPA also proposes to not require any quantitative $PM_{2.5}$ hot-spot analyses until EPA releases quantitative modeling guidance and announces in the **Federal Register** that $PM_{2.5}$ quantitative modeling requirements are in effect. If EPA finalizes an option that would require quantitative and/or qualitative $PM_{2.5}$ hot-spot analyses, we would provide guidance and appropriate models for carrying out such analyses in a timely manner. EPA would consult with conformity stakeholders when developing quantitative guidance.

5. Other Requirements

General requirements: For options that would require a $PM_{2.5}$ hot-spot analysis, EPA is proposing to extend the general requirements in § 93.123(c) of the current conformity rule to $PM_{2.5}$ areas. EPA is not proposing any substantive changes to these requirements in today's action. Under these current requirements, all hot-spot analyses include:

- The total emissions burden of direct $PM_{2.5}$ emissions which may result from the implementation of the project (including re-entrained road dust and construction dust as applicable), summed together with future background concentrations;
- The entire transportation project, after the identification of major design features which will significantly impact local concentrations;
- Consistent assumptions with those used in regional emissions analyses for inputs that are required for both analyses (*e.g.*, temperature, humidity);
- Assumptions for the implementation of mitigation or control measures only where written commitments for such measures have been obtained; and
- No temporary emissions increases from construction-related activities which occur only during the construction phase and last five years or less at any individual site.

See the preamble for the January 1, 1993 proposal (58 FR 3779–3780) and November 24, 1993 final rule (58 FR 62212–62213) for further information regarding the intent and rationale for these general hot-spot requirements.

Finally, as described in the November 2003 proposal, EPA is proposing to also extend the requirements of § 93.125(a) of the current conformity rule to $PM_{2.5}$ areas if a $PM_{2.5}$ hot-spot requirement is finalized. Section 93.125(a) of the existing conformity rule currently applies to all projects in CO and PM_{10} nonattainment and maintenance areas.

As described in the November 2003 proposal and today's action, FHWA or FTA must obtain from the project sponsor and/or operator enforceable written commitments to implement any required project-level control or mitigation measures, prior to making a project-level conformity determination in a $PM_{2.5}$ nonattainment or maintenance area. These control or mitigation measures may be a condition of either a National Environmental Policy Act (NEPA) approval or a conformity determination for a transportation plan or TIP or be included in the design concept and scope of the project that is used in the regional emissions analysis required by §§ 93.118 or 93.119 of the conformity rule, or used in the project-level hot-spot analysis required by § 93.116. These measures may be applicable during construction and/or operation of the project. Such measures would already be applicable to such projects through the mechanisms cited above; however, including commitments to them in conformity determinations will provide an additional enforcement tool.

Changes to other related existing requirements: Today's proposal also includes minor clarifications with respect to $PM_{2.5}$ to various parts of the current conformity rule that are consistent with existing CO and PM_{10} hot-spot analysis requirements. For example, EPA has proposed to add $PM_{2.5}$ to the current rule's ''hot-spot analysis'' definition in § 93.101. EPA proposes that this and the other minor clarifications in today's proposed regulatory text would be finalized under any option that would require $PM_{2.5}$ hot-spot analyses.

B. Why Are We Proposing These Options?

1. General

EPA believes it is important to consider the full range of options for addressing localized $PM_{2.5}$ concentrations which may cause or contribute to any new violation of the $PM_{2.5}$ standard; increase the frequency or severity of any existing violation; or delay timely attainment of the standard. In developing this supplemental proposal, EPA considered several factors:

- The Clean Air Act conformity requirements for individual transportation projects;
- The current scientific understanding of $PM_{2.5}$ hot-spots and public health effects;
- The feasibility of implementing proposed options; and
- The impact of proposed options on state and local resources.

The following paragraphs outline how these factors relate to the proposed options.

First, EPA believes that any option that is selected in the final rule must ensure that all federally funded and approved transportation projects in $PM_{2.5}$ areas are consistent with Clean Air Act requirements. Section 176(c)(1)(B) of the Clean Air Act states that federally-supported transportation projects must not ''cause or contribute to any new violation of any standard in any area; increase the frequency or severity of any existing violation of any standard in any area; or delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.'' While these statutory requirements apply at all times for highway and transit project conformity determinations, as noted in the November 3, 2003 proposal, Section 176 (c)(3)(B)(ii) only specifically requires hot-spot analysis for projects in CO nonattainment areas and therefore, EPA has discretion to decide if hot-spot analyses are necessary to protect air quality in particulate matter nonattainment and maintenance areas. EPA received comments concerning this interpretation of the Agency's statutory authority during the comment period following the November 3, 2003 proposal and invites further comments on this matter.

EPA also considered what is currently known about the possibility that transportation-related $PM_{2.5}$ hot-spots exist in the development of the November 2003 proposal and today's supplemental proposal. In the November 3, 2003 proposal EPA indicated that the Agency was not certain that hot-spots will occur, or that in the event such hot-spots are confirmed, that requiring a qualitative hot-spot analysis for every FHWA and FTA project in $PM_{2.5}$ nonattainment and maintenance areas would provide an environmental benefit due to the

regional nature of $PM_{2.5}$ and the significant role of secondary formation of these fine particles.

Understanding whether transportation projects can result in $PM_{2.5}$ hot-spots and if so, under what circumstances, provides a basis for considering whether explicit hot-spot reviews must be required. The state of scientific research continues to evolve on the relationship between individual transportation projects and $PM_{2.5}$ air quality. EPA noted in the November 2003 proposal that most of the research studies that had been reviewed at that time indicated that concentrations of some components of $PM_{2.5}$ increase near heavily traveled roadways. In the November 2003 proposal, EPA noted its review of a number of key studies that represent the range of available research on the impact of on-road mobile source emissions of particles on air quality near roadways. The majority of these studies indicate that concentrations of some components of $PM_{2.5}$, such as black carbon and ultrafine particles, increase near roadways. However, many of these studies did not measure $PM_{2.5}$ directly. Several studies concluded that on-road sources were one of several contributors to the concentrations measured near roadways. Please see the November 2003 proposal for additional information on these and other studies (68 FR 62713).

EPA has also considered information that has become available since the November 2003 proposal and has further considered the information that was described in the November 2003 proposal. For example, one new study published this year examines changes in traffic patterns associated with a single transportation project that can result in statistically significant differences in $PM_{2.5}$ mass concentrations measured along affected roadways (Burr, *et al.*, 2004). Some commenters also provided other information regarding $PM_{2.5}$ hot-spots for EPA's consideration. The information available prior to the November 2003 proposal did not measure $PM_{2.5}$ directly and did not isolate the effects of new transportation projects. However, both this information as well as the most recent information does indicate a potential for higher localized emissions and $PM_{2.5}$ concentrations near transportation projects. EPA is considering the context for how this information was developed, including how localized emissions increases and existing background concentrations relate to the potential for localized violation of the $PM_{2.5}$ standard. We invite others to submit data or research relevant to the existence of transportation-related hot-spots during the comment period for this supplemental proposal. Please read C. of this section for further information.

EPA also considered what would be known about the potential for $PM_{2.5}$ hot-spots in individual $PM_{2.5}$ nonattainment areas, and as a consequence, the feasibility of implementing any proposed option to meet statutory requirements before and after $PM_{2.5}$ SIP submission. We invite state and local agencies to comment on the feasibility of implementing all of the proposed options, including what state or local information would be available for implementation purposes as appropriate.

In addition, EPA will be considering in the final rule the impact of our new diesel fuel and engine standards (January 18, 2001, 66 FR 5002) for the necessity of applying any of the proposed options. Such standards are expected to significantly impact the amount of particulate emissions that will be emitted by new diesel vehicles, and consequently may impact the potential for $PM_{2.5}$ transportation-related hot-spots.

2. $PM_{2.5}$ Hot-Spot Analyses Before SIP Submission

EPA has proposed several options for $PM_{2.5}$ hot-spot analyses prior to SIP submission (Options 1–5). As stated above, our understanding of transportation-related $PM_{2.5}$ and the potential of $PM_{2.5}$ hot-spots will continue to develop, especially during the time period when conformity first applies for the $PM_{2.5}$ standard.

EPA is again proposing Options 1 and 2 which do not require any explicit $PM_{2.5}$ hot-spot analysis for any project before $PM_{2.5}$ SIP submission in $PM_{2.5}$ nonattainment and maintenance areas. Please see the November 2003 proposal (68 FR 62712–62713) for further information on these options.

EPA has also proposed to apply the existing rule's PM_{10} hot-spot requirements to $PM_{2.5}$ areas before $PM_{2.5}$ SIP submission (Option 3). EPA believes that this option would meet statutory requirements since it relies on an existing interpretation that has already been implemented under the current conformity rule. In the November 24, 1993 conformity rule (58 FR 62188), EPA promulgated the existing conformity requirements for CO and PM_{10} hot-spot analyses. A hot-spot analysis is currently required for all non-exempt federal projects in CO and PM_{10} nonattainment and maintenance areas, regardless of whether or not a SIP has been submitted. Quantitative hot-spot analyses under the current rule are required for projects that meet specific criteria in the conformity rule, rather than based on criteria identified in a SIP.

The current conformity rule requires hot-spot analyses for all non-exempt FHWA/FTA projects at all times in PM_{10} areas, since we believed that emissions produced by individual highway and transit projects in these areas could potentially result in a new air quality violation or worsen an existing violation. Option 3 relies on this same rationale.

Applying the current rule's provisions in $PM_{2.5}$ areas would provide an environmentally conservative approach to any uncertainty regarding the potential or prevalence of $PM_{2.5}$ hot-spots, since some type of hot-spot analysis would be completed for every non-exempt FHWA/FTA project in $PM_{2.5}$ areas. Although state and local agencies have developed boundary recommendations for $PM_{2.5}$ designations, SIPs for individual nonattainment areas will not be developed for three years after designations. As a result, information regarding localized $PM_{2.5}$ air quality challenges in individual areas may not be available for most areas. EPA will consider in the final rule whether sufficient information is available to confidently confirm or eliminate the possibility of $PM_{2.5}$ hot-spots for categories of project types or locations, and as a result, if explicit hot-spot reviews are necessary before $PM_{2.5}$ SIP submission.

EPA is also proposing Options 4 and 5 for the time period prior to $PM_{2.5}$ SIP submission, due to the evolving nature of our understanding of $PM_{2.5}$ air quality issues. These options would apply current PM_{10} hot-spot requirements with respect to $PM_{2.5}$ depending on whether or not worsening $PM_{2.5}$ concentrations would result in a new violation or increased severity or frequency of an existing violation of the $PM_{2.5}$ standard in an area prior to $PM_{2.5}$ SIP submission. These options would rely on the proposed interpretation stated in the November 2003 proposal (68 FR 62713): Clean Air Act section 176(c)(1)(B) requirements could be met as long as explicit reviews are performed at locations identified in the $PM_{2.5}$ SIP as susceptible to $PM_{2.5}$ hot-spots. If hot-spots are found not to be a concern (Option 4) for any projects in a given area prior to $PM_{2.5}$ SIP submission, then statutory requirements could be met in these areas without any explicit hot-spot review. Conversely, if hot-spots are found to be a concern (Option 5) in a given area, then all project-level conformity determinations in these areas should include explicit

hot-spot reviews to ensure that statutory requirements are met. Both of these options would allow EPA and states to target hot-spot requirements in $PM_{2.5}$ nonattainment areas where hot-spots may or may not be an air quality concern.

As described in A.2. of this section, EPA is requesting comment on whether state and local air agencies will have the necessary data and other information to make the hot-spot findings described in Options 4 and 5 prior to $PM_{2.5}$ SIP submission. The appropriateness and feasibility of these options—that is, the ability to argue that section 176(c)(1)(B) requirements are met under these options—depends on whether well-considered, informed findings will be possible prior to $PM_{2.5}$ SIP submission.

3. $PM_{2.5}$ Hot-Spot Analyses After SIP Submission

EPA has also proposed options for $PM_{2.5}$ hot-spot analyses after SIP submission (Options A–C). Option C would extend the existing rule's PM_{10} hot-spot requirements (with a minor addition) to $PM_{2.5}$ areas after $PM_{2.5}$ SIP submission. Similar to Option 3 for the time period before $PM_{2.5}$ SIPs, EPA concludes that Option C would meet statutory requirements since it relies on existing rationale for the current conformity rule.

EPA also notes that extending the current rule's provisions for PM_{10} hot-spot analyses to $PM_{2.5}$ areas would ensure that potential transportation-related $PM_{2.5}$ hot-spots for all areas are addressed, especially in cases where it is not possible to determine through the SIP process what the potential for localized $PM_{2.5}$ violations would be in a given nonattainment or maintenance area. As noted previously, EPA will consider in the final rule the potential existence of $PM_{2.5}$ hot-spots for transportation projects, and whether explicit hot-spot reviews will be needed to meet Clean Air Act requirements. Option C would require state and local resources be used for all FHWA/FTA non-exempt projects in $PM_{2.5}$ areas, although EPA is proposing flexibility to require more intensive quantitative hot-spot reviews only for a subset of projects.

EPA also proposed Option B to require quantitative $PM_{2.5}$ hot-spot analyses only at types of project locations identified as a localized air quality concern in a given $PM_{2.5}$ SIP. When the SIP identifies such locations, a quantitative hot-spot analysis would be completed for affected projects. No qualitative analyses would be required for projects in other types of locations, or in $PM_{2.5}$ areas where the SIP does not identify types of locations as a localized $PM_{2.5}$ air quality concern. Under Option B, EPA is proposing quantitative hot-spot analyses only for projects at locations identified in the SIP as a localized concern, since EPA believes that if a SIP identifies such a project location as problematic, then a more thorough examination of the localized impacts of transportation projects at such locations is necessary to ensure that the SIP's purpose and Clean Air Act conformity requirements are met.

As stated in the November 2003 proposal, Option B is consistent with the purpose of conformity, which is to ensure that federally funded or approved transportation projects are consistent with the SIP in a given nonattainment or maintenance area. Section 176(c)(1)(A) requires ''conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards * * *.'' Under this option, the SIP would define the types of locations where transportation projects are a localized $PM_{2.5}$ concern, and therefore, when explicit hot-spot reviews are necessary to meet statutory requirements.

For Option B, EPA is considering whether $PM_{2.5}$ SIPs can be developed so potential transportation-related hot-spot locations are defined for each $PM_{2.5}$ nonattainment and maintenance area. This option would be feasible in the case where sufficient information exists that allows a state to specify susceptible locations for $PM_{2.5}$ hot-spots are or are not a concern. However, there may be other cases where it is unclear whether susceptible locations for hot-spots exist, or where there is a potential for localized $PM_{2.5}$ violations but it is difficult to specify which project locations could create hot-spots. EPA is requesting comment on whether such cases could occur in future $PM_{2.5}$ areas, and whether other proposed options would be more appropriate in such cases after a $PM_{2.5}$ SIP is submitted.

EPA also requests comment on how the proposed options should be implemented in cases where the latest information available on the potential for $PM_{2.5}$ hot-spots is not reflected in the $PM_{2.5}$ SIP. For example, suppose an attainment demonstration for the $PM_{2.5}$ standard is developed that specifies that there are no project locations susceptible to $PM_{2.5}$ hot-spots. However, after the attainment demonstration is submitted, information becomes available outside the SIP process that indicates that there may be potential transportation-related hot-spot locations. One may argue that in such a case under Option B $PM_{2.5}$ SIPs would need to be updated in a timely manner to reflect new information so that project-level conformity determinations could be made that meet statutory requirements. On the other hand, there may be arguments to allow the SIP process to evaluate any new information prior to its use in the conformity process.

EPA has committed to issue SIP guidance under this option if it is finalized. Due to the evolving nature of our understanding of $PM_{2.5}$, there may be challenges to any guidance document that is developed in the near future. EPA requests in today's action further comment on whether state and local air quality agencies will have the necessary local information and resources to specify in $PM_{2.5}$ SIPs which project locations are a potential $PM_{2.5}$ hot-spot concern, in order to support Option B and provide flexibility in the conformity process.

State and local agencies may identify types of locations in each $PM_{2.5}$ SIP that may increase or decrease the kinds of projects requiring quantitative hot-spot analyses, as compared to the current conformity rule's criteria for such PM_{10} hot-spot analyses. Ultimately, EPA anticipates that this option would likely result in fewer total projects having some type of $PM_{2.5}$ hot-spot review as compared to the current conformity rule's requirements, since not all $PM_{2.5}$ areas may have future $PM_{2.5}$ SIPs that identify hot-spots as a concern.

EPA is again proposing options for not requiring any explicit $PM_{2.5}$ hot-spot analysis for any project after $PM_{2.5}$ SIP submission (Option A). As stated in B.2. of this section, this option could be finalized based on the discussion of this option in the November 3, 2003 proposal.

4. Specific Analysis Requirements

EPA continues to believe it has discretion both to decide if hot-spot analyses are necessary and to establish the level of any $PM_{2.5}$ hot-spot analysis that would be required for transportation projects. For example, the options that involve applying the existing conformity rule's PM_{10} requirements with respect to $PM_{2.5}$ would require quantitative hot-spot analyses only for certain projects. Qualitative hot-spot analyses would be completed under these options for other projects that are not subject to quantitative analyses. Applying the current conformity rule's approach for requiring dispersion modeling only at certain project locations would

streamline $PM_{2.5}$ hot-spot reviews and utilize state and local resources in an efficient and reasonable manner while still satisfying Clean Air Act requirements.

EPA's minor proposal to add a new criterion under Option C to § 93.123(b)(1) of the regulatory text for when PM quantitative hot-spot analyses are required would ensure that Clean Air Act and SIP goals are met. That is, requiring quantitative hot-spot analyses to also be completed for types of project locations that the SIP identifies will support the SIP's goals for an individual area in those cases where a state has the information to identify specific types of locations. Where a state does not have such information, EPA believes that the remaining three criteria for when quantitative analyses are completed sufficiently cover the cases where it is most likely to have a hot-spot occur.

EPA notes that this minor proposal would be consistent with a similar criterion in § 93.123(a)(1)(i) of the existing rule's requirements for quantitative CO hot-spot analyses. This criterion requires quantitative CO hot-spot analyses ''[f]or projects in or affecting locations, areas, or categories of sites which are identified in the applicable implementation plan as sites of violation or possible violation; * * *.''

5. Other Requirements

Finally, EPA is proposing to apply the current conformity rule's other provisions for conducting hot-spot analyses with respect to $PM_{2.5}$ for any option that requires a $PM_{2.5}$ hot-spot analysis. As described in A.5. of this section, these minor proposed changes would not substantively change these provisions of the current conformity rule (*e.g.*, §§ 93.123(c) and 93.125(a)). These proposed changes would allow EPA to implement any $PM_{2.5}$ hot-spot requirement in the final rule, if necessary.

C. Request for $PM_{2.5}$ Hot-Spot Information

EPA again invites commenters to submit studies or data regarding $PM_{2.5}$ hot-spots during the comment period for this supplemental proposal. All comments and information submitted for the November 2003 proposal and today's action will be considered when EPA develops the final rule that addresses $PM_{2.5}$ hot-spot requirements.

IV. PM_{10} Hot-Spot Analyses

A. What Are We Proposing?

1. Background

EPA is proposing several options for PM_{10} hot-spot analyses in today's action for project-level conformity determinations in PM_{10} nonattainment and maintenance areas. As described in Section III. of today's action, a highway or transit project subject to transportation conformity provisions of the Clean Air Act must not cause or contribute to any new violations of the air quality standard, increase the frequency or severity of existing violations or delay timely attainment of any standard or interim emission reductions or milestones.

Comments can be submitted on all options during the comment period for this supplemental proposal. The options below are listed in terms of what would be required for project-level conformity determinations before and after a PM_{10} SIP is submitted in a given PM_{10} nonattainment or maintenance area.

The following paragraphs describe the November 5, 2003 proposal's PM_{10} hot-spot options along with new options proposed for comment today. Today's proposed regulatory text combines various $PM_{2.5}$ and PM_{10} hot-spot options as illustrative examples, since common sections and paragraphs of the conformity rule would be affected under the supplemental proposal. However, EPA believes that any combination of the proposed $PM_{2.5}$ or PM_{10} hot-spot options could be included in the final rule.

As described in Section III., the existing conformity rule requires some type of hot-spot analyses for all FHWA/FTA non-exempt projects in CO and PM_{10} nonattainment and maintenance areas (see 40 CFR 93.116 and 93.123). These requirements currently apply for all project-level conformity determinations that occur before and after a SIP is submitted for these standards.

2. PM_{10} Hot-Spot Analyses Prior to SIP Submission

In today's supplemental proposal, EPA is proposing the following PM_{10} hot-spot options for project-level conformity determinations that occur prior to the submission of a PM_{10} SIP:

- *Option 1:* Retain the existing conformity rule's PM_{10} hot-spot analysis requirements in all PM_{10} areas.
- *Option 2:* Apply the existing conformity rule's PM_{10} hot-spot analysis requirements, unless the EPA Regional Administrator or state air agency finds that localized PM_{10} violations are not a concern for a given PM_{10} area;
- *Option 3:* Only apply the existing conformity rule's PM_{10} hot-spot analysis requirements, if the EPA Regional Administrator or state air agency finds that localized PM_{10} violations are a concern for a given PM_{10} area; or
- *Option 4:* Delete the current PM_{10} hot-spot analysis requirements from the conformity rule and impose no hot-spot analysis requirements.

For Options 2 and 3, EPA intends localized PM_{10} violations to be a concern if Clean Air Act requirements for projects are not met, that is, if projects create new or worsen existing PM_{10} violations. Although EPA has not proposed specific language in § 93.123(b) for Options 3 and 4, EPA has described these options sufficiently in this preamble to include either or both of them in the final rule, if selected.

For Options 2 and 3, EPA requests comment today on whether state and local agencies that do not already have established PM_{10} SIPs have information available to make such findings (''hot-spot findings''), and what type of information would be available in the future for those limited number of PM_{10} areas without PM_{10} SIPs. An EPA or state hot-spot finding that localized PM_{10} violations are or are not a concern prior to PM_{10} SIP submission would be based on a case-by-case review of local factors for a given PM_{10} area. For example, such a review could consider the following local factors: PM_{10} monitoring data and proximity to the PM_{10} standard, future modeling projections and likelihood of new or worsening localized PM_{10} violations at transportation-related project locations, the prevalence of heavy-duty diesel vehicles at certain types of locations (*e.g.*, highly congested intersections or large transit stations where significant traffic and engine idling occurs), site-specific terrain, meteorology, etc.

The proposed rule would require hot-spot findings under the proposed options to be made only after discussions with federal, state, and local air quality and transportation agencies through the interagency consultation process for a given PM_{10} nonattainment area. A hot-spot finding would be made through a letter to the relevant state and local air quality and transportation agencies, MPO(s), FHWA, FTA, and EPA (in the case of a state air agency finding). A hot-spot finding under the proposed options would not be completed through EPA's adequacy process for submitted SIPs with motor vehicle emissions budgets, as noted in Section III.A.2. of today's supplemental proposal.

3. PM_{10} Hot-Spot Analyses After SIP Submission

EPA is proposing the following PM_{10} hot-spot options for project-level conformity determinations that occur after PM_{10} SIP submission:

• *Option A:* Retain the existing conformity rule's PM_{10} hot-spot analysis requirements for FHWA/FTA non-exempt projects in all PM_{10} areas with one minor addition, as described below;

• *Option B:* Only require quantitative PM_{10} hot-spot analyses for projects at those types of locations that the PM_{10} SIP for a given area identifies as a localized PM_{10} air quality concern. No qualitative analyses would be required for projects in other types of locations, or in PM_{10} areas where the SIP does not identify types of locations as a localized PM_{10} air quality concern; or

• *Option C:* Do not apply any PM_{10} hot-spot analysis requirements for any PM_{10} area and delete the current PM_{10} requirements from the conformity rule.

EPA notes that all of these options were represented in the November 2003 proposal. As described in Section III. for $PM_{2.5}$ PM_{10} quantitative hot-spot analyses under Option B would only be required for projects at the types of locations identified as a concern in the PM_{10} SIP; no qualitative hot-spot analyses would be done for all other projects. This option would not require some type of hot-spot analyses for all projects in the PM_{10} nonattainment or maintenance area, as is currently required. If EPA finalizes Option B, we would provide guidance on how to identify locations where transportation-related PM_{10} hot-spots may exist. The majority of PM_{10} areas already have an attainment demonstration or a maintenance plan; therefore, SIP revisions may be necessary under Option B to identify types of locations where quantitative analyses must be performed.

As described in Section III. of today's notice, examples of types of project locations include:

• Highly congested intersections,

• Large transit stations where significant traffic and engine idling occurs,

• Long or steep grades, or

• Monitors where the PM_{10} standard has been exceeded or violated.

EPA requests comment on the above examples, and requests further information regarding other types of project locations where potential PM_{10} hot-spots could occur in a given area.

Minor change to quantitative hot-spot requirements: For Option A, EPA is proposing one minor change to the existing conformity rule's requirements for PM_{10} hot-spot analyses after PM_{10} SIPs are submitted. The proposal would add another criterion for when quantitative (rather than qualitative) analyses would be performed—in those types of project locations that the PM_{10} SIP identifies as a PM_{10} hot-spot concern. This criterion would only be relevant after the PM_{10} SIP is submitted. If EPA finalizes this minor change, it would apply to both $PM_{2.5}$ and PM_{10} hot-spot analyses. This change is also being proposed in Section III. of today's action for a similar option for $PM_{2.5}$ analyses. Regulatory text for this minor change is in § 93.123(b)(1).

Section 93.123(b)(1) currently requires quantitative PM_{10} hot-spot analyses for the following types of transportation projects:

• Projects which are located at sites at which violations have been verified by monitoring data;

• Projects which are located at sites which have vehicle and roadway emission and dispersion characteristics that are essentially identical to those of sites with verified violations (including sites near one at which a violation has been monitored); and

• New or expanded bus and rail terminals and transfer points which increase the number of diesel vehicles congregating at a single location.

EPA proposes to make a minor change to § 93.123(b)(1)(iii) to clarify that quantitative analyses would be required for such projects that *significantly* increase the number of diesel vehicles, so that quantitative analyses are not required for insignificant vehicle increases with de minimis localized emissions increases. The proposed change may also cover the cases where the number of vehicles increases but emissions do not increase because the added vehicles are cleaner (*e.g.*, retrofitted diesel vehicles).

EPA notes that today's action would not change § 93.123(b)(2) of the current rule for relevant options, which requires a qualitative hot-spot analysis of local factors for all other projects, rather than dispersion modeling.

Section 93.123(b)(3) currently requires that the consultation process be used to identify the specific cases in a given nonattainment or maintenance area under which PM_{10} quantitative hot-spot analyses are performed, and addresses categorical conformity determinations for certain transit projects and FTA actions in PM_{10} areas. A categorical conformity determination under the existing conformity rule and this proposal allows FTA to determine that a quantitative hot-spot analysis is not needed for a particular project if there is modeling that shows that such a project will not cause or contribute to new or worsening localized violations. Today's proposal does not substantively change § 93.123(b)(3) for FTA actions on certain transit projects, and EPA is not requesting comment on this existing flexibility.

However, today's proposal would modify § 93.123(b)(3) of the current conformity rule to allow FHWA to also make a categorical $PM_{2.5}$ or PM_{10} conformity determination on certain roadways and intersections based on appropriate modeling of various configurations and activity levels. As described above, the current rule provides for such FTA categorical conformity determinations for only certain transit projects in PM_{10} areas. We request comment on allowing FHWA to make a categorical determination without additional PM_{10} hot-spot analyses if it believes this would meet Clean Air Act requirements. EPA also requests information on what types of roadway and intersection projects would be appropriately covered by this proposal. If finalized, EPA and DOT would consult on the development of additional guidance on the implementation of such a provision. See Section III.A.4. of today's proposal for further information.

4. Quantitative PM_{10} Hot-Spot Analyses and Future EPA Guidance

If EPA finalizes an option that would require quantitative PM_{10} hot-spot analyses, we would provide guidance and appropriate models for carrying out such analyses in a timely manner.[2] Section 93.123(b)(4) of the current rule does not require any quantitative PM_{10} hot-spot analyses until EPA releases quantitative modeling guidance and announces in the **Federal Register** that quantitative modeling requirements are in effect. EPA would consult with conformity stakeholders when developing PM_{10} quantitative guidance.

5. Other Requirements

For options that require PM_{10} hot-spot analyses, EPA is proposing to continue to apply the general requirements for such analyses in §§ 93.123(c), 93.125(a), and other provisions of the current conformity rule for all PM_{10} hot-spot analyses. EPA is not proposing any substantive changes to these requirements. See Section III. of this

[2] PM_{10} qualitative hot-spot guidance has already been issued, titled, ''Federal Highway Administration Guidance for Qualitative Project Level ''Hot Spot'' Analysis in PM–10 Nonattainment and Maintenance Areas,'' September 2001. This guidance can be downloaded from the following website: *http://www.epa.gov/otaq/transp/conform/policy.htm*

preamble or the proposed regulatory text for further general information regarding these requirements.

B. Why Are We Proposing These Options?

1. General

EPA considered the following factors in developing the PM_{10} hot-spot options in the November 2003 proposal and today's action:

- The Clean Air Act conformity requirements for individual transportation projects in PM_{10} areas;
- The current scientific understanding of PM_{10} hot-spots and public health effects;
- The feasibility of implementing proposed options; and
- The impact of proposed options on state and local resources.

As stated in the November 2003 proposal, EPA believes it is important to re-evaluate the need for hot-spot analyses for PM_{10} nonattainment and maintenance areas. EPA is addressing hot-spots in PM_{10} areas, in addition to $PM_{2.5}$ areas in this SNPRM, because of the similarity between sources of these two pollutants and the similarity of the requirements. For example, both types of particulate matter result from tailpipe emissions, as well as brake and tire wear, and in some areas, road dust. PM_{10} includes particles that are 2.5 microns in diameter and smaller, as well as particles that range from 2.5 microns to 10 microns. In addition, because we are soliciting comment on a range of options for hot-spot analyses in $PM_{2.5}$ areas, EPA believes it is reasonable to seek comment on a similar range of options for hot-spot analyses in PM_{10} areas. We are soliciting input to guide our decision on the proposed options both before and after a PM_{10} SIP is submitted. The following paragraphs outline how the above factors relate to the proposed options.

When the conformity rule was promulgated in 1993, EPA interpreted Clean Air Act section 176(c)(1)(B) to require PM_{10} hot-spot analyses because of the requirement to ensure that transportation activities do not create new violations, worsen existing violations or delay timely attainment of the air quality standard (January 11, 1993, 58 FR 3776). Any option that is selected in the final rule must be consistent with these Clean Air Act requirements, which apply at all times for highway and transit project conformity determinations.

EPA's developing understanding of potential PM_{10} hot-spots is one of the factors that needs to be considered for applying the proposed options. EPA believes it is appropriate to focus conformity resources where air quality issues are significant and need to be in place to address Clean Air Act requirements. To that end, EPA will consider information that was available when the original conformity rule was developed, as well as new information that is submitted through the rulemaking process or has otherwise become available. For example, in 1993, EPA believed that typically sized bus terminals or transfer points would not create PM_{10} hot-spots, however, we decided that it was practical to require a determination to that effect to ensure that Clean Air Act requirements were met. We also believed at that time that direct PM_{10} emissions would be capable of causing violations only in conditions of unusually heavy diesel truck/bus traffic and limited dispersion, such as street canyons (January 11, 1993, 58 FR 3780). On the other hand, EPA may not have fully considered the role of re-entrained road dust in contributing to potential PM_{10} hot-spots. EPA will consider all past and current information on the potential for PM_{10} hot-spots in the development of the final rule.

In addition, EPA will be considering in the final rule the impact of our new diesel fuel and engine standards (January 18, 2001, 66 FR 5002) for the necessity of applying any of the proposed options. Such standards are expected to significantly impact the amount of particulate emissions that will be emitted by new diesel vehicles, and consequently may impact the potential for PM_{10} transportation-related hot-spots.

Understanding the potential for PM_{10} hot-spots provides a basis for determining when explicit hot-spot reviews must be required. As indicated in the November 3, 2003 proposal, section 176(c)(3)(B)(ii) specifically requires hot-spot analyses for projects only in CO nonattainment areas.

EPA also considered the feasibility of implementing any proposed option to meet statutory requirements before and after PM_{10} SIP submission. We invite state and local agencies to comment on the feasibility of implementing all of the proposed options, including what state or local information would be available for implementation purposes.

2. PM_{10} Hot-Spot Analyses Before SIP Submission

EPA has proposed to apply the existing rule's PM_{10} hot-spot requirements to PM_{10} areas before PM_{10} SIP submission (Option 1). EPA believes that this option would meet statutory requirements since it relies on the existing interpretation for the current conformity rule. In the November 24, 1993 conformity rule (58 FR 62188), EPA promulgated the existing conformity requirements for PM_{10} hot-spot analyses. Section 93.116 of the current conformity rule requires an explicit PM_{10} hot-spot review to be completed for all non-exempt federal projects in PM_{10} nonattainment and maintenance areas, regardless of whether or not a SIP has been submitted. EPA believed that emissions produced by individual highway and transit projects in PM_{10} nonattainment and maintenance areas could potentially result in a new air quality violation or worsen an existing violation. Option 1 would continue to rely on this same rationale.

EPA is also proposing today Options 2 and 3 to apply current PM_{10} hot-spot requirements depending on whether or not new or worsening localized PM_{10} violations could occur in a given area prior to PM_{10} SIP submission. These options would rely on the proposed interpretation stated in the November 2003 proposal (68 FR 62713): Clean Air Act section 176(c)(1)(B) requirements could be met as long as explicit reviews are performed at locations susceptible to PM_{10} hot-spots. If hot-spots are found not to be a potential concern (Option 2) in a given area, then EPA believes that statutory requirements could be met in these areas without an explicit hot-spot review. Conversely, if potential hot-spots are found to be a concern (Option 3) in a given area, then all project-level conformity determinations in these areas should include explicit hot-spot reviews to ensure that statutory requirements are met. Both of these options would allow EPA and states to target hot-spot requirements in PM_{10} nonattainment areas where hot-spots may or may not be an air quality concern.

Commenters should consider the practical impact of all of the options that are being proposed for the time period prior to PM_{10} SIP submission. Since most PM_{10} nonattainment and maintenance areas already have submitted or approved PM_{10} SIPs, the proposed options may impact a small number of PM_{10} areas. EPA requests information on the appropriateness of the proposed options in any PM_{10} areas without SIPs, including whether there are unique circumstances of these areas that would be relevant to the potential for PM_{10} hot-spots and necessity of project-level conformity analyses.

As described in A.2. of this section, EPA is requesting comment on whether state and local air agencies that have not yet established PM_{10} SIPs will have the

necessary information to make the hot-spot findings described in Options 2 and 3. The appropriateness and feasibility of these options in meeting Clean Air Act requirements depends on whether well-considered, informed findings will be possible prior to PM_{10} SIP submission.

EPA is again proposing Option 4 to not require any explicit PM_{10} hot-spot analysis for any project before PM_{10} SIP submission in PM_{10} nonattainment and maintenance areas. See the November 5, 2003 proposal (68 FR 62713—62714) for further information.

3. PM_{10} Hot-spot Analyses After SIP Submission

EPA continues to consider the November 2003 proposal's options for PM_{10} hot-spot analyses after SIP submission (Options A–C). Option A would continue to apply the existing rule's PM_{10} hot-spot requirements (with a minor addition) after PM_{10} SIP submission. Similar to Option 1 for the time period before PM_{10} SIPs, EPA concludes that Option A would meet statutory requirements since it relies on existing rationale for the current conformity rule.

Like similar $PM_{2.5}$ hot-spot options discussed in Section III., EPA notes that retaining the current PM_{10} hot-spot requirements would ensure that potential transportation-related hot-spots for all areas are addressed, especially in cases where it is not possible to determine through the SIP process the potential for localized PM_{10} violations in a given nonattainment or maintenance area. EPA will consider in the final rule the potential existence of PM_{10} hot-spots for transportation projects, and whether explicit hot-spot reviews will be needed to meet Clean Air Act requirements. Option A would require state and local resources be used for all FHWA/FTA non-exempt projects in PM_{10} areas, although the existing conformity rule and today's proposal streamlines hot-spot analyses for projects that do not require quantitative analyses.

EPA also proposed Option B to require quantitative PM_{10} hot-spot analyses only at types of project locations identified as a localized air quality concern in a given PM_{10} SIP. When the SIP identifies such locations, a quantitative hot-spot analysis would be completed for affected projects. No qualitative analyses would be required for projects in other types of locations, or in PM_{10} areas where the SIP does not identify types of locations as a localized PM_{10} air quality concern. Under Option B, EPA is proposing quantitative hot-spot analyses only for projects at locations identified in the SIP as a localized concern, since EPA believes that if a SIP identifies such a project location, then a more thorough examination of the localized impacts of projects at such locations is necessary to ensure that the SIP's purpose and Clean Air Act conformity requirements are met.

As indicated in the November 2003 proposal, Option B is consistent with the purpose of conformity, which is to ensure that federally funded or approved transportation projects are consistent with the SIP in a given nonattainment or maintenance area. See Section III.B. for more information regarding similar rationale for $PM_{2.5}$.

However, it is unclear how Option B would be implemented in current PM_{10} nonattainment and maintenance areas since most PM_{10} areas may not have considered the potential for PM_{10} hot-spots during the development of existing PM_{10} SIPs. In such cases, should existing SIPs be revised to consider potential PM_{10} hot-spots? Should states evaluate the potential for PM_{10} hot-spots outside the SIP process? How do the practical circumstances of Option B affect the other proposed PM_{10} options? EPA requests comments on all of these questions.

Like $PM_{2.5}$ SIPs, EPA is also considering whether PM_{10} SIPs can be developed so potential transportation-related hot-spot locations are defined for each PM_{10} nonattainment and maintenance area. EPA is requesting comment on whether such cases could occur in PM_{10} areas, and whether other proposed options would be more appropriate in such cases after a PM_{10} SIP is submitted. EPA also requests comment on how the proposed options should be implemented in cases where the latest information available on the potential for PM_{10} hot-spots is not reflected in the PM_{10} SIP. See Section III.B.3. of today's proposal for further information.

EPA has committed to issue SIP guidance under this option if it is finalized. EPA requests further comment on whether state and local air quality agencies will have the necessary local information and resources to specify in PM_{10} SIPs which project locations are a potential PM_{10} hot-spot concern, in order to support Option B and provide flexibility in the conformity process.

State and local agencies may identify types of locations in each PM_{10} SIP that may increase or decrease the kinds of projects requiring quantitative hot-spot analyses, as compared to current conformity requirements. EPA anticipates that this option would likely result in fewer total projects having some type of PM_{10} hot-spot review as compared to the current conformity rule's requirements, since not all PM_{10} areas may have future PM_{10} SIPs that identify hot-spots as a concern.

Finally, EPA is again proposing options for not requiring any explicit PM_{10} hot-spot analysis for any project after PM_{10} SIP submission (Option C), for reasons cited above and in the November 2003 proposal.

4. Specific Analysis Requirements and Other Requirements

EPA continues to believe it has discretion to define what level of PM_{10} hot-spot analysis would be required for proposed options that involve such analyses, as described in Section III. of today's proposal. EPA believes that applying the current conformity rule's approach would streamline hot-spot reviews and utilize state and local resources in an efficient and reasonable manner while still satisfying Clean Air Act requirements.

Finally, EPA has proposed to add a new criterion for when quantitative PM_{10} hot-spot analyses are completed after a PM_{10} SIP is submitted for Option A. As stated in Section III.B., EPA believes that if Option A is finalized for PM_{10} hot-spot requirements, quantitative analyses should also be done if the PM_{10} SIP identifies certain types of locations as a PM_{10} hot-spot concern. Since the primary intent of the Clean Air Act is to ensure consistency between transportation decisions and SIP air quality objectives, it is appropriate to require more intensive hot-spot reviews in cases where the SIP specifically identifies a type of transportation project location as having the potential to increase local emissions and worsen air quality. EPA notes that this minor proposal would be consistent with a similar criterion in § 93.123(a)(1)(i) of the existing rule's requirements for quantitative CO hot-spot analyses.

EPA is also proposing to retain the existing conformity rule's general provisions for conducting PM_{10} hot-spot analyses for those options that would apply the existing rule's requirements. Examples would include related provisions in §§ 93.101, 93.123, and 93.125 of the conformity rule.

C. Request for PM_{10} Hot-Spot Information

EPA again invites commenters to submit studies or data regarding PM_{10} hot-spots during the comment period for this supplemental proposal. All information submitted for the November 2003 proposal and today's action will be considered when EPA develops the final

rule that addresses PM_{10} hot-spot requirements.

V. Minor Change for Compliance With $PM_{2.5}$ SIP Control Measures

Today EPA is proposing a small change to the footnote at the bottom of Table 2 in § 93.126. Section 93.126 is titled, ''Exempt projects'' and Table 2 lists these projects under several different headings. Projects listed in the table are exempt from the requirement to determine conformity, and may proceed even in the absence of a conformity transportation plan and TIP.

Today's proposed change would add ''and $PM_{2.5}$'' after ''PM_{10}'' in the footnote at the bottom of Table 2. Currently, the footnote reads, ''Note: In PM_{10} nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.'' However, $PM_{2.5}$ areas also need to be included in this note to make § 93.126 consistent with § 93.117. In the July 1, 2004, final rule, EPA updated § 93.117, which discusses compliance with control measures in PM areas, to include $PM_{2.5}$ as well as PM_{10}. EPA should have updated the footnote in § 93.126 in the July 1, 2004 rule; we are proposing to correct this oversight in today's action. With this change, projects on the exempt list in § 93.126 would be exempt in a $PM_{2.5}$ area only if they are in compliance with control measures in the applicable SIP.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

(1) Have an annual effect on the economy of $100 million or more, or otherwise 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;

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

It has been determined that this supplemental proposal is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to review by the Office of Management and Budget (OMB).

B. Paperwork Reduction Act

The information collection requirements for this supplemental proposal have been submitted for approval to OMB under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and as ICR 2130.02. The information collection requirements are not enforceable until OMB approves them.

Transportation conformity determinations are required under Clean Air Act section 176(c) (42 U.S.C. 7506(c)) to ensure that federally supported highway and transit project activities are consistent with (''conform to'') the purpose of the SIP. Conformity to the purpose of the SIP means that transportation activities will not cause or contribute to new air quality violations, worsen existing violations, or delay timely attainment of the relevant air quality standards. Transportation conformity applies under EPA's conformity regulations at 40 CFR parts 51.390 and 93 to areas that are designated nonattainment and those redesignated to attainment after 1990 (''maintenance areas'' with SIPs developed under Clean Air Act section 175A) for transportation-source criteria pollutants. The Clean Air Act gives EPA the statutory authority to establish the criteria and procedures for determining whether transportation activities conform to the SIP.

Amendments in today's supplemental proposal that are related to conformity requirements in existing PM_{10} nonattainment and maintenance areas do not impose any new information collection requirements from EPA that require approval by OMB under the Paperwork Reduction Act of 1980, 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 information collection requirements of EPA's existing transportation conformity rule and any revisions in today's action for existing PM_{10} areas are covered under the DOT information collection request (ICR) entitled, ''Metropolitan and Statewide Transportation Planning,'' with the OMB control number of 2132–0529.

EPA provided two opportunities for public comment on the incremental burden estimates for transportation conformity determinations under the new 8-hour ozone and $PM_{2.5}$ standards. EPA received comments on both the initial burden estimates provided in the November 5, 2003 proposal (68 FR 62720) and on the revised estimates in the January 2004 ICR (69 FR 336). EPA responded to all of these comments, including accounting for some $PM_{2.5}$ hot-spot burden during the time period of the ICR in the final ICR that was submitted to OMB for approval for all aspects of the conformity rulemaking effort for the new air quality standards (ICR 2130.02). EPA estimated burden in this ICR based on implementing the most intensive options proposed.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When ICR 2130.02 is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires the Agency to conduct a regulatory flexibility analysis of any significant impact a rule will have on a substantial number of small entities. Small entities include small businesses, small not-for-profit organizations and small government jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (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; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This regulation directly affects federal agencies and metropolitan planning organizations that, by definition, are designated under federal transportation laws only for metropolitan areas with a population of at least 50,000. These organizations do not constitute small entities within the meaning of the Regulatory Flexibility Act.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this supplemental proposal itself 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 primary purpose of this supplemental proposal is to determine requirements for hot-spot analyses in $PM_{2.5}$ and PM_{10} nonattainment and maintenance areas. Clean Air Act section 176(c)(5) requires the applicability of conformity to such areas as a matter of law one year after nonattainment designations. Thus, although this rule explains how these analyses should be conducted, it merely implements already established law that imposes conformity requirements and does not itself impose requirements that may result in expenditures of $100 million or more in any year. Thus, today's supplemental proposal is not subject to the requirements of sections 202 and 205 of the UMRA and EPA has not prepared a statement with respect to budgetary impacts.

E. Executive Order 13132: Federalism

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

This proposed rule does not have federalism implications. It 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, as specified in Executive Order 13132. The Clean Air Act requires conformity to apply in certain nonattainment and maintenance areas as a matter of law, and this supplemental action merely proposes to establish and revise procedures for transportation planning entities in subject areas to follow in meeting their existing statutory obligations. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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

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

Today's proposed amendments to the conformity rule do not significantly or uniquely affect the communities of Indian tribal governments, as the Clean Air Act requires transportation conformity to apply in any area that is designated nonattainment or maintenance by EPA. This supplemental proposal would incorporate into the conformity rule provisions addressing newly designated $PM_{2.5}$ nonattainment and maintenance areas subject to conformity requirements under the Act that would not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Accordingly, the requirements of Executive Order 13175 are not applicable to this supplemental proposal.

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

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

the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This supplemental proposal is not subject to Executive Order 13045 because it is not economically significant within the meaning of Executive Order 12866 and does not involve the consideration of relative environmental health or safety risks on children.

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

This supplemental proposal is not subject to Executive Order 13211, ''Action Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355; May 22, 2001) because it will not have a significant adverse effect on the supply, distribution, or use of energy. Further, we have determined that this supplemental proposal is not likely to have any significant adverse effects on energy supply.

I. National Technology Transfer and Advancement Act

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

This supplemental proposal does not involve technical standards. Therefore, the use of voluntary consensus standards does not apply to this supplemental proposal.

List of Subjects in 40 CFR Part 93

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Transportation, Volatile organic compounds.

Dated: December 7, 2004.

Michael O. Leavitt,

Administrator.

For the reasons set out in the preamble, 40 CFR part 93 is proposed to be amended as follows:

PART 93—[AMENDED]

1. The authority citation for part 93 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

§ 93.101 [Amended]

2. Section 93.101 is amended in the first sentence of the definition for ''Hot-spot analysis'' by removing ''CO and PM_{10}'' and adding in its place ''CO, PM_{10}, and/or $PM_{2.5}$''.

3. Section 93.105(c)(1)(v) is revised to read as follows:

§ 93.105 Consultation.

* * * * *

(c) * * *

(1) * * *

(v) Identifying, as required by § 93.123(b), projects located at sites in PM_{10} and $PM_{2.5}$ nonattainment areas which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM_{10} and/or $PM_{2.5}$ hot-spot analysis;

* * * * *

4. Section 93.109 is amended as follows:

a. In Table 1 of paragraph (b), revising both entries for ''§ 93.116'';

b. By redesignating paragraphs (i)(1) and (2) as paragraphs (i)(2) and (3) and adding new paragraph (i)(1);

c. In paragraph (k) by removing ''CO and PM_{10}'' and adding in its place ''CO, PM_{10}, and $PM_{2.5}$''; and

d. In paragraph (l)(1) by removing ''(''Localized CO and PM_{10} violations (hot spots)'')'' and adding in its place ''(''Localized CO, PM_{10}, and $PM_{2.5}$ violations (hot-spots)'')''.

§ 93.109 Criteria and procedures for determining conformity of transportation plans, programs, and projects: General.

* * * * *

(b) * * *

TABLE 1.—CONFORMITY CRITERIA

* * * * *	
§ 93.116	CO, PM_{10}, and $PM_{2.5}$ hot spots
* * * * *	
§ 93.116	CO, PM_{10}, and $PM_{2.5}$ hot spots
* * * * *	

* * * * *

(i) * * *

(1) FHWA/FTA projects in $PM_{2.5}$ nonattainment or maintenance areas must satisfy the appropriate hot-spot test required by § 93.116(a).

* * * * *

5. In §93.116 the section heading and paragraph (a) are revised to read as follows:

§ 93.116 Criteria and procedures: Localized CO, PM_{10}, and $PM_{2.5}$ violations (hot-spots).

(a) This paragraph applies at all times. The FHWA/FTA project must not cause or contribute to any new localized CO, PM_{10}, and/or $PM_{2.5}$ violations or increase the frequency or severity of any existing CO, PM_{10}, and/or $PM_{2.5}$ violations in CO, PM_{10}, and $PM_{2.5}$ nonattainment and maintenance areas. This criterion is satisfied if it is demonstrated that during the time frame of the transportation plan (or regional emissions analysis) no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project. The demonstration must be performed according to the consultation requirements of § 93.105(c)(1)(i) and the methodology requirements of § 93.123.

* * * * *

6. Section 93.123 is amended as follows:

a. Revising the section heading;

b. Revising the first sentence of paragraph (a)(1) introductory text;

c. Amending paragraph (b) by either:

Under Option A

i. Revising paragraph (b)(1)(iii);

ii. Adding new paragraph (b)(1)(iv); and

iii. Revising paragraph (b)(3); or

Under Option B

i. Revising paragraph (b)(1) and (2); and

ii. Removing paragraph (b)(3) and redesignating paragraph (b)(4) as (b)(3);

d. Amending paragraph (c)(4) by removing ''PM_{10} or CO'' in the first sentence and adding in its place ''CO, PM_{10}, or $PM_{2.5}$''; and e. Amending paragraph (c)(5) by removing ''CO and PM_{10}'' in the first sentence and adding in its place ''CO, PM_{10}, and $PM_{2.5}$''.

§ 93.123 Procedures for determining localized CO, PM_{10}, and $PM_{2.5}$ concentrations (hot-spot analysis).

(a) *CO hot-spot analysis.* (1) The demonstrations required by § 93.116 (''Localized CO, PM_{10}, and $PM_{2.5}$ violations'') must be based on quantitative analysis using the applicable air quality models, data bases, and other requirements specified

in 40 CFR part 51, Appendix W (Guideline on Air Quality Models).* * *

* * * * *

Option A for paragraph (b):

(b) PM_{10} and $PM_{2.5}$ hot-spot analyses. (1) * * *

(iii) New or expanded bus and rail terminals and transfer points which significantly increase the number of diesel vehicles congregating at a single location;

(iv) Projects in or affecting locations, areas, or categories of sites which are identified in the PM_{10} or $PM_{2.5}$ applicable implementation plan or implementation plan submission, as appropriate, as sites of violation or possible violation.

* * * * *

(3) The identification of the sites described in paragraphs (b)(1)(i), (ii), (iii), and (iv) of this section, and other cases where quantitative methods are appropriate, shall be determined through the interagency consultation process required in § 93.105. DOT, in consultation with EPA, may choose to make a categorical conformity determination on bus and rail terminals or transfer points based on appropriate modeling of various terminal sizes, configurations, and activity levels. DOT, in consultation with EPA, may also choose to make a categorical conformity determination on roadways and intersection based on appropriate modeling of various configurations and activity levels.

* * * * *

Option B for paragraph (b):

(b) PM_{10} and $PM_{2.5}$ hot-spot analyses. (1) The hot-spot demonstration required by § 93.116 must be based on quantitative analysis methods for projects in or affecting locations, areas, or categories of sites which are identified in the PM_{10} or $PM_{2.5}$ applicable implementation plan or implementation plan submission, as appropriate, as sites of violation or possible violation.

(2) The identification of the sites described in paragraph (b)(1) of this section shall be determined through the interagency consultation process required in § 93.105. DOT, in consultation with EPA, may choose to make a categorical conformity determination on bus and rail terminals or transfer points based on appropriate modeling of various terminal sizes, configurations, and activity levels. DOT, in consultation with EPA, may also choose to make a categorical conformity determination on roadways and intersection based on appropriate modeling of various configurations and activity levels.

* * * * *

§ 93.125 [Amended]

7. Section 93.125(a) is amended by removing ''PM_{10} or CO'' in the first sentence and adding in its place ''CO, PM_{10}, or $PM_{2.5}$''.

§ 93.126 [Amended]

8. Section 93.126 is amended in footnote 1 by removing ''PM_{10}'' and adding in its place ''PM_{10} and $PM_{2.5}$''.

§ 93.127 [Amended]

9. Section 93.127 is amended by removing ''CO or PM_{10}'' and adding in its place ''CO, PM_{10}, or $PM_{2.5}$''.

[FR Doc. 04–27171 Filed 12–10–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–P–7665]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and record keeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding and location of referenced elevation	♦ Elevation in feet (NAVD)		Communities affected
	Existing	Modified	
Alligator Bayou:			
At the confluence with Flat River	♦ 163	♦ 160	City of Bossier City.
Approximately 1,550 feet downstream of U.S. Highway 79/80 Eastbound.	♦ 163	♦ 162	
Benoit Bayou:			
At the confluence with Macks Bayou Segment G and Macks Bayou Segment H.	♦ 166	♦ 168	City of Bossier City, Bossier Parish (Unincorporated Areas).
Approximately 12,520 feet upstream of Brownlee Road	None	♦ 173	
Bossier Ditch:			
Approximately 60 feet upstream of the confluence with Cooper Bayou and Macks Bayou Segment F.	♦ 160	♦ 159	City of Bossier City.
Approximately 180 feet upstream of Benton Road	None	♦ 170	
Fifi Bayou:			
Just upstream of U.S. Interstate 20	None	♦ 174	Bossier Parish (Unincorporated Areas).
Approximately 9,000 feet upstream of Winfield Road	None	♦ 190	
Flat River:			
Just upstream of State Route 527	None	♦ 154	City of Bossier City, Bossier Parish (Unincorporated Areas).
Approximately 500 feet upstream of U.S. Interstate 220 Westbound.	♦ 165	♦ 164	
Flat River Drainage Canal:			
Just upstream of Coy Road	♦ 166	♦ 165	City of Bossier, City Bossier Parish (Unincorporated Areas).
Approximately 400 feet upstream of Airline Drive	♦ 173	♦ 174	
Herndon Ditch:	.....		
At the confluence with Flat River	♦ 156	♦ 158	City of Bossier City, Bossier Parish (Unincorporated Areas).
Approximately 1,300 feet downstream of the confluence of Macks Bayou Segment B.	♦ 157	♦ 158	
Lake Bistineau: Entire shoreline within Bossier Parish	None	♦ 148	Bossier Parish (Unincorporated Areas).City of Bossier City, Bossier Parish (Unincorporated Areas).
Macks Bayou Segment A:			
At the confluence with Flat River	♦ 156	♦ 157	City of Bossier City.
Approximately 25 feet upstream of Golden Meadows Drive	♦ 156	♦ 157	
Macks Bayou Segment E:			
Approximately 1,025 feet upstream of the confluence with Bossier Ditch.	♦ 162	♦ 163	City of Bossier City.
Approximately 2,010 feet upstream of the confluence with Bossier Ditch.	♦ 162	♦ 163	
Macks Bayou Segment G:			
Approximately 650 feet upstream of Kansas City Southern Railway.	♦ 166	♦ 167	City of Bossier City.
At the confluence of Benoit Bayou and junction with Macks Bayou Segment H.	♦ 166	♦ 168	
Macks Bayou Segment H:			
Approximately 190 feet upstream of the confluence with Flat River.	♦ 165	♦ 166	City of Bossier City, Bossier Parish (Unincorporated Areas).
At the confluence of Benoit Bayou and divergence of Macks Bayou Segment G.	♦ 166	♦ 168	
Racetrack Bayou:			
At the confluence with Willow Chute	None	♦ 166	City of Bossier City.
At U.S. Interstate 220 Westbound and divergence from Macks Bayou Segment H.	♦ 166	♦ 168	
Red Chute Bayou:			
Approximately 12,400 feet upstream of Smith Road	None	♦ 154	City of Bossier City, Bossier Parish (Unincorporated Areas).

Source of flooding and location of referenced elevation	♦ Elevation in feet (NAVD)		Communities affected
	Existing	Modified	
Approximately 4,050 feet upstream of Dogwood Trail	♦ 165	♦ 169	
City of Bossier City			
Maps are available for inspection at City Hall, 620 Benton Road, Bossier City, Louisiana.			
Send comments to The Honorable George Dement, Mayor, City of Bossier City, City Hall, 620 Benton Road, Bossier City, Louisiana 71111.			
Bossier Parish (Unincorporated Areas)			
Maps are available for inspection at the Police Jury Office, 204 Burt Boulevard, Room 108, Benton, Louisiana.			
Send comments to The Honorable Rick Avery, Bossier Parish President, P.O. Box 70, Benton, Louisiana 71006.			
Carter Branch:			
Approximately 275 feet above confluence with Mill Race	♦ 943	♦ 944	City of Carthage, Jasper County (Unincorporated Areas).
Approximately 5,030 feet upstream of East 13th Street	None	♦ 1,020	
City Branch:			
Approximately 500 feet upstream of the confluence with Spring River.	♦ 935	♦ 936	Jasper County (Unincorporated Areas).
Approximately 330 feet upstream of Case Street	None	♦ 1,018	City of Carthage.

Addresses

Jasper County (Unincorporated Areas)

Maps are available for inspection at Tri-State Engineering, Inc., 1102 West 9th Street, Joplin, Missouri.

Send comments to The Honorable Chuck Surface, Presiding Commissioner, 302 South Main Street, Carthage, Missouri 64836.

City of Carthage

Maps are available for inspection at the Engineer's Office, 623 East 7th Street, Carthage, Missouri.

Send comments to The Honorable Kenneth Johnson, Mayor, City of Carthage, 326 Grant Street, Carthage, Missouri 64836.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: December 7, 2004.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 04–27246 Filed 12–10–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–P–7663]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105,

and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and record keeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 Proposed flood elevation determination.

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD) ♦Elevation in feet (NAVD)	
				Existing	Modified
Indiana	Indianapolis (City) McClain County.	Berkshire Creek	At its confluence with Devon Creek	N/A	*746
			Approximately 150 feet upstream of Marrison Place.	N/A	*780
		Buffalo Creek	Just upstream of West County Line Road	*709	*707
			At East Stop 11 Road	*758	*754
		Devon Creek	Approximately 740 feet downstream of Millersville Road.	*734	*733
			Approximately 100 feet upstream of Laurel Falls Road.	N/A	*814
		Little Buck Creek	Approximately 300 feet downstream of South Tibbs Avenue.	*670	*669
			Approximately 75 feet upstream of the furthest upstream crossing of East Engewood Avenue.	N/A	*844
Maps are avaialble for inspection at 2142 City-County Building, 200 East Washington Street, Indianapolis, Indiana. Send comments to The Honorable Bart Peterson, Mayor, City of Indianapolis, 2501 City-County Building, 200 East Washington Street, Indianapolis, Indiana 46204.					
Nebraska	Wakefield (City) Dixon and Wayne Counties.	Logan Creek Dredge	Approximately 1.4 miles downstream of State Highway 35.	None	♦1,378
			Approximately 0.6 mile upstream of County Road 859.	None	♦1,389
		South Logan Creek	At confluence with Logan Creek Dredge	None	♦1,387
			Approximately 1.2 miles upstream of the confluence with Logan Creek Dredge.	None	♦1,390
		Ponding areas west of State Highway 35 and north of Abandoned Railroad (4).	Entire shoreline	None	♦1,382
		Ponding areas adjacent to State Highway 35 and north of Abandoned Railroad (4).	Entire shoreline	None	♦1,380
		Ponding area east of State Highway 35.	Entire shoreline	None	♦1,376
		Ponding area east of State Highway 35 and south of Abandoned Railroad.	Entire shoreline	None	♦1,378
Maps are avaialble for inspection at 405 Main Street, Wakefield, Nebraska. Send comments to The Honorable Jim Clark, Mayor, City of Wakefield, 405 Main Street, P.O. Box 178, Wakefield, Nebraska 68784.					
Oklahoma	Blanchard (City) Grady and McClain Counties.	Bridge Creek	Approximately 150 feet downstream of County Line Road.	None	*1,199
			Just downstream of County Line Road	None	*1,199
		East Branch Walnut Creek Tributary.	Approximately 1,675 feet downstream of Southeast 7th Street.	None	*1,196

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD) ♦Elevation in feet (NAVD)	
				Existing	Modified
			Approximately 525 feet upstream of Northeast 10th Street.	None	*1,270
		North Fork Walnut Creek ...	Approxiamtely 2,570 feet downstream of U.S. Highway 62/277.	None	*1,164
			Approxiamtely 22,820 feet upstream of U.S. Highway 62/277.	None	*1,201
		Stinson Creek	Approximately 20 feet downstream of Sandrock Road.	None	*1,208
			Approxiamtely 1,190 feet upstream of Sandrock Road.	None	*1,212
		Tributary A2	At the confluence with West Branch Walnut Creek Tributary.	None	*1,217
			Approxiamtely 3,585 feet upstream of the confluence with West Branch Walnut Creek Tributary.	None	*1,241
		West Branch Walnut Creek Tributary.	Approximately 4,035 feet downstream of Southeast 7th Street.	None	*1,195
			Approximately 3,690 feet upstream of N2990 Road.	None	*1,242
Maps are available for inspection at City Hall, 114 West Broadway, Blanchard, Oklahoma. Send comments to The Honorable Barbara Harris, Mayor, City of Blanchard, City Hall, 114 West Broadway, Blanchard, Oklahoma 73010.					
Oklahoma	Grady County (Unincorporated Areas).	West Branch Walnut Creek Tributary.	Approximately 160 feet downstream of N2990 Road.	None	*1,227
			Approximately 4,030 feet upstream of N2990 Road.	None	*1,244
Maps are available for inspection at 4th Street and Choctaw Street, Chickasha, Oklahoma. Send comments to The Honorable Jack Porter, Chairman, Grady County Board of Commissioners, 326 West Chuctaw, Chickasha, Oklahoma 73108.					
Oklahoma	McAlester (City) Pittsburg County.	Tributary A	Approximately 4,875 feet downstream of Village Boulevard.	♦681	♦682
			Approximately 2,100 feet upstream of Crooked Oak Lane..	♦764	♦756
		Tributary AA	At the confluence with Tributary A.	♦697	♦698
			Approximately 3,275 feet upstream of U.S. Highway 69.	♦755	♦754
		Tributary B	Approximately 490 feet downstream of South C Street.	♦690	♦687
		Tributary B	Approximately 300 feet upstream of U.S. Highway 69 Service Road (2nd crossing).	None	♦741
		Tributary C	Just upstream of Union Pacific Railroad ..	♦647	♦646
			Approximately 550 feet upstream of East Monroe Avenue.	♦687	♦686
		Tributary D	Just upstream of South F Street	♦681	♦678
			Approximatley 1,375 feet upstream of East South Avenue.	♦725	♦726
		Tributary DD	At the confluence with Tributary D	♦701	♦703
			Approximately 325 feet upstream of East Seminole Avenue.	None	♦715
Maps are available for inspection at 28 East Washington Street, McAlester, Oklahoma. Send comments to The Honorable Dale Covington, Mayor, City of McAlester, 28 East Washington Street, McAlester, Oklahoma 74502.					
Oklahoma	McClain County (Unincorporated Areas).	East Branch Walnut Creek Tributary.	At the confluence with West Branch Walnut Creek Tributary.	None	*1,180
			Approximately 2,320 feet upstream of confluence with West Branch Walnut Creek Tributary.	None	*1,197
		North Fork Walnut Creek ...	Approximately 24,660 feet upstream of the confluence with Walnut Creek.	None	*1,164
			Approximately 7,340 feet upstream of State Highway 76.	None	*1,201
		Stinson Creek (Lower Reach).	At the confluence with North Fork Walnut Creek.	None	*1,175

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD) ♦Elevation in feet (NAVD)	
				Existing	Modified
			Approximately 6,500 feet upstream of Quailhaven Road.	None	*1,208
		West Branch Walnut Creek Tirubtary.	Approximately 3,350 feet upstream of the confluence with Walnut Creek.	None	*1,171
			Approximately 2,590 feet upstream of Tyler Avenue.	None	*1,206
Maps are available for inspection at 501 North Street, Purcell, Oklahoma. Send comments to The Honorable Loyd Tucker, Chairman, McClain County Board of Commissioners, 501 North Street, P.O. Box 629, Purcell, Oklahoma 73080.					
Texas	Eagle Pass (City) Maverick County.	Eagle Pass Creek	At the confluence with Rio Grande.	*712	*716
			Approximately 200 feet upstream of Vista Hermosa Drive.	None	*790
		Eagle Pass Creek Tributary 1.	Just upstream of Union Pacific Railroad	*727	*726
			Approximately 330 feet upstream of Travis Street.	*743	*741
		Eagle Pass Creek Tributary 2.	Just upstream of the confluence with Eagle Pass Creek.	*743	741
			Approximately 2,100 feet upstream of North Bibb Avenue.	None	*799
		Rio Grande	Approximately 1,950 feet downstream of International Union Pacific Railroad Bridge.	*709	*710
			Approximately 1,950 feet upstream of East Garrison Street.	*719	*722
		Tributary to East Seco Creek.	Approximately 100 feet downstream of U.S. Highway 277.	None	*736
			Approximately 1,185 feet upstream of U.S. Highway 277.	None	*744
		Unnamed Tributary of Rio Grande.	Approximately 1,620 feet downstream of FM 3443 (1st Crossing).	None	*739
			Approximately 1,620 feet upstream of East Main Street.	None	*772
Maps are available for inspection at City Hall, 100 South Monroe Street, Eagle Pass, Texas. Send comments to The Honorable Chad Foster, Mayor, City of Eagle Pass, City Hall, 100 South Monroe Street, Eagle Pass, Texas 78852.					
Wisconsin	Manitowoc (City) Manitowoc County	Manitowoc River	At South 10th Street	*584	*585
			Approximately 2,550 feet downstream of Michigan Avenue.	*603	*604
Maps area available for inspection at the Manitowoc City Hall, 900 Quay Street, Manitowoc, Wisconsin. Send comments to The Honorable Kevin Crawford, Mayor, City of Manitowoc, 900 Quay Street, Manitowoc, Wisconsin 54220.					

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: December 7, 2004.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 04–27245 Filed 12–10–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI49

Endangered and Threatened Wildlife and Plants; Extension of the Comment Period on Proposed Designation of Critical Habitat for the Southwestern Willow Flycatcher

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the extension of the public comment period for the proposal to designate critical habitat for southwestern willow flycatcher (*Empidonax extimus traillii*) to allow all interested parties to comment on the proposed critical habitat designation under the Endangered Species Act of 1973, as amended. The proposed rule was published and the public comment period opened on October 12, 2004 (69 FR 60706).

DATES: The deadline for submitting comments on this proposal is extended from December 13, 2004, to March 31, 2005. Comments must be submitted directly to the Service (see **ADDRESSES** section) on or before March 31, 2005. Any comments received after the closing date may not be considered in the final determination on the proposal.

ADDRESSES: If you wish to comment, you may submit your comments and materials by any one of several methods:

1. You may submit written comments and information to Steve Spangle, Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ, 85021.

2. You may hand-deliver written comments and information to our Arizona Ecological Services Office, or fax your comments to 602/242–2513.

3. You may send your comments by electronic mail (e-mail) to *wiflcomments@fws.gov*.

The critical habitat proposal and supportive maps are available for viewing by appointment during regular business hours at the above address or on the Internet at *http://arizonaes.fws.gov*. All comments and materials received, as well as supporting documentation used in preparation of the proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor, Arizona Ecological Services Office (telephone 602–242–0210, facsimile 602–242–2513).

SUPPLEMENTARY INFORMATION:

Background

We proposed to designate for the southwestern willow flycatcher 376,095 acres (ac) (152,124 hectares (ha)) [including approximately 1,556 stream miles (2,508 stream kilometers)] of critical habitat, which includes various stream segments and their associated riparian areas, not exceeding the 100-year floodplain or flood prone area, on a combination of Federal, State, Tribal, and private lands in southern California, southern Nevada, southwestern Utah, south-central Colorado, Arizona, and New Mexico. The proposed rule was published in the **Federal Register** (69 FR 60706) on October 12, 2004, pursuant to a court order.

On September 30, 2003, in a complaint brought by the Center for Biological Diversity, the U.S. District Court of New Mexico instructed us to propose critical habitat by September 30, 2004, and publish a final rule by September 30, 2005. Additional background information is available in the October 12, 2004, proposal to designate critical habitat.

Critical habitat identifies specific areas that are essential to the conservation of a listed species and that may require special management considerations or protection. If the proposed rule is made final, section 7 of the Act will prohibit adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

Section 4 of the Act requires that we consider economic and other relevant impacts prior to making a final decision on what areas to designate as critical habitat. We are currently developing a draft economic analysis and draft environmental assessment for the proposal to designate certain areas as critical habitat for the southwestern willow flycatcher and will announce their availability at a later date. We may revise the proposal, or its supporting documents, to incorporate or address new information received during the comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

Pursuant to 50 CFR 424.16(c)(2), we may extend or reopen a comment period upon finding that there is good cause to do so. We are currently developing a draft economic analysis and draft environmental assessment for the proposal and will announce the availability of those documents and solicit data and comments from the public on these draft documents at a later date. We will also announce hearing dates concurrently with the availability of the draft documents. However, it is our intention to leave the public comment period open and uninterrupted until those documents are available for public consideration and comment. We believe that allowing the comment period to expire before the full set of supporting draft analytical documents is available could result in hurried and incomplete comments on our proposed rule and unnecessarily frustrate respondents. We deem these considerations as sufficient cause to extend the comment period.

We are required by court order to complete the final designation of critical habitat for the southwestern willow flycatcher by September 30, 2005. To meet this date, all comments on or proposed revisions to the proposed rule need to be submitted to us during the comment period as extended by this document (see **DATES**).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address, which we will honor to the extent allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comments. However, we will not consider anonymous comments. To the extent consistent with applicable law, 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 public inspection, by appointment, during normal business hours at the Arizona Ecological 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: December 6, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–27330 Filed 12–10–04; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 69, No. 238

Monday, December 13, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Senior Executive Service: Membership of Performance Review Board

ACTION: Notice.

SUMMARY: The following persons are members of the Performance Review Board for 2004.

Members: Marilyn S. Marton, SES Member, Chair; James E. Painter, SES Member; Jessalyn L. Pendarvis, SES Member; Gloria D. Steele, SES Member; Franklin C. Moore, SES Member.

FOR FURTHER INFORMATION CONTACT: Lynn Mason (202) 712–1286.

Dated: December 8, 2004.

Lee Roussel,

Chief, M/HR/EM.

[FR Doc. 04–27286 Filed 12–10–04; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Modoc Resource Advisory Committee, Alturas, California, USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Modoc National Forest's Modoc Resource Advisory Committee will meet Monday, January 10th, 2005, February 7th, 2005 and March 7th, 2005 in Alturas, California for business meetings. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The business meeting January 10th begins at 4 pm., at the Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas. Agenda topics will include the final roll-call vote for a majority of the projects submitted for funding in fiscal year 2005. Time will also be set aside for public comments at the beginning of the meeting.

The business meeting February 7th begins at 4 pm; at the Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas. Agenda topics will include existing and future projects. Time will also be set aside for public comments at the beginning of the meeting.

The business meeting March 7th begins at 4 pm; at the Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas. Agenda topics will include existing and future projects. Time will also be set aside for public comments at the beginning of the meeting.

FOR FURTHER INFORMATION CONTACT: Stan Sylva, Forest Supervisor and Designated Federal Officer, at (530) 233–8700; or Public Affairs Officer Nancy Gardner at (530) 233–8713.

Stanley G. Sylva,

Forest Supervisor.

[FR Doc. 04–27282 Filed 12–10–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Public Meeting With All Interested Parties to Comment on the Activities of the Resource Conservation and Development Program

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of comment period.

SUMMARY: The Department of Agriculture's Natural Resources Conservation Service (NRCS) will solicit comments on the activities of the Resource Conservation and Development (RC&D) Program. Section 2504 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) requires that the Secretary of Agriculture, in consultation with the National Association of Resource Conservation and Development Councils (NAR&DC), evaluate the RC&D Program to determine whether it is effectively meeting the needs of, and purposes identified by, States, units of governments, Indian tribes, non-profit organizations, and councils participating in, or served by, the program. The Secretary of Agriculture, acting through NRCS, will conduct this evaluation, and submit to the Committee on Agriculture of the U.S. House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, a report describing the results of the evaluation, together with any recommendations of the Secretary for continuing, terminating, or modifying the program by June 30, 2005.

As part of this evaluation, NRCS is conducting an open comment period for all interested parties to solicit comments on the activities of the program. Comments will be solicited on, and should be limited to, the following topics: (1) RC&D Program effectiveness in meeting the needs of the States, units of government, Indian tribes, non-profit organizations, and RC&D councils served by the program; (2) RC&D Program effectiveness in developing community leadership conservation; (3) RC&D Program elements that best serve regional conservation and development needs; (4) RC&D Program elements that can be strengthened to better serve regional conservation and development needs.

DATES: Effective Dates: The comment period will be open from December 8, 2004, through January 31, 2004. Written comments also may be submitted, no later than January 31, 2005, to Terry D'Addio, National RC&D Program Manager, Natural Resources Conservation Service, 1400 Independence Avenue SW., Room 6013, South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Terry D'Addio, Natural Resources Conservation Service, telephone: (202) 720–0557; fax: (202) 690–0639, e-mail: *terry.d'addio@usda.gov.*

Signed in Washington, DC on December 7, 2004.

Bruce I. Knight,

Chief.

[FR Doc. 04–27274 Filed 12–10–04; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Census Bureau

Business and Professional Classification Report

ACTION: Proposed collection; comment request.

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

DATES: Written comments must be submitted on or before February 11, 2005.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Scott Handmaker, U.S. Census Bureau, Room 3–1640, Washington, DC 20233, (301) 763–7107 (or via the Internet at *Scott.P.Handmaker@census.gov).*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau sponsors the SQ–CLASS, ''Business and Professional Classification Report'', to collect information needed to keep the retail, wholesale, and service samples current with the business universe. Because of rapid changes in the marketplace caused by the emergence of new businesses, the deaths of others, transfer of ownership, mergers, and so forth, on a quarterly basis the Census Bureau canvasses a sample of new Employer Identification Numbers (EINs) obtained from the Internal Revenue Service (IRS) and the Social Security Administration (SSA). Each selected firm is canvassed once for a type of business description, measure of size, and company affiliation on the establishment(s) associated with the new EIN. In essence, from the perspective of the business firm, this is a one time collection of data. A different sample of EINs is canvassed four times a year.

We are revising the SQ-CLASS to improve the flow of the questions as well as to provide information needed to assign the proper North American Industry Classification System (NAICS) code.

II. Method of Collection

We collect this information by mail, fax, and telephone follow-up.

III. Data

OMB Number: 0607–0189.

Form Number: SQ–CLASS.

Type of Review: Regular Submission.

Affected Public: Retail, Wholesale, and Service firms in the United States.

Estimated Number of Respondents: Annually, approximately 50,000.

Estimated Time Per Response: 13 minutes.

Estimated Total Annual Burden Hours: 10,835 hours.

Estimated Total Annual Cost: The cost to the respondent is estimated to be $255,598 for fiscal year 2005.

Respondent's Obligation: This collection of information is voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

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

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

Dated: December 7, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–27204 Filed 12–10–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

2005 National Census Test Coverage Follow Up

ACTION: Proposed collection; comment request.

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

DATES: Written comments must be submitted on or before February 11, 2005.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to Frank Vitrano, U.S. Census Bureau, Building 2, Room 2012, Washington, DC 20233–9200, 301–763–3961.

SUPPLEMENTARY INFORMATION

I. Abstract

Improved coverage (*See Definition of Terms*) is one of the four major goals for Census 2010. In preparation for the 2010 Census, the U.S. Census Bureau plans to conduct a series of tests. In September 2005, the Census Bureau will conduct the 2005 National Census Test (NCT) to evaluate a variety of short form questionnaire content and design modifications, and the effect of a bilingual questionnaire on response rates and data quality. The results of this test will help guide the Census Bureau as it develops the final short form questionnaire design and content for the 2010 Census.

In support of the 2005 NCT, the Coverage Followup (CFU) is intended to develop and evaluate new procedures to improve coverage and reduce duplication. We want to determine whether respondents included all the appropriate persons on their form and excluded persons who should have been counted elsewhere. The CFU will collect data to evaluate different versions of the coverage questions and

different presentations of the residence rules instructions (*See Definition of Terms*) included on the 2005 NCT questionnaire. We also will create, test and analyze an automated version of the paper coverage followup questionnaire used in the 2004 Census Test.

The Census Bureau will conduct the CFU operation from November 1, 2005 through March 6, 2006.

II. Method of Collection

Approximately 60,000 households will be included in the followup sample for this operation. The sample is broken down into five categories:

- Households that responded ''yes'' to either coverage question;
- A sample of households that responded ''no'' to both coverage questions;
- Households that contain at least one match between the StARS database (*see Definition of Terms*) and 2005 NCT data and at least one nonmatch in StARS. This will identify households with potentially missed people.
- Households containing more than six persons; and
- Households that were not asked any coverage questions.

The coverage questions for the 2005 CFU operation will be chosen based on the results of cognitive tests using four revised versions of the 2004 Census Test undercount question (Question 2) and overcount question (Question 10). These questions are designed to ensure that each individual is counted once and only once and in the right place.

The CFU interviewers will attempt to contact, via telephone, all the households that fall in the CFU sample. The followup interview will be conducted at the Census Bureau telephone call centers by U.S. Census Bureau staff. These questions will be conducted using computer-assisted telephone interviewing (CATI). The results will be used to further improve and enhance the questionnaire for the 2010 Census. For this operation, there will be no field followup (i.e personal visits by enumerators) for those households that refuse to give information over the telephone and those households that telephone interviewers are unable to reach.

The purpose of the CFU telephone contact is to identify those persons who may have been counted in more than one household or erroneously excluded from any household. The items included in the 2005 CFU questionnaire are probes that are intended to indicate whether respondents understood and properly applied the residence rules instructions on the 2005 NCT questionnaire.

Definition of Terms

Coverage—How well the Census Bureau counts people and housing units in the census.

Residence Rules Instructions—Instructions that respondents use to determine who should be counted in that household. They are meant to insure that everyone is counted once and in the right place for the primary purposes of apportionment and redistricting.

StARS—The Statistical Administrative Records System (StARS) is an administrative records database built from six national level data files.

III. Data

OMB Number: Not available.

Form Number(s): None.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 60,000.

Estimated Time Per Response: 10 minutes.

Estimated Total Annual Burden Hours: 10,000 hours.

Estimated Total Annual Cost: There is no cost to respondents except for their time to respond.

Respondent Obligation: Mandatory.

Legal Authority: Title 13 of the United States Code, Sections 141 and 193.

IV. Request for Comments

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

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

Dated: December 7, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–27205 Filed 12–10–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–825]

Stainless Steel Sheet and Strip in Coils From Germany Antidumping Duty Administrative Review; Extension of Time Limit

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

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results of the 2002–2003 administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Germany from December 6, 2004, until December 13, 2004. This review covers one manufacturer/exporter of the subject merchandise to the United States and the period July 1, 2002, through June 30, 2003.

DATES: Effective Date: December 13, 2004.

FOR FURTHER INFORMATION CONTACT: Michael Heaney at (202) 482–4475 or Robert James at (202) 482–0649, AD/CVD Operations, Office 7, 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 2002–2003 administrative review of the antidumping duty order on stainless steel sheet and strip from Germany. *See Stainless Steel Sheet and strip in Coils From Germany; Notice of Preliminary Results of Antidumping Duty Administrative Review,* 69 FR 47900 (August 6, 2004). The final results of this review are currently due no later than December 6, 2004.[1]

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the final results of an administrative review within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete an administrative review within the time specified, the administering authority (*i.e.,* the Department) may extend the final results to no later than 180 days following the publication of the preliminary results. *See* 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations. In this case,

[1] The present statutory due date of December 4, 2004 falls on a Saturday; the Final Results would, therefore, be due the next business day, *i.e.,* Monday, December 6, 2004.

the Department has determined it is not practicable to complete this review within the statutory time limit because of significant issues which require additional time to evaluate. These include: the proper treatment of certain equity transactions involving the respondent's parent firm, and various issues relating to the calculation of the respondent's cost of production.

Therefore, the Department is extending the time limit for completion of the preliminary results until December 13, 2004, in accordance with section 751(a)(3)(A) of the Act.

This notice is issued and published in accordance with section 751(a)(1) of the Act and section 351.213(h)(2) of the Department's regulations.

Dated: December 3, 2004.

Gary Taverman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 04–27301 Filed 12–10–04; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Sea Grant Review Panel

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of Solicitation for Sea Grant Review Panelists.

SUMMARY: This notice responds to the National Sea Grant College Program Act, at 33 U.S.C. 1128, which requires the Secretary of Commerce to solicit nominations at least once a year for membership on the Sea Grant Review Panel. This advisory committee provides advice on the implementation of the National Sea Grant College Program.

DATES: Resumes should be sent to the address specified and must be received by 30 days from publication.

ADDRESSES: Dr. Francis M. Schuler, Executive Director; National Sea Grant College Program; 1315 East-West Highway, Room 11716; Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Francis M. Schuler of the National Sea Grant College Program at the address given above; telephone (301) 713–2445 or fax number (301) 713–1031.

SUPPLEMENTARY INFORMATION: Section 209 of the Act establishes a Sea Grant Review Panel to advise the Secretary of Commerce, the Under Secretary for Oceans and Atmosphere, and the Director of the National Sea Grant College Program on the implementation of the Sea Grant Program. The panel provides advice on such matters as:

(a) The Sea Grant Fellowship Program;

(b) applications or proposals for, and performance under, grants and contracts awarded under the Sea Grant Program Improvement Act of 1976, as amended at 33 U.S.C. 1124;

(c) the designation and operation of sea grant colleges and sea grant institutes; and the operation of the sea grant program;

(d) the formulation and application of the planning guidelines and priorities under 33 U.S.C. 1123 (a) and (c)(1); and

(e) such other matters as the Secretary refers to the panel for review and advice.

The Panel is to consist of 15 voting members composed as follows: Not less than eight of the voting members of the panel should be individuals who, by reason of knowledge, experience, or training, are especially qualified in one or more of the disciplines and fields included in marine science. The other voting members shall be individuals who by reason of knowledge, experience, or training, are especially qualified in, or representative of, education, extension service, state government, industry, economics, planning, or any other activity which is appropriate to, and important for, any effort to enhance the understanding, assessment, development, utilization, or conservation of ocean and coastal resources. No individual is eligible to be a voting member of the panel if the individual is (a) the director of a sea grant college, sea grant regional consortium, or sea grant program, (b) an applicant for or beneficiary (as determined by the Secretary) of any grant or contract under 33 U.S.C. 1124 or (c) a full-time officer or employee of the United States. The Director of the National Sea Grant College Program and one Director of a Sea Grant Program also serve as non-voting members. Panel members are appointed for a 4-year term.

Dated: December 8, 2004.

Sharon Schroeder,

Director, Program Policy Division, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 04–27263 Filed 12–10–04; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Olympic Coast National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Olympic Coast National Marine Sanctuary (OCNMS or Sanctuary) is seeking applicants for the following vacant seats on its Sanctuary Advisory Council (Advisory Council): Citizen-at-large member and alternate, Tourism/Chamber of Commerce member and alternate, and Conservation alternate. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the Sanctuary. Applicants who are chosen as members should expect to serve 3-year terms, pursuant to the Advisory Council's Charter.

DATES: Applications are due by December 31, 2004.

ADDRESSES: Application kits may be obtained from Olympia Coast National Marine Sanctuary, 115 East Railroad Ave., Suite 301, Port Angeles, WA 98362. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Andrew Palmer, 115 East Railroad Ave., Suite 301, Port Angeles, WA 98362. Telephone (360) 457–6622, ext. 15. E-mail *andrew.palmer@noss.gov.*

SUPPLEMENTARY INFORMATION: Sanctuary Advisory Council members and alternatives serve three-year terms. The Advisory Council meets bi-monthly in public sessions in communities in and around the Olympic Coast National Marine Sanctuary.

The Olympic Coast National Marine Sanctuary Advisory Council was established in December 1998 to assure continued public participation in the management of the sanctuary. Serving in a volunteer capacity, the advisory council's 15 voting members represent a variety of local user groups, as well as the general public. In addition, 5 Federal Government agencies and one

Federally funded program serve as non-voting, *ex-officio* members. Since its establishment, the advisory council has played a vital role in advising the sanctuary and NOAA on critical issues. In addition to providing advice on management issues facing the Sanctuary, the Council members serve as a communication bridge between constituents and the Sanctuary staff.

Authority: 16 U.S.C. 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: December 5, 2004.

Daniel J. Basta,

Director, National Marine Sanctuary Program, National Ocean Services, National Oceanic and Atmospheric Administration.

[FR Doc. 04–27242 Filed 12–10–04; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070104A]

Small Takes of Marine Mammals Incidental to Specified Activities; Marine Seismic Survey in the Eastern Tropical Pacific Ocean off Central America

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting oceanographic seismic surveys in the in the eastern tropical Pacific Ocean (ETPO) off Central America has been issued to the Lamont-Doherty Earth Observatory (L-DEO), a part of Columbia University.

DATES: Effective from November 19, 2004 through November 18, 2005.

ADDRESSES: The application and authorization are available by writing to Steve Leathery, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, by telephoning the contact listed here and are also available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Small_Take/smalltake_info.htm#applications.*

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of Protected Resources, NMFS, (301) 713–2289, ext 128.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On June 28, 2004, NMFS received an application from L-DEO for the taking, by harassment, of several species of marine mammals incidental to conducting a marine seismic survey program during a 4–week period beginning in late November 2004 in the Exclusive Economic Zones of El Salvador, Honduras, Nicaragua, and Costa Rica. The purpose of the seismic survey is to investigate stratigraphic development in the presence of tectonic forcing in the Sandino basin off Nicaragua and Costa Rica. Because of the variations in subsidence/uplift histories within the Sandino Basin, and the inability to provide whole-basin coverage during a research cruise of reasonable length, data will be collected in two primary grids in the Sandino Basin and a third, smaller grid off Nicoya Peninsula. Grid descriptions are provided in L-DEO's application.

Description of the Activity

The seismic survey will involve one vessel. The source vessel, the *R/V Maurice Ewing*, will deploy three low-energy GI airguns as an energy source, with a total discharge volume of up to 315 in3. As the airguns are towed along the survey lines, the towed hydrophone system will receive the returning acoustic signals.

The program will consist of a maximum of 6048 km (3266 nm) of surveys. Water depths within the survey area are up to 5000 m (16,400 ft); most of the survey will be conducted in water depths less than 2000 m (6560 ft). The area to be surveyed extends from approximately 4 to 150 km (2 to 80 nm) offshore. The airguns may also be operated closer to, and farther from, shore while the ship is maneuvering toward or between survey lines.

The proposed program will use conventional seismic methodology with a small towed array of three GI airguns as the energy source, and a towed hydrophone streamer as the receiver system. The energy to the airguns is compressed air supplied by compressors on board the source vessel. Seismic pulses will be emitted at intervals of 5 seconds. The 5–sec spacing corresponds to a shot interval of approximately 12.5 m (41 ft).

The generator chamber of each GI gun, the one responsible for introducing the sound pulse into the ocean, is 105 in^3. The injector chamber injects air into the previously generated bubble to maintain its shape, and does not introduce appreciably more sound into the water. The three 105–in^3 GI guns will be towed behind the *Ewing*, at a

depth of 2.5 m (8.2 ft). Operating pressure will be 2000 psi. The GI guns will be 7.8 m (25.6 ft) apart and will be towed 37 m (121.4 ft) behind the *Ewing*. The *Ewing* will also tow a hydrophone streamer that is up to 1500 m (4922 ft) long. As the airguns are operated along the survey lines, the hydrophone receiving system will receive and record the returning acoustic signals.

General-Injector Airguns

Three GI-airguns will be used from the *Ewing* during the proposed program. These 3 GI-airguns have a zero to peak (peak) source output of 240.7 dB re 1 microPascal-m (10.8 bar-m) and a peak-to-peak (pk-pk) level of 246 dB (21 bar-m). However, these downward-directed source levels do not represent actual sound levels that can be measured at any location in the water. Rather, they represent the level that would be found 1 m (3.3 ft) from a hypothetical point source emitting the same total amount of sound as is emitted by the combined airguns in the airgun array. The actual received level at any location in the water near the airguns will not exceed the source level of the strongest individual source and actual levels experienced by any organism more than 1 m (3.3 ft) from any GI gun will be significantly lower.

Further, the root mean square (rms) received levels that are used as impact criteria for marine mammals (see Richardson *et al.*, 1995) are not directly comparable to these peak or pk-pk values that are normally used to characterize source levels of airgun arrays. The measurement units used to describe airgun sources, peak or pk-pk decibels, are always higher than the rms decibels referred to in biological literature. For example, a measured received level of 160 decibels rms in the far field would typically correspond to a peak measurement of about 170 to 172 dB, and to a pk-pk measurement of about 176 to 178 decibels, as measured for the same pulse received at the same location (Greene, 1997; McCauley *et al.* 1998, 2000). The precise difference between rms and peak or pk-pk values depends on the frequency content and duration of the pulse, among other factors. However, the rms level is always lower than the peak or pk-pk level for an airgun-type source.

The depth at which the sources are towed has a major impact on the maximum near-field output, because the energy output is constrained by ambient pressure. The normal tow depth of the sources to be used in this project is 2.5 m (6.7 ft), where the ambient pressure is approximately 3 decibars. This also limits output, as the 3 decibars of confining pressure cannot fully constrain the source output, with the result that there is loss of energy at the sea surface. Additional discussion of the characteristics of airgun pulses is provided later in this document (see Characteristics of Airgun Pulses).

For the GI-airguns, the sound pressure fields have been modeled by L-DEO in relation to distance and direction from the airguns, and in relation to depth. Table 1 shows the maximum distances from the airguns where sound levels of 190-, 180-, 170- and 160–dB re 1 microPa (rms) are predicted to be received. Some empirical data concerning the 180, 170 and 160 dB distances have been acquired for several airgun configurations, including two GI-guns, based on measurements during an acoustic verification study conducted by L-DEO in the northern Gulf of Mexico from 27 May to 3 June 2003 (see Tolstoy *et al.*, 2004). Although the results are limited and do not include measurements for three GI-guns, the data for other airgun configurations showed that water depth affected the size of the radii around the airguns where the received level would be 180 dB re 1 microPa (rms), NMFS' current injury threshold safety criterion applicable to cetaceans (NMFS, 2000). Similar depth-related variation is likely in the 190–dB distances applicable to pinnipeds. Water depths within the survey area are up to 5000 m (16400 ft), but the major part of the survey will be conducted in water depths less than 1000 m (3281 ft), as shown in Table 1, column 3.

Table 1. Estimated distances to which sound levels ≥190, 180, 170 and 160 dB re 1 μPa (rms) might be received from (A) three 105 in^3 GI guns and (B) one of those guns, as planned for the seismic survey off the west coast of Central America during November December 2004. Distance estimates are given for operations in deep, intermediate, and shallow water. The 180– and 190–dB distances are the safety radii to be used during the survey. Three GI guns will be used for the survey and one GI gun will be used during power down.

Airgun configuration	Water depth	% of seismic survey conducted	Estimated distances at received levels (m)			
			190 dB	180 dB	170 dB	160 dB
A. 3 GI guns	>1000 m	11.6	26	82	265	823
	100–1000 m	57.9	39	123	398	1235
	<100 m	30.6	390	574	1325	2469
B. 1 GI gun	>1000 m		10	27	90	275
	00–1000 m		15	41	135	413
	<100		150	189	450	825

The empirical data indicate that, for deep water (greater than 1000 m (3281 ft)), the L-DEO model for the airguns tends to overestimate the received sound levels at a given distance (Tolstoy *et al.*, 2004). However, to be precautionary pending acquisition of additional empirical data, the mitigation safety radii during airgun operations in deep water will be the values predicted by L-DEO's model (see Table 1).

The 180– and 190–dB radii were not measured for three GI- guns operating in shallow water (less than 100 m (328 ft)). However, the measured 180–dB radius for the 6–airgun array operating in shallow water was 6.8x that predicted by L-DEO's model for operation of the six-airgun array in deep water. This conservative correction factor is applied to the model estimates to predict the radii for the three GI-guns in shallow water, as shown in Table 1.

Empirical measurements were not conducted for intermediate depths (100–1000 m (328–3281 ft)). On the expectation that results will fall between those for shallow and deep water, a 1.5x correction factor is applied to the estimates provided by the model for deep water situations, as shown in Table 1. This is the same factor that was applied to the model estimates during L-DEO cruises in 2003.

Bathymetric Sonar and Sub-bottom Profiler

In addition to the 3 GI-airguns, a multibeam bathymetric sonar and a low-

energy 3.5–kHz sub-bottom profiler will be used during the seismic profiling and continuously when underway.

Bathymetric Sonar-Atlas Hydrosweep – The 15.5–kHz Atlas Hydrosweep sonar is mounted on the hull of the *Maurice Ewing*, and it operates in three modes, depending on the water depth. There is one shallow water mode and two deep-water modes: an Omni mode (similar to the shallow-water mode but with a source output of 220 dB (rms)) and a Rotational Directional Transmission (RDT) mode. The RDT mode is normally used during deep-water operation and has a 237–dB rms source output. In the RDT mode, each ''ping'' consists of five successive transmissions, each ensonifying a beam that extends 2.67 degrees fore-aft and approximately 30 degrees in the cross-track direction. The five successive transmissions (segments) sweep from port to starboard with minor overlap, spanning an overall cross-track angular extent of about 140 degrees, with small (much less than 1 millisec) gaps between the pulses for successive 30–degree segments. The total duration of the ''ping,'' including all five successive segments, varies with water depth, but is 1 millisec in water depths less than 500 m and 10 millisec in the deepest water. For each segment, ping duration is 1/5 of these values or 2/5 for a receiver in the overlap area ensonified by two beam segments. The ''ping'' interval during RDT operations depends on water depth and varies from once per second in less than 500 m (1640.5 ft) water depth to once per 15 seconds in the deepest water. During the project, the Atlas Hydrosweep will generally be used in waters greater than 800 m (2624.7 ft), but whenever water depths are less than 400 m (1312 ft) the source output is 210 dB re 1 microPa-m (rms) and a single 1–ms pulse or ''ping'' per second is transmitted.

Sub-bottom Profiler – The sub-bottom profiler is normally operated to provide information about the sedimentary features and the bottom topography that is simultaneously being mapped by the Hydrosweep. The energy from the sub-bottom profiler is directed downward by a 3.5–kHz transducer mounted in the hull of the *Ewing*. The output varies with water depth from 50 watts in shallow water to 800 watts in deep water. Pulse interval is 1 second (s) but a common mode of operation is to broadcast five pulses at 1–s intervals followed by a 5–s pause. The beamwidth is approximately 300 and is directed downward. Maximum source output is 204 dB re 1 microPa (800 watts) while nominal source output is 200 dB re 1 microPa (500 watts). Pulse duration will be 4, 2, or 1 ms, and the bandwith of pulses will be 1.0 kHz, 0.5 kHz, or 0.25 kHz, respectively.

Although the sound levels have not been measured directly for the sub-bottom profilers used by the *Ewing*, Burgess and Lawson (2000) measured sounds propagating more or less horizontally from a sub-bottom profiler similar to the L-DEO unit with similar source output (i.e., 205 dB re 1 microPa m). For that profiler, the 160- and 180–dB re 1 microPa (rms) radii in the horizontal direction were estimated to be, respectively, near 20 m (66 ft) and 8 m (26 ft) from the source, as measured in 13 m (43 ft) water depth. The corresponding distances for an animal in the beam below the transducer would be greater, on the order of 180 m (591 ft) and 18 m (59 ft) respectively, assuming spherical spreading. Thus the received level for the L-DEO sub-bottom profiler would be expected to decrease to 160 and 180 dB about 160 m (525 ft) and 16 m (52 ft) below the transducer, respectively, assuming spherical spreading. Corresponding distances in the horizontal plane would be lower, given the directionality of this source (30° beamwidth) and the measurements of Burgess and Lawson (2000).

Characteristics of Airgun Pulses

Discussion of the characteristics of airgun pulses was provided in several previous **Federal Register** documents (see 69 FR 31792 (June 7, 2004) or 69 FR 34996 (June 23, 2004)) and is not repeated here. Additional information is contained in the L-DEO application, especially in Appendix A.

Comments and Responses

A notice of receipt and request for 30–day public comment on the application and proposed authorization was published on September 30, 2004 (69 FR 58396). During the 30–day public comment period, NMFS received one comment which expressed the opinion that marine mammals should not be killed and that these killings are not small. As noted in this document, NMFS believes that no marine mammals are likely to be seriously injured or killed as a result of this L-DEO conducting seismic surveys.

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the ETPO area and its associated marine mammals can be found in the L-DEO application and a number of documents referenced in the L-DEO application, and is not repeated here. Thirty-four species of cetaceans are known to occur in the ETPO, belonging to two taxonomic groups: odontocetes (sperm whale, dwarf sperm whale, pygmy sperm whale, Cuvier's beaked whale, Longman's beaked whale, pygmy beaked whale, gingko-toothed beaked whale, Blainville's beaked whale, rough-toothed dolphin, bottlenose dolphin, pantropical spotted dolphin, spinner dolphin, striped dolphin, short-beaked common dolphin, Fraser's dolphin, Risso's dolphin, melon-headed whale, pygmy killer whale, false killer whale, killer whale, and short-finned pilot whale); and mysticetes (humpback whale, minke whale, sei whale, fin whale, Bryde's whale, and blue whale). Of these 34 species, 27 cetacean species are likely to occur in the survey area. These 27 species are shown in Table 2 of this document and are described in L-DEO (2004)).

Seven cetacean species (Pacific white-sided dolphin, Baird's beaked whale, long-beaked common dolphin, dusky dolphin, southern right whale dolphin, Burmeister's porpoise, and long-finned pilot whale) although present in the wider ETPO, are unlikely to be found in L-DEO's proposed survey area (L-DEO, 2004). These species are mentioned briefly in L-DEO's application, but are unlikely to be taken by incidental harassment and therefore are not analyzed further in this document.

Six species of pinnipeds are known to occur in the ETPO: Guadalupe fur seal, California sea lion, Galapagos sea lion, Galapagos fur seal, southern sea lion, and South American fur seal. The last four species could potentially occur within the proposed seismic survey area, but they are expected to be, at most, uncommon. Ranges of the first two species are substantially north of the proposed seismic survey area and therefore unlikely to be taken by incidental harassment.

More detailed information on these species is contained in the L-DEO application, which is available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Small_Take/smalltake_info.htm#applications*.

Potential Effects on Marine Mammals

The effects of sounds from airgun arrays might include one or more of the following: tolerance, masking of natural sounds, behavioral disturbance and perhaps temporary or permanent hearing impairment (Richardson *et al.* 1995). In addition, intense acoustic events may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

Effects of Seismic Surveys on Marine Mammals

The L-DEO application provides the following information on what is known about the effects on marine mammals of the types of seismic operations planned by L-DEO. The types of effects considered here are (1) tolerance, (2) masking of natural sounds, (2) behavioral disturbance, and (3) potential hearing impairment and other non-auditory physical effects (Richardson *et al.*, 1995). Given the relatively small size of the airguns planned for the present project, its effects are anticipated to be considerably less than would be the case with a large array of airguns. L-DEO and NMFS believe it is very unlikely that there would be any cases of temporary or especially permanent hearing impairment, or non-auditory physical effects. Also, behavioral disturbance is expected to be limited to distances less than 823 m (2700 ft) in deep water and 2469 m (8100 ft) in shallow water, the zones calculated for 160 dB or the onset of Level B harassment. Additional discussion on species-specific effects can be found in the L-DEO application.

Tolerance

Numerous studies (referenced in L-DEO, 2004) have shown that pulsed sounds from airguns are often readily detectable in the water at distances of many kilometers, but that marine mammals at distances more than a few kilometers from operating seismic vessels often show no apparent response. That is often true even in cases when the pulsed sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of that mammal group. However, most measurements of airgun sounds that have been reported concerned sounds from larger arrays of airguns, whose sounds would be detectable farther away than that planned for use in the proposed survey. Although various baleen whales, toothed whales, and pinnipeds have been shown to react behaviorally to airgun pulses under some conditions, at other times mammals of all three types have shown no overt reactions. In general, pinnipeds and small odontocetes seem to be more tolerant of exposure to airgun pulses than are baleen whales. Given the relatively small and low-energy airgun source planned for use in this project, mammals are expected to tolerate being closer to this source than would be the case for a larger airgun source typical of most seismic surveys.

Masking

Masking effects of pulsed sounds on marine mammal calls and other natural sounds are expected to be limited (due in part to the small size of the GI airguns), although there are very few specific data on this. Given the small source planned for use in the ETPO, there is even less potential for masking of baleen or sperm whale calls during the present research than in most seismic surveys (L-DEO, 2004). Seismic sounds are short pulses generally occurring for less than 1 sec every 5 seconds or so. The 5–sec spacing corresponds to a shot interval of approximately 12.5 m (41 ft). Sounds from the multibeam sonar are very short pulses, occurring for 1–10 msec once every 1 to 15 sec, depending on water depth. (During operations in deep water, the duration of each pulse from the multibeam sonar as received at any one location would actually be only 1/5 or at most 2/5 of 1–10 msec, given the segmented nature of the pulses.)

Some whales are known to continue calling in the presence of seismic pulses. Their calls can be heard between the seismic pulses (Richardson *et al.*, 1986; McDonald *et al.*, 1995, Greene *et al.*, 1999). Although there has been one report that sperm whales cease calling when exposed to pulses from a very distant seismic ship (Bowles *et al.*, 1994), a recent study reports that sperm whales continued calling in the presence of seismic pulses (Madsen *et al.*, 2002). Given the relatively small source planned for use during this survey, there is even less potential for masking of sperm whale calls during the present study than in most seismic surveys. Masking effects of seismic pulses are expected to be negligible in the case of the smaller odontocete cetaceans, given the intermittent nature of seismic pulses and the relatively low source level of the airguns to be used in the ETPO. Also, the sounds important to small odontocetes are predominantly at much higher frequencies than are airgun sounds.

Most of the energy in the sound pulses emitted by airgun arrays is at low frequencies, with strongest spectrum levels below 200 Hz and considerably lower spectrum levels above 1000 Hz. These low frequencies are mainly used by mysticetes, but generally not by odontocetes or pinnipeds. An industrial sound source will reduce the effective communication or echolocation distance only if its frequency is close to that of the marine mammal signal. If little or no overlap occurs between the industrial noise and the frequencies used, as in the case of many marine mammals relative to airgun sounds, communication and echolocation are not expected to be disrupted. Furthermore, the discontinuous nature of seismic pulses makes significant masking effects unlikely even for mysticetes.

A few cetaceans are known to increase the source levels of their calls in the presence of elevated sound levels, or possibly to shift their peak frequencies in response to strong sound signals (Dahlheim, 1987; Au, 1993; Lesage *et al.*, 1999; Terhune, 1999; as reviewed in Richardson *et al.*, 1995). These studies involved exposure to other types of anthropogenic sounds, not seismic pulses, and it is not known whether these types of responses ever occur upon exposure to seismic sounds. If so, these adaptations, along with directional hearing, pre-adaptation to tolerate some masking by natural sounds (Richardson et al., 1995) and the relatively low-power acoustic sources being used in this survey, would all reduce the importance of masking marine mammal vocalizations.

Disturbance by Seismic Surveys

Disturbance includes a variety of effects, including subtle changes in behavior, more conspicuous dramatic changes in activities, and displacement. However, there are difficulties in defining which marine mammals should be counted as ''taken by harassment''. For many species and situations, scientists do not have detailed information about their reactions to noise, including reactions to seismic (and sonar) pulses. Behavioral reactions of marine mammals to sound are difficult to predict. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors. If a marine mammal does react to an underwater sound by changing its behavior or moving a small distance, the impacts of the change may not rise to the level of a disruption of a behavioral pattern. However, if a sound source would displace marine mammals from an important feeding or breeding area, such a disturbance may constitute Level B harassment under the MMPA. Given the many uncertainties in predicting the quantity and types of impacts of noise on marine mammals, scientists often resort to estimating how many mammals may be present within a particular distance of industrial activities or exposed to a particular level of industrial sound. With the possible exception of beaked whales, NMFS believes that this is a conservative approach and likely overestimates the numbers of marine mammals that are

affected in some biologically important manner.

The sound exposure levels used to estimate how many marine mammals might be harassed behaviorally by the seismic survey are based on behavioral observations during studies of several species. However, information is lacking for many species. Detailed information on potential disturbance effects on baleen whales, toothed whales, and pinnipeds can be found in L-DEO's ETPO application.

Hearing Impairment and Other Physical Effects

Temporary or permanent hearing impairment is a possibility when marine mammals are exposed to very strong sounds, but there has been no specific documentation of this for marine mammals exposed to airgun pulses. Current NMFS policy precautionarily sets impulsive sounds equal to or greater than 180 and 190 dB re 1 microPa (rms) as the exposure thresholds for onset of Level A harassment for cetaceans and pinnipeds, respectively (NMFS, 2000). Those criteria have been used in defining the safety (shut-down) radii for seismic surveys. However, those criteria were established before there were any data on the minimum received levels of sounds necessary to cause auditory impairment in marine mammals. As discussed in the L-DEO application and summarized here,

1. The 180–dB criterion for onset of Level A harassment in cetaceans is probably quite precautionary, i.e., lower than necessary to avoid TTS let alone permanent auditory injury, at least for delphinids.

2. The minimum sound level necessary to cause permanent hearing impairment is higher, by a variable and generally unknown amount, than the level that induces barely-detectable TTS.

3. The level associated with the onset of TTS is often considered to be a level below which there is no danger of permanent damage.

Because of the small size of the three 105 in3 GI-airguns, along with the required monitoring and mitigation measures, there is little likelihood that any marine mammals will be exposed to sounds sufficiently strong to cause even the mildest (and reversible) form of hearing impairment. Several aspects of the monitoring and mitigation measures for this project are designed to detect marine mammals occurring near the 3 GI-airguns (and multibeam bathymetric sonar), and to avoid exposing them to sound pulses that might (at least in theory) cause hearing impairment. In addition, research and monitoring studies on gray whales, bowhead whales and other cetacean species indicate that many cetaceans are likely to show some avoidance of the area with ongoing seismic operations. In these cases, the avoidance responses of the animals themselves will reduce or avoid the possibility of hearing impairment.

Non-auditory physical effects may also occur in marine mammals exposed to strong underwater pulsed sound. Possible types of non-auditory physiological effects or injuries that theoretically might occur in mammals close to a strong sound source include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage. It is possible that some marine mammal species (i.e., beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds. However, L-DEO and NMFS believe that it is especially unlikely that any of these non-auditory effects would occur during the proposed survey given the small size of the sources, the brief duration of exposure of any given mammal, and the mitigation and monitoring measures. The following paragraphs discuss the possibility of TTS, permanent threshold shift (PTS), and non-auditory physical effects.

TTS

TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). When an animal experiences TTS, its hearing threshold rises and a sound must be stronger in order to be heard. TTS can last from minutes or hours to (in cases of strong TTS) days. Richardson *et al.* (1995) note that the magnitude of TTS depends on the level and duration of noise exposure, among other considerations. For sound exposures at or somewhat above the TTS threshold, hearing sensitivity recovers rapidly after exposure to the noise ends. Little data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals.

For toothed whales exposed to single short pulses, the TTS threshold appears to be, to a first approximation, a function of the energy content of the pulse (Finneran *et al.*, 2002). Given the available data, the received level of a single seismic pulse might need to be on the order of 210 dB re 1 microPa rms (approx. 221 226 dB pk pk) in order to produce brief, mild TTS. Exposure to several seismic pulses at received levels near 200 205 dB (rms) might result in slight TTS in a small odontocete, assuming the TTS threshold is (to a first approximation) a function of the total received pulse energy (Finneran *et al.*, 2002). Seismic pulses with received levels of 200 205 dB or more are usually restricted to a zone of no more than 100 m (328 ft) around a seismic vessel operating a large array of airguns. Such sound levels would be limited to distances within a few meters of the small airguns planned for use during this project.

There are no data, direct or indirect, on levels or properties of sound that are required to induce TTS in any baleen whale. However, TTS is not expected to occur during this survey given the small size of the source, and the strong likelihood that baleen whales would avoid the approaching airguns (or vessel) before being exposed to levels high enough for there to be any possibility of TTS.

TTS thresholds for pinnipeds exposed to brief pulses (single or multiple) have not been measured, although exposures up to 183 dB re 1 microPa (rms) have been shown to be insufficient to induce TTS in California sea lions (Finneran et al., 2003). However, prolonged exposures show that some pinnipeds may incur TTS at somewhat lower received levels than do small odontocetes exposed for similar durations (Kastak *et al.*, 1999; Ketten *et al.*, 2001; Au *et al.*, 2000).

A marine mammal within a zone of less than 100 m (328 ft) around a typical large array of operating airguns might be exposed to a few seismic pulses with levels of ≥205 dB, and possibly more pulses if the mammal moved with the seismic vessel. Also, around smaller arrays, such as the three GI-airgun array that will be used during this survey, a marine mammal would need to be even closer to the source to be exposed to levels greater than or equal to 205 dB, at least in waters greater than 100 m (328 ft) deep. However, as noted previously, most cetacean species tend to avoid operating airguns, although not all individuals do so. In addition, ramping up airgun arrays, which is now standard operational protocol for L-DEO and other seismic operators, should allow cetaceans to move away from the seismic source and to avoid being exposed to the full acoustic output of the airgun array. It is unlikely that these cetaceans would be exposed to airgun pulses at a sufficiently high level for a sufficiently long period to cause more than mild TTS, given the relative movement of the vessel and the marine mammal. However, TTS would be more likely in any odontocetes that bow-ride or otherwise linger near the airguns. While bow-riding, odontocetes would

be at or above the surface, and thus not exposed to strong sound pulses given the pressure-release effect at the surface. However, bow-riding animals generally dive below the surface intermittently. If they did so while bow-riding near airguns, they would be exposed to strong sound pulses, possibly repeatedly. During this project, the bow of the Ewing will be 107 m (351 ft) ahead of the airguns and the 205–dB zone would be less than 100 m (328 ft). Thus, TTS would not be expected in the case of odontocetes bow riding during airgun operations and if some cetaceans did incur TTS through exposure to airgun sounds, it would very likely be a temporary and reversible phenomenon.

Currently, NMFS believes that, to avoid Level A harassment, cetaceans should not be exposed to pulsed underwater noise at received levels exceeding 180 dB re 1 microPa (rms). The corresponding limit for pinnipeds has been set at 190 dB. The predicted 180- and 190–dB distances for the airgun arrays operated by L-DEO during this activity are summarized in Table 1 in this document. These sound levels are not considered to be the levels at or above which TTS will occur. Rather, they are the received levels above which, in the view of a panel of bioacoustics specialists convened by NMFS (at a time before TTS measurements for marine mammals started to become available), one could not be certain that there would be no injurious effects, auditory or otherwise, to marine mammals. As noted here, TTS data that are now available imply that, at least for dolphins, TTS is unlikely to occur unless the dolphins are exposed to airgun pulses substantially stronger than 180 dB re 1 microPa (rms).

It has also been shown that most whales tend to avoid ships and associated seismic operations. Thus, whales will likely not be exposed to such high levels of airgun sounds. Because of the slow ship speed, any whales close to the trackline could move away before the sounds become sufficiently strong for there to be any potential for hearing impairment. Therefore, there is little potential for whales being close enough to an array to experience TTS. In addition, as mentioned previously, ramping up the airgun array should allow cetaceans to move away from the seismic source and avoid being exposed to the full acoustic output of the GI airguns.

Permanent Threshold Shift (PTS)

When PTS occurs there is physical damage to the sound receptors in the ear. In some cases there can be total or partial deafness, while in other cases the animal has an impaired ability to hear sounds in specific frequency ranges. Although there is no specific evidence that exposure to pulses of airgun sounds can cause PTS in any marine mammals, even with the largest airgun arrays, physical damage to a mammal's hearing apparatus may occur if it is exposed to sound impulses that have very high peak pressures, especially if they have very short rise times (time required for sound pulse to reach peak pressure from the baseline pressure). Such damage can result in a permanent decrease in functional sensitivity of the hearing system at some or all frequencies.

Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage in terrestrial mammals. However, very prolonged exposure to sound strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter, 1985). Relationships between TTS and PTS thresholds have not been studied in marine mammals but are assumed to be similar to those in humans and other terrestrial mammals. The low-to-moderate levels of TTS that have been induced in captive odontocetes and pinnipeds during recent controlled studies of TTS have been confirmed to be temporary, with no measurable residual PTS (Kastak *et al.*, 1999; Schlundt *et al.*, 2000; Finneran *et al.*, 2002; Nachtigall *et al.*, 2003). In terrestrial mammals, the received sound level from a single non-impulsive sound exposure must be far above the TTS threshold for any risk of permanent hearing damage (Kryter, 1994; Richardson *et al.*, 1995). For impulse sounds with very rapid rise times (e.g., those associated with explosions or gunfire), a received level not greatly in excess of the TTS threshold may start to elicit PTS. Rise times for airgun pulses are rapid, but less rapid than for explosions.

Some factors that contribute to onset of PTS are as follows: (1) exposure to single very intense noises, (2) repetitive exposure to intense sounds that individually cause TTS but not PTS, and (3) recurrent ear infections or (in captive animals) exposure to certain drugs.

Cavanagh (2000) has reviewed the thresholds used to define TTS and PTS. Based on his review and SACLANT (1998), it is reasonable to assume that PTS might occur at a received sound level 20 dB or more above that which induces mild TTS. However, for PTS to occur at a received level only 20 dB above the TTS threshold, it is probable that the animal would have to be exposed to the strong sound for an extended period.

Sound frequency, impulse duration, peak amplitude, rise time, and number of pulses are the main factors thought to determine the onset and extent of PTS. Based on existing data, Ketten (1994) has noted that the criteria for differentiating the sound pressure levels that result in PTS (or TTS) are location and species-specific. PTS effects may also be influenced strongly by the health of the receiver's ear.

Given that marine mammals are unlikely to be exposed to received levels of seismic pulses that could cause TTS, it is highly unlikely that they would sustain permanent hearing impairment. If we assume that the TTS threshold for odontocetes for exposure to a series of seismic pulses may be on the order of 220 dB re 1 microPa (pk-pk) (approximately 204 dB re 1 microPa rms), then the PTS threshold might be about 240 dB re 1 microPa (pk-pk). In the units used by geophysicists, this is 10 bar-m. Such levels are found only in the immediate vicinity of the largest airguns (Richardson *et al.*, 1995; Caldwell and Dragoset, 2000). However, it is very unlikely that an odontocete would remain within a few meters of a large airgun for sufficiently long to incur PTS. The TTS (and thus PTS) thresholds of baleen whales and pinnipeds may be lower, and thus may extend to a somewhat greater distance from the source. However, baleen whales generally avoid the immediate area around operating seismic vessels, so it is unlikely that a baleen whale could incur PTS from exposure to airgun pulses. Some pinnipeds do not show strong avoidance of operating airguns. In summary, it is highly unlikely that marine mammals could receive sounds strong enough (and over a sufficient period of time) to cause permanent hearing impairment during this project. In the subject seismic survey marine mammals are unlikely to be exposed to received levels of seismic pulses strong enough to cause TTS, and because of the higher level of sound necessary to cause PTS, it is even less likely that PTS could occur. This is due to the fact that even levels immediately adjacent to the three GI-airguns may not be sufficient to induce PTS because the mammal would not be exposed to more than one strong pulse unless it swam alongside an airgun for a period of time.

Strandings and Mortality

Marine mammals close to underwater detonations of high explosives can be killed or severely injured, and the auditory organs are especially

susceptible to injury (Ketten *et al.*, 1993; Ketten, 1995). Airgun pulses are less energetic and have slower rise times. While there is no documented evidence that airgun arrays can cause serious injury, death, or stranding, the association of mass strandings of beaked whales with naval exercises and, recently, an L-DEO seismic survey have raised the possibility that beaked whales may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds.

In March 2000, several beaked whales that had been exposed to repeated pulses from high intensity, mid-frequency military sonars stranded and died in the Providence Channels of the Bahamas Islands, and were subsequently found to have incurred cranial and ear damage (NOAA and USN, 2001). Based on post-mortem analyses, it was concluded that an acoustic event caused hemorrhages in and near the auditory region of some beaked whales. These hemorrhages occurred before death. They would not necessarily have caused death or permanent hearing damage, but could have compromised hearing and navigational ability (NOAA and USN, 2001). The researchers concluded that acoustic exposure caused this damage and triggered stranding, which resulted in overheating, cardiovascular collapse, and physiological shock that ultimately led to the death of the stranded beaked whales. During the event, five naval vessels used their AN/SQS–53C or -56 hull-mounted active sonars for a period of 16 hours. The sonars produced narrow (<100 Hz) bandwidth signals at center frequencies of 2.6 and 3.3 kHz (-53C), and 6.8 to 8.2 kHz (-56). The respective source levels were usually 235 and 223 dB re 1 μPa, but the -53C briefly operated at an unstated but substantially higher source level. The unusual bathymetry and constricted channel where the strandings occurred were conducive to channeling sound. This, and the extended operations by multiple sonars, apparently prevented escape of the animals to the open sea. In addition to the strandings, there are reports that beaked whales were no longer present in the Providence Channel region after the event, suggesting that other beaked whales either abandoned the area or perhaps died at sea (Balcomb and Claridge, 2001).

Other strandings of beaked whales associated with operation of military sonars have also been reported (e.g., Simmonds and Lopez-Jurado, 1991; Frantzis, 1998). In these cases, it was not determined whether there were noise-induced injuries to the ears or other organs. Another stranding of 15 beaked whales occurred on 24–25 September 2002 in the Canary Islands, where naval maneuvers were taking place. Jepson *et al.* (2003) concluded that cetaceans might be subject to decompression injury (the bends or air embolism) in some situations. If so, this might occur if the mammals ascend unusually quickly when exposed to aversive sounds. Previously, it was widely assumed that diving marine mammals are not subject to decompression injury.

It is important to note that seismic pulses and mid-frequency sonar pulses are quite different. Sounds produced by the types of airgun arrays used to profile sub-sea geological structures are broadband with most of the energy below 1 kHz. Typical military mid-frequency sonars operate at frequencies of 2 to 10 kHz, generally with a relatively narrow bandwidth at any one time (though the center frequency may change over time). Because seismic and sonar sounds have considerably different characteristics and duty cycles, it is not appropriate to assume that there is a direct connection between the effects of military sonar and seismic surveys on marine mammals. However, evidence that sonar pulses can, in special circumstances, lead to hearing damage and, indirectly, mortality suggests that caution is warranted when dealing with exposure of marine mammals to any high-intensity pulsed sound.

In addition to the sonar-related strandings, there was a September, 2002 stranding of two Cuvier's beaked whales in the Gulf of California (Mexico) when a seismic survey by the *Ewing* was underway in the general area (Malakoff, 2002). The airgun array in use during that project was the *Ewing*'s 20–gun 8490–in^3 array. This might be a first indication that seismic surveys can have effects, at least on beaked whales, similar to the suspected effects of naval sonars. However, the evidence linking the Gulf of California strandings to the seismic surveys is inconclusive, and to date is not based on any physical evidence (Hogarth, 2002; Yoder, 2002). The ship was also operating its multi-beam bathymetric sonar at the same time but this sonar had much less potential to affect beaked whales than the naval sonars. Although the link between the Gulf of California strandings and the seismic (plus multi-beam sonar) survey is inconclusive, this plus the various incidents involving beaked whale strandings associated with naval exercises suggests a need for caution in conducting seismic surveys in areas occupied by beaked whales.

Non-auditory Physiological Effects

Possible types of non-auditory physiological effects or injuries that might theoretically occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage. There is no evidence that any of these effects occur in marine mammals exposed to sound from airgun arrays. However, there have been no direct studies of the potential for airgun pulses to elicit any of these effects. If any such effects do occur, they would probably be limited to unusual situations when animals might be exposed at close range for unusually long periods.

Long-term exposure to anthropogenic noise may have the potential to cause physiological stress that could affect the health of individual animals or their reproductive potential, which could theoretically cause effects at the population level (Gisner (ed.), 1999). However, there is essentially no information about the occurrence of noise-induced stress in marine mammals. Also, it is doubtful that any single marine mammal would be exposed to strong seismic sounds for sufficiently long that significant physiological stress would develop. This is particularly so in the case of the proposed L-DEO project where the airguns are small.

Gas-filled structures in marine animals have an inherent fundamental resonance frequency. If stimulated at this frequency, the ensuing resonance could cause damage to the animal. There may also be a possibility that high sound levels could cause bubble formation in the blood of diving mammals that in turn could cause an air embolism, tissue separation, and high, localized pressure in nervous tissue (Gisner (ed), 1999; Houser *et al.*, 2001). In 2002, NMFS held a workshop (Gentry (ed.) 2002) to discuss whether the stranding of beaked whales in the Bahamas in 2000 might have been related to air cavity resonance or bubble formation in tissues caused by exposure to noise from naval sonar. A panel of experts concluded that resonance in air-filled structures was not likely to have caused this stranding. Among other reasons, the air spaces in marine mammals are too large to be susceptible to resonant frequencies emitted by mid- or low-frequency sonar; lung tissue damage has not been observed in any mass, multi-species stranding of beaked whales; and the duration of sonar pings is likely too short to induce vibrations that could damage tissues (Gentry (ed.),

2002). Opinions were less conclusive about the possible role of gas (nitrogen) bubble formation/growth in the Bahamas stranding of beaked whales. Workshop participants did not rule out the possibility that bubble formation/growth played a role in the stranding, and participants acknowledged that more research is needed in this area. The only available information on acoustically-mediated bubble growth in marine mammals is modeling that assumes prolonged exposure to sound.

Until recently, it was assumed that diving marine mammals are not subject to the bends or air embolism. However, a paper concerning beaked whales stranded in the Canary Islands in 2002 suggests that cetaceans might be subject to decompression injury in some situations (Jepson *et al.*, 2003). If so, decompression injury might occur if cetaceans ascend unusually quickly when exposed to aversive sounds. However, the interpretation that the effect was related to decompression injury is unproven (Piantadosi and Thalmann, 2004; Fernandez *et al.*, 2004). Even if that effect can occur during exposure to mid-frequency sonar, there is no evidence that this type of effect occurs in response to low-frequency airgun sounds. It is especially unlikely in the case of the L-DEO survey which involves only three GI-guns.

In summary, little is known about the potential for seismic survey sounds to cause either auditory impairment or other non-auditory physical effects in marine mammals. Available data suggest that such effects, if they occur at all, would be limited to short distances from the sound source. However, the available data do not allow for meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in these ways. Marine mammals that show behavioral avoidance of seismic vessels, including most baleen whales, some odontocetes, and some pinnipeds, are unlikely to incur auditory impairment or other physical effects. Also, the planned mitigation and monitoring measures are expected to minimize any possibility of serious injury, mortality or strandings.

Possible Effects of Mid-frequency Sonar Signals

A multi-beam bathymetric sonar (Atlas Hydrosweep DS–2 (15.5–kHz) and a sub-bottom profiler will be operated from the source vessel essentially continuously during the planned survey. Details about these sonars were provided previously in this document.

Navy sonars that have been linked to avoidance reactions and stranding of cetaceans generally (1) are more powerful than the Atlas Hydrosweep sonars, (2) have a longer pulse duration, and (3) are directed close to horizontally (vs. downward for the Atlas Hydrosweep). The area of possible influence for the *Ewing*'s sonars is much smaller - a narrow band below the source vessel. For the Hydrosweep there is no horizontal propagation as these signals project at an angle of approximately 45 degrees from the ship. For the deep-water mode, under the ship the 160- and 180–dB zones are estimated to be 3200 m (10500 ft) and 610 m (2000 ft), respectively. However, the beam width of the Hydrosweep signal is only 2.67 degrees fore and aft of the vessel, meaning that a marine mammal diving could receive at most 1–2 signals from the Hydrosweep and a marine mammal on the surface would be unaffected. Marine mammals that do encounter the bathymetric sonars at close range are unlikely to be subjected to repeated pulses because of the narrow fore-aft width of the beam, and will receive only limited amounts of pulse energy because of the short pulses and vessel speed. Therefore, as harassment or injury from pulsed sound is a function of total energy received, the actual harassment or injury threshold for the bathymetric sonar signals (approximately 10 ms) would be at a much higher dB level than that for longer duration pulses such as seismic signals. As a result, NMFS believes that marine mammals are unlikely to be harassed or injured from the multibeam sonar.

Masking by Mid-frequency Sonar Signals

Marine mammal communications will not be masked appreciably by the multibeam sonar signals or the sub-bottom profiler given the low duty cycle and directionality of the sonars and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of baleen whales, the sonar signals from the Hydrosweep sonar do not overlap with the predominant frequencies of the calls, which would avoid significant masking.

For the sub-bottom profiler, marine mammal communications will not be masked appreciably because of their relatively low power output, low duty cycle, directionality (for the profiler), and the brief period when an individual mammal may be within the sonar's beam. In the case of most odonotocetes, the sonar signals from the profiler do not overlap with the predominant frequencies in their calls. In the case of mysticetes, the pulses from the pinger do not overlap with their predominant frequencies.

Behavioral Responses Resulting from Mid-Frequency Sonar Signals

Behavioral reactions of free-ranging marine mammals to military and other sonars appear to vary by species and circumstance. Observed reactions have included silencing and dispersal by sperm whales (Watkins *et al.*, 1985), increased vocalizations and no dispersal by pilot whales (Rendell and Gordon, 1999), and the previously-mentioned strandings by beaked whales. Also, Navy personnel have described observations of dolphins bow-riding adjacent to bow-mounted mid-frequency sonars during sonar transmissions. However, all of these observations are of limited relevance to the present situation. Pulse durations from these sonars were much longer than those of the L-DEO multibeam sonar, and a given mammal would have received many pulses from the naval sonars. During L-DEO's operations, the individual pulses will be very short, and a given mammal would not receive many of the downward-directed pulses as the vessel passes by.

Captive bottlenose dolphins and a white whale exhibited changes in behavior when exposed to 1–sec pulsed sounds at frequencies similar to those that will be emitted by the multi-beam sonar used by L-DEO and to shorter broadband pulsed signals. Behavioral changes typically involved what appeared to be deliberate attempts to avoid the sound exposure (Schlundt *et al.*, 2000; Finneran *et al.*, 2002). The relevance of these data to free-ranging odontocetes is uncertain and in any case the test sounds were quite different in either duration or bandwidth as compared to those from a bathymetric sonar.

L-DEO and NMFS are not aware of any data on the reactions of pinnipeds to sonar sounds at frequencies similar to those of the 15.5 kHz frequency of the *Ewing*'s multibeam sonar. Based on observed pinniped responses to other types of pulsed sounds, and the likely brevity of exposure to the bathymetric sonar sounds, pinniped reactions are expected to be limited to startle or otherwise brief responses of no lasting consequences to the individual animals. The pulsed signals from the sub-bottom profiler are much weaker than those from the airgun array and the multibeam sonar. Therefore, significant behavioral responses are not expected.

Hearing Impairment and Other Physical Effects

Given recent stranding events that have been associated with the operation of naval sonar, there is much concern that sonar noise can cause serious impacts to marine mammals (for discussion see Effects of Seismic Surveys on Marine Mammals). However, the multi-beam sonars proposed for use by L-DEO are quite different than sonars used for navy operations. Pulse duration of the bathymetric sonars is very short relative to the naval sonars. Also, at any given location, an individual marine mammal would be in the beam of the multi-beam sonar for much less time given the generally downward orientation of the beam and its narrow fore-aft beam-width. (Navy sonars often use near-horizontally-directed sound.) These factors would all reduce the sound energy received from the multi-beam sonar rather drastically relative to that from the sonars used by the Navy. Therefore, hearing impairment by multi-beam bathymetric sonar is unlikely.

Source levels of the sub-bottom profiler are much lower than those of the airguns and the multi-beam sonar. Sound levels from a sub-bottom profiler similar to the one on the Ewing were estimated to decrease to 180 dB re 1 microPa (rms) at 8 m (26 ft) horizontally from the source (Burgess and Lawson, 2000), and at approximately 18 m downward from the source. Furthermore, received levels of pulsed sounds that are necessary to cause temporary or especially permanent hearing impairment in marine mammals appear to be higher than 180 dB (see earlier discussion). Thus, it is unlikely that the sub-bottom profiler produces pulse levels strong enough to cause hearing impairment or other physical injuries even in an animal that is (briefly) in a position near the source.

The sub-bottom profiler is usually operated simultaneously with other higher-power acoustic sources. Many marine mammals will move away in response to the approaching higher-power sources or the vessel itself before the mammals would be close enough for there to be any possibility of effects from the less intense sounds from the sub-bottom profiler. In the case of mammals that do not avoid the approaching vessel and its various sound sources, mitigation measures that would be applied to minimize effects of the higher-power sources would further reduce or eliminate any minor effects of the sub-bottom profiler.

Estimates of Take by Harassment for the ETPO Seismic Survey

Although information contained in this document indicates that injury to marine mammals from seismic sounds potentially occurs at sound pressure levels significantly higher than 180 and 190 dB, NMFS' current criteria for onset of Level A harassment of cetaceans and pinnipeds from impulse sound are, respectively, 180 and 190 re 1 microPa rms. The rms level of a seismic pulse is typically about 10 dB less than its peak level and about 16 dB less than its pk-pk level (Greene, 1997; McCauley *et al.*, 1998; 2000a). The criterion for Level B harassment onset is 160 dB.

Given the mitigation required under this IHA (see Mitigation later in this document), all anticipated takes involve a temporary change in behavior that may constitute Level B harassment. The mitigation measures will minimize or eliminate the possibility of Level A harassment or mortality. L-DEO has calculated the ''best estimates'' for the numbers of animals that could be taken by level B harassment during the proposed ETPO seismic survey using data on marine mammal density and abundance from marine mammal surveys in the region, and estimates of the size of the affected area, as shown in the predicted RMS radii table (see Table 1).

These estimates are based on a consideration of the number of marine mammals that might be exposed to sound levels greater than 160 dB, the criterion for the onset of Level B harassment, by operations with the 3 GI-gun array planned to be used for this project. The anticipated zone of influence of the multi-beam sonar is less than that for the airguns, so it is assumed that any marine mammals close enough to be affected by the multi-beam sonar would already be affected by the airguns. Therefore, no additional incidental takings are included for animals that might be affected by the multi-beam sonar.

Table 2 explains the corrected density estimates as well as the best estimate of the numbers of each species that would be exposed to seismic sounds greater than 160 dB. A detailed description on the methodology used by L-DEO to arrive at the estimates of Level B harassment takes that are provided in Table 2 can be found in L-DEO's IHA application for the ETPO survey.

TABLE 4. Estimates of the possible numbers of marine mammal exposures to the different sound levels, and the numbers of different individuals that might be exposed, during L-DEO's proposed seismic survey in the ETP off the coast of Central America in November-December 2004. The proposed sound source is a 3-GI gun configuration with a total volume of 315 in^3. Received levels of airgun sounds are expressed in dB re 1 μPa (rms, averaged over pulse duration).The column of numbers in boldface shows the numbers of "takes" for which authorization is requested.

Species	Number of Exposures to Sound Levels >160 dB (>170 dB, Delphinids only)		Number of Individuals Exposed to Sound Levels >160 dB (>170 dB, Delphinids only)		
			Best Estimate		
	Best Estimate[a]	Maximum Estimate[a]	Number	% of Regional Pop'n[c]	Maximum Estimate
Physeteridae					
Sperm whale	*51*	*82*	*33*	*0.1*	*54*
Pygmy sperm whale	0	0	0	NA[b]	0
Dwarf sperm whale	404	503	265	2.4	330
Ziphiidae					
Cuvier's beaked whale	117	133	77	0.4	87
Tropical bottlenose whale	0	0	0	NA	0
Pygmy beaked whale	0	0	0	NA	0
Blainville's beaked whale	0	0	0	NA	0
Mesoplodon sp. (unidentified)	23	28	15	0.1	18
Delphinidae					
Rough-toothed dolphin	181	269	119	0.1	177
Bottlenose dolphin	1011	1782	663	0.3	1169
Spotted dolphin	3349	5829	2196	0.1	3821
Spinner dolphin	2439	6215	1599	0.1	4074
Costa Rican spinner dolphin	280	2657	184	NA	1742
Clymene dolphin	0	0	0	NA	0
Striped dolphin	3457	5819	2266	0.1	3815
Short-beaked common dolphin	2816	4620	1846	0.1	3029
Fraser's dolphin	0	0	0	NA	0
Risso's dolphin	219	391	144	0.1	256
Melon-headed whale	38	189	25	0.1	124
Pygmy killer whale	74	176	49	0.1	115
False killer whale	0	0	0	0.0	0
Killer whale	3	4	2	0.0	2
Short-finned pilot whale	307	533	201	0.1	350
Balaenopteridae					
Humpback whale	*0*	*0*	*0*	*NA*	*0*
Minke whale	0	0	0	NA	0
Bryde's whale	4	13	3	0.0	8
Sei whale	*0*	*0*	*0*	*NA*	*0*
Fin whale	*0*	*0*	*0*	*NA*	*0*
Blue whale	*4*	*11*	*3*	*0.2*	*7*
Pinnipeds					
South American fur seal	0	0	0	NA	0
Southern sea lion	0	0	0	NA	0
Galapagos fur seal	0	0	0	NA	0
Galapagos sea lion	0	0	0	NA	0

a Best estimate and maximum estimate of densities are from Table 3. in L-DEO application

b NA indicates that regional population estimates are not available.

c Regional populations are given in Table 2. in L-DEO application.

Conclusions

Effects on Cetaceans

Strong avoidance reactions by several species of mysticetes to seismic vessels have been observed at ranges up to 6–8 km (3.2–4.3 nm) and occasionally as far as 20–30 km (10.8–16.2 nm) from the source vessel. However, reactions at the longer distances appear to be atypical of most species and situations, particularly when feeding whales are involved. Few mysticetes are expected to be encountered during the proposed survey in the ETPO (Table 2) and disturbance effects would be confined to shorter distances given the low-energy acoustic source to be used during this project. In addition, the estimated numbers presented in Table 2 are considered overestimates of actual numbers that may be harassed.

Odontocete reactions to seismic pulses, or at least the reactions of dolphins, are expected to extend to lesser distances than are those of mysticetes. Odontocete low-frequency hearing is less sensitive than that of mysticetes, and dolphins are often seen from seismic vessels. In fact, there are documented instances of dolphins approaching active seismic vessels. However, dolphins as well as some other types of odontocetes sometimes show avoidance responses and/or other changes in behavior when near operating seismic vessels.

Taking into account the small size and the relatively low sound output of the three GI-guns to be used, and the mitigation measures that are planned, effects on cetaceans are generally expected to be limited to avoidance of a small area around the seismic operation and short-term changes in behavior, falling within the MMPA definition of Level B harassment. Furthermore, the estimated numbers of animals potentially exposed to sound levels sufficient to cause appreciable disturbance are very low percentages of the affected populations.

Based on the 160–dB criterion, the best estimates of the numbers of individual cetaceans that may be exposed to sounds ≤160 dB re 1 microPa (rms) represent 0 to approximately 0.4 percent (except for approximately 2.4 percent for dwarf sperm whales) of the regional ETPO species populations (Table 2). L-DEO also estimates that approximately 0.1 percent of the estimated (corrected) regional ETPO population of approximately 26,053 sperm whales (Table 2) would be exposed to sounds ≤160 dB re 1 microPa (rms). In the case of endangered balaenopterids, it is most likely that no humpback, sei, or fin whales will be exposed to seismic sounds ≤ 160 dB re 1 microPa (rms), based on the reported (corrected) densities of those species in the survey region. However, L-DEO has requested an authorization to expose up to 2 individuals of each of those species to seismic sounds of ≥ 160 dB during the proposed survey given the possibility of encountering one or more groups. Best estimates of blue whales are 3 individuals that might be potentially exposed to seismic pulses with received levels ≥ 160 dB re 1 microPa (rms), representing approximately 0.2 percent of the estimated regional ETP population of approximately 1400 blue whales (Table 2).

Larger numbers of delphinids may be affected by the proposed seismic surveys, but the population sizes of species likely to occur in the survey area are large, and the numbers potentially affected are small relative to population sizes (Table 2). The best estimates of the numbers of individual delphinids that will potentially be exposed to sounds ≤ 160 dB re 1 microPa (rms) represent less than 0.1 percent of the approximately 10,000,000 dolphins estimated to occur in the ETPO, and less than 0.3 percent of the bottlenose dolphin population occurring there (Table 2).

Mitigation measures such as controlled speed, course alteration, observers, use of the PAM system, non-pursuit, ramp ups, and power downs or shut downs when marine mammals are seen within defined ranges should further reduce short-term reactions, and minimize any effects on hearing. In all cases, the effects are expected to be short-term, with no lasting biological consequence. In light of the type of take expected and the small percentages of affected stocks of cetaceans, the action is expected to have no more than a negligible impact on the affected species or stocks of cetaceans.

Effects on Pinnipeds

It is unlikely that any pinnipeds will be encountered during the proposed survey. However, to ensure that the L-DEO project remains in compliance with the MMPA in the event that a few pinnipeds are encountered, L-DEO has requested an authorization to expose up to 10 individuals of each of four pinniped species to seismic sounds with rms levels ≤ 160 dB re 1 μPa. If pinnipeds are encountered, they will be stray individuals outside of their normal range. The proposed survey would have, at most, a short-term effect on their behavior and no long-term impacts on individual pinnipeds or their populations. Responses of pinnipeds to acoustic disturbance are variable, but usually quite limited. Effects are expected to be limited to short-term and localized behavioral changes falling within the MMPA definition of Level B harassment. As is the case for cetaceans, the short-term exposures to sounds from the three GI-guns are not expected to result in any long-term consequences for the individuals or their populations and the activity is expected to have no more than a negligible impact on the affected species or stocks of pinnipeds.

Potential Effects on Habitat

The proposed seismic survey will not result in any permanent impact on habitats used by marine mammals, or to the food sources they utilize. The main impact issue associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals.

One of the reasons for the adoption of airguns as the standard energy source for marine seismic surveys was that they (unlike the explosives used in the distant past) do not result in any appreciable fish kill. Various experimental studies showed that airgun discharges cause little or no fish kill, and that any injurious effects were generally limited to the water within a meter or so of an airgun. However, it has recently been found that injurious effects on captive fish, especially on fish hearing, may occur at somewhat greater distances than previously thought (McCauley *et al.*, 2000a,b, 2002; 2003). Even so, any injurious effects on fish would be limited to short distances from the source. Also, many of the fish that might otherwise be within the injury-zone are likely to be displaced from this region prior to the approach of the airguns through avoidance reactions to the passing seismic vessel or to the airgun sounds as received at distances beyond the injury radius.

Fish often react to sounds, especially strong and/or intermittent sounds of low frequency. Sound pulses at received levels of 160 dB re 1 μPa (peak) may cause subtle changes in behavior. Pulses at levels of 180 dB (peak) may cause noticeable changes in behavior (Chapman and Hawkins, 1969; Pearson *et al.*, 1992; Skalski *et al.*, 1992). It also appears that fish often habituate to repeated strong sounds rather rapidly, on time scales of minutes to an hour. However, the habituation does not endure, and resumption of the disturbing activity may again elicit disturbance responses from the same fish.

Fish near the airguns are likely to dive or exhibit some other kind of behavioral response. This might have short-term

impacts on the ability of cetaceans to feed near the survey area. However, only a small fraction of the available habitat would be ensonified at any given time, and fish species would return to their pre-disturbance behavior once the seismic activity ceased. Thus, the proposed surveys would have little impact on the abilities of marine mammals to feed in the area where seismic work is planned. Some of the fish that do not avoid the approaching airguns (probably a small number) may be subject to auditory or other injuries.

Zooplankton that are very close to the source may react to the airgun's shock wave. These animals have an exoskeleton and no air sacs; therefore, little or no mortality is expected. Many crustaceans can make sounds and some crustacea and other invertebrates have some type of sound receptor. However, the reactions of zooplankton to sound are not known. Some mysticetes feed on concentrations of zooplankton. A reaction by zooplankton to a seismic impulse would only be relevant to whales if it caused a concentration of zooplankton to scatter. Pressure changes of sufficient magnitude to cause this type of reaction would probably occur only very close to the source, so few zooplankton concentrations would be affected. Impacts on zooplankton behavior are predicted to be negligible, and this would translate into negligible impacts on feeding mysticetes.

Potential Effects on Subsistence Use of Marine Mammals

There is no legal subsistence hunting for marine mammals in the ETPO off Central America, so the proposed L-DEO activities will not have any impact on the availability of these species or stocks for subsistence users.

Mitigation

For the proposed seismic survey in the ETPO off Central America, L-DEO will deploy three GI-airguns as an energy source, with a total discharge volume of 315 in^3. The energy from the airguns will be directed mostly downward. The directional nature of the airguns to be used in this project is an important mitigating factor. This directionality will result in reduced sound levels at any given horizontal distance as compared with the levels expected at that distance if the source were omnidirectional with the stated nominal source level. Also, the small size of these airguns is an inherent and important mitigation measure that will reduce the potential for effects relative to those that might occur with large airgun arrays. This measure is in conformance with NMFS encouraging seismic operators to use the lowest intensity airguns practical to accomplish research objectives.

The following mitigation measures, as well as marine mammal visual monitoring (discussed later in this document), will be implemented for the subject seismic surveys: (1) Speed and course alteration (provided that they do not compromise operational safety requirements); (2) power-down and shut-down procedures; (3) ramp-up procedures, (4) use of passive acoustics to detect vocalizing marine mammals and (5) incorporation of a protocol that seismic lines will be run from shallow water towards deeper water whether the lines are being run parallel to shore or perpendicular to shore. This last mitigation measure would mitigate potential takings of beaked whales. Some of these mitigation measures will also be implemented to protect sea turtles.

Speed and Course Alteration

If a marine mammal is detected outside its respective safety zone (180 dB for cetaceans, 190 dB for pinnipeds) and, based on its position and the relative motion, is likely to enter the safety zone, the vessel's speed and/or direct course may, when practical and safe, be changed in a manner that also minimizes the effect to the planned science objectives. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach within the safety zone. If the mammal appears likely to enter the safety zone, further mitigative actions will be taken (i.e., either further course alterations or shut down of the airguns).

Power-down and Shut-down Procedures

A power down involves decreasing the number of airguns in use such that the radius of the 180–dB (or 190–dB) zone is decreased to the extent that marine mammals are not in the safety zone. During a power down, one GI-airgun will continue to be operated. The continued operation of one airgun is intended to alert marine mammals to the presence of the seismic vessel in the area. In contrast, a shut down occurs when all airgun activity is suspended.

If a marine mammal is detected outside the safety radius but is likely to enter the safety radius, and if the vessel's speed and/or course cannot be changed to avoid having the mammal enter the safety radius, the GI-guns will be powered down before the mammal is within the safety radius. Likewise, if a mammal is already within the safety zone when first detected, the airguns will be powered down immediately. During a power down, one GI-airgun (i.e., 105 in^3) will be operated. If a marine mammal is detected within or near the smaller safety radius around that single GI-gun (Table 1), all guns will be shut down.

Following a power-down, airgun activity will not resume until the marine mammal has cleared the safety zone. The animal will be considered to have cleared the safety zone if it (1) is visually observed to have left the safety zone, or (2) has not been seen within the zone for 15 min in the case of small odontocetes and pinnipeds, or (3) has not been seen within the zone for 30 min in the case of mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales.

During airgun operations following a power-down whose duration has exceeded these specified limits, the airgun array will be ramped-up gradually. Ramp-up is described later in this document.

During a power-down, the operating GI-airgun will be shut down if a marine mammal approaches and is about to enter the modeled safety radius for the operating single GI gun. For a 105 in3 GI gun, the predicted 180–dB distances applicable to cetaceans are 27–189 m (89–620 ft), depending on water depth, and the corresponding 190–dB radii applicable to pinnipeds are 10–150 m (33–492 ft), depending on depth (Table 1). Airgun activity will not resume until the marine mammal has cleared the safety radius, as described for power-down situations.

Ramp-up Procedure

When airgun operations commence after a specified period without airgun operations, the number of guns firing will be increased gradually, or ''ramped up'' (also described as a ''soft start''). The specified period of time for the GI-airguns varies depending on the speed of the source vessel. Under normal operational conditions (vessel speed 4.9 knots or 9 km/h), the Ewing would travel 574 m (1476 ft) in about 4 minutes. The 574–m distance is the calculated 180–dB safety radius for the three GI-gun array operating in shallow water. Thus, a ramp-up would be required after a power-down or shut-down period lasting about 4 minutes or longer if the *Ewing* was traveling at 4.9 knots and was towing the three GI-airgun array. Ramp up will begin with one of the 105–in^3 GI guns. The other two GI-guns will be added at 5 min intervals. During ramp up, the safety radius for the full gun array will be maintained.

During the day, ramp-up cannot begin from a shut-down unless the entire 180–dB safety radius has been visible for at least 30 minutes prior to the ramp up (i.e., no ramp-up can begin in heavy fog or high sea states). However, ramp-up may occur from a power down in heavy fog or high sea states, as long as at least one GI gun has been maintained during the interruption of seismic activity.

During nighttime operations, if the entire safety radius is visible using vessel lights and night-vision devices (NVDs) (as may be the case in deep and intermediate waters), then start up of the airguns from a shut down may occur. However, lights and NVDs will probably not be very effective as a basis for monitoring the larger safety radii around the three GI-guns operating in shallow water. It is an IHA requirement that, in shallow water, nighttime start ups of the airguns will not be authorized. However, ramp-up may occur from a power-down at night, as long as at least one GI-gun has been maintained during the interruption of the seismic signal. Also, if the airgun array has been operational before nightfall, it can remain operational throughout the night, even though the entire safety radius may not be visible.

Comments on past IHAs raised the issue of prohibiting nighttime operations as a practical mitigation measure. However, this is not practicable due to cost considerations and ship time schedules. The daily cost to operate vessels such as Ewing is approximately $33,000-$35,000/day (Ljunngren, pers. comm. May 28, 2003). If the vessels were prohibited from operating during nighttime, each trip could require an additional three to five days to complete, or up to $175,000 more, depending on average daylight at the time of work.

If a seismic survey vessel is limited to daylight seismic operations, efficiency would also be much reduced. Without commenting specifically on how that would affect the present project, for seismic operators in general, a daylight-only requirement would be expected to result in one or more of the following outcomes: cancellation of potentially valuable seismic surveys; reduction in the total number of seismic cruises annually due to longer cruise durations; a need for additional vessels to conduct the seismic operations; or work conducted by non-U.S. operators or non-U.S. vessels when in waters not subject to U.S. law.

Marine Mammal Monitoring

L-DEO must have at least three visual observers on board the Ewing, and at least two must be an experienced marine mammal observer that NMFS has approved in advance of the start of the ETPO cruise. These observers will be on duty in shifts of no longer than 4 hours.

The visual observers will monitor marine mammals and sea turtles near the seismic source vessel during all daytime airgun operations, during any nighttime start-ups of the airguns and at night, whenever daytime monitoring resulted in one or more shut-down situations due to marine mammal presence. During daylight, vessel-based observers will watch for marine mammals and sea turtles near the seismic vessel during periods with shooting (including ramp-ups), and for 30 minutes prior to the planned start of airgun operations after a shut-down.

Use of multiple observers will increase the likelihood that marine mammals near the source vessel are detected. L-DEO bridge personnel will also assist in detecting marine mammals and implementing mitigation requirements whenever possible (they will be given instruction on how to do so), especially during ongoing operations at night when the designated observers are on stand-by and not required to be on watch at all times.

The observer(s) will watch for marine mammals from the highest practical vantage point on the vessel, which is either the bridge or the flying bridge. On the bridge of the Ewing, the observer's eye level will be 11 m (36 ft) above sea level, allowing for good visibility within a 210 arc. If observers are stationed on the flying bridge, the eye level will be 14.4 m (47.2 ft) above sea level. The observer(s) will systematically scan the area around the vessel with Big Eyes binoculars, reticle binoculars (e.g., 7 X 50 Fujinon) and with the naked eye during the daytime. Laser range-finding binoculars (Leica L.F. 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. The observers will be used to determine when a marine mammal or sea turtle is in or near the safety radii so that the required mitigation measures, such as course alteration and power-down or shut-down, can be implemented. If the GI-airguns are powered-down or shut down, observers will maintain watch to determine when the animal is outside the safety radius.

Observers will not be on duty during ongoing seismic operations at night; bridge personnel will watch for marine mammals during this time and will call for the airguns to be powered-down or shut-down if marine mammals are observed in or about to enter the safety radii. However, a biological observer must be on standby at night and available to assist the bridge watch if marine mammals are detected. If the airguns are ramped-up at night (see previous section), two marine mammal observers will monitor for marine mammals for 30 minutes prior to ramp-up and during the ramp-up using either deck lighting or NVDs that will be available (ITT F500 Series Generation 3 binocular image intensifier or equivalent).

Post-Survey Monitoring

In addition, the biological observers will be able to conduct monitoring of most recently-run transect lines as the Ewing returns along a parallel transect track and when the Ewing runs seismic lines perpendicular to previously run seismic lines. A final post-survey transect will be conducted by the Ewing as it retrieves the towed hydrophone array. This will provide the biological observers with opportunities to look for injured or dead marine mammals (although no injuries or mortalities are expected during this research cruise).

Passive Acoustic Monitoring (PAM)

L-DEO has agreed to use the PAM system whenever the Ewing is operating in waters deep enough for the PAM hydrophone array to be towed. Passive acoustic equipment was first used on the Ewing during the 2003 Sperm Whale Seismic Study conducted in the Gulf of Mexico and subsequently was evaluated by L-DEO to determine whether it was practical to incorporate it into future seismic research cruises. The SEAMAP system has been used successfully in L-DEO's SE Caribbean study (69 FR 24571, May 4, 2004). The SEAMAP PAM system has four hydrophones, which allow the SEAMAP system to derive the bearing toward the a vocalizing marine mammal. In order to operate the SEAMAP system, the marine mammal monitoring contingent onboard the Ewing will be increased by 2 additional biologists/acousticians who will monitor the SEAMAP system. Verification of acoustic contacts will then be attempted through visual observation by the marine mammal observers. However, the PAM system by itself usually does not determine the distance that the vocalizing mammal might be from the seismic vessel. It can be used as a cue by the visual observers as to the presence of an animal and to its approximate bearing (with some ambiguity). At this time, however, it is doubtful if PAM can be used as a trigger to initiate power-down of the array. NMFS encourages L-DEO to continue to study the relationship between a signal on a passive acoustic array and distance from the array can be determined with

sufficient accuracy to be used for this purpose without complementary visual observations.

Taking into consideration the additional costs of prohibiting nighttime operations and the likely impact of the activity (including all mitigation and monitoring), NMFS has determined that the mitigation and monitoring requirements ensure that the activity will have the least practicable impact on the affected species or stocks. Marine mammals will have sufficient notice of a vessel approaching with operating seismic airguns, thereby giving them an opportunity to avoid the approaching array; if ramp-up is required, two marine mammal observers will be required to monitor the safety radii using shipboard lighting or NVDs for at least 30 minutes before ramp-up begins and verify that no marine mammals are in or approaching the safety radii; ramp-up may not begin unless the entire safety radii are visible. Therefore as mentioned earlier, it is likely that the 3 GI-airgun array will not be ramped-up from a shut-down at night when in waters shallower than 100 m (328 ft).

Reporting

L-DEO will submit a report to NMFS within 90 days after the end of the cruise, which is currently predicted to occur during November and December, 2004. The report will describe the operations that were conducted and the marine mammals that were detected. The report must provide full documentation of methods, results, and interpretation pertaining to all monitoring tasks. The report will summarize the dates and locations of seismic operations, marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and estimates of the amount and nature of potential take of marine mammals by harassment or in other ways.

Endangered Species Act (ESA)

NMFS has issued a biological opinion regarding the effects of this action on ESA-listed species and critical habitat under the jurisdiction of NMFS. That biological opinion concluded that this action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. A copy of the Biological Opinion is available upon request (see **ADDRESSES**).

National Environmental Policy Act (NEPA)

The NSF made a FONSI determination on June 24, 2004, based on information contained within its EA, that implementation of the subject action is not a major Federal action having significant effects on the environment within the meaning of NEPA. NSF determined, therefore, that an environmental impact statement would not be prepared. On September 30, 2004 (69 FR 58396), NMFS noted that the NSF had prepared an EA for the ETPO surveys and made this EA was available upon request. In accordance with NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS has reviewed the information contained in NSF's EA and determined that the NSF EA accurately and completely describes the proposed action alternative, and the potential impacts on marine mammals, endangered species, and other marine life that could be impacted by the preferred alternative and the other alternatives. Accordingly, NMFS adopted the NSF EA under 40 CFR 1506.3 and made its own FONSI. The NMFS FONSI also takes into consideration additional mitigation measures required by the IHA that are not in NSF's EA. Therefore, it is not necessary to issue a new EA, supplemental EA or an environmental impact statement for the issuance of an IHA to L-DEO for this activity. A copy of the EA and the NMFS FONSI for this activity is available upon request (see **ADDRESSES**).

Determinations

NMFS has determined that the impact of conducting the seismic survey in the ETPO off Central America may result, at worst, in a temporary modification in behavior by certain species of marine mammals. This activity is expected to result in no more than a negligible impact on the affected species or stocks.

For reasons stated previously in this document, this determination is supported by (1) the likelihood that, given sufficient notice through slow ship speed and ramp-up, marine mammals are expected to move away from a noise source that is annoying prior to its becoming potentially injurious; (2) recent research that indicates that TTS is unlikely (at least in delphinids) until levels closer to 200–205 dB re 1 microPa are reached rather than 180 dB re 1 microPa; (3) the fact that 200–205 dB isopleths would be well within 100 m (328 ft) of the vessel even in shallow water; and (4) the likelihood that marine mammal detection ability by trained observers is close to 100 percent during daytime and remains high at night to that distance from the seismic vessel. As a result, no take by injury or death is anticipated, and the potential for temporary or permanent hearing impairment is very low and will be avoided through the incorporation of the mitigation measures mentioned in this document.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small. In addition, the proposed seismic program will not interfere with any legal subsistence hunts, since seismic operations will not take place in subsistence whaling and sealing areas and will not affect marine mammals used for subsistence purposes.

Authorization

NMFS has issued an IHA to L-DEO to take marine mammals, by harassment, incidental to conducting seismic surveys in the ETPO for a 1–year period, provided the mitigation, monitoring, and reporting requirements are undertaken.

Dated: December 7, 2004.

Stephen L. Leathery,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–27266 Filed 12–10–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050304A]

Endangered Species; File No.1375

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Dr. Thomas J. Kwak, U.S. Geological Survey has been issued a modification to scientific research Permit No. 1375.

ADDRESSES: The modification 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

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Jennifer Jefferies (301)713–2289.

SUPPLEMENTARY INFORMATION: On December 12, 2003, notice was published in the **Federal Register** (68 FR 69388) that an modification of Permit No. 1375, issued March 27, 2003 (68 FR 16002), had been requested by the above-named individual. The requested modification has been granted 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).

Permit No. 1375 authorized the permit holder to deploy 1,000 hatchery-reared juvenile shortnose sturgeon (*Acipenser brevirostrum*) in cages at 10 test sites within the Roanoke/Albemarle River system for 28 days. Afterwards the fish will be euthanized and their tissue analyzed for contaminants. The results of this study will provide needed information to determine if water quality is a factor limiting the ecological success of shortnose sturgeon in this river system. When the initial study was conducted, however, high water temperatures and low dissolved oxygen contributed to a shortened experiment time. With the issuance of this modification the permit holder will be authorized to obtain an additional 1000 fish to repeat the experiment in more favorable conditions. The modification will also extend the expiration date until December 31, 2005.

Issuance of this modification, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: December 8, 2004.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–27270 Filed 12–10–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120304E]

Guidelines for Producing the Climate Change Science Program Synthesis and Assessment Products

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The United States Climate Change Science Program (CCSP) is announcing the Guidelines for Producing the CCSP Synthesis and Assessment Products, which are described in the Strategic Plan for the U.S. Climate Change Science Program. The synthesis and assessment products are intended to provide useful information for a variety of users about key climate change topics. The products include reports, data sets, and evaluations of the uses and limits of climate information for decisionmaking.

ADDRESSES: The CCSP website is at: *http://www.climatescience.gov*. The finalized guidelines areavailable on the CCSP web site at: *http://www.climatescience.gov/Library/sap/sap-guidelines.htm*.The draft guidelines and a collation of comments submitted are available on the CCSP web site at: *http://www.climatescience.gov/Library/sap/sap-guidelines–29mar2004.pdf* and *http://www.climatescience.gov/Library/sap/guidelines-comments/default.htm.*

FOR FURTHER INFORMATION CONTACT: Ms. Sandy MacCracken, U.S. Climate Change Science Program, Suite 250, 1717 Pennsylvania Ave., N.W., Washington, DC 20006, 1–202–419–3483 (voice), 1–202–223–3065 (fax), *smaccrac@usgcrp.gov* (e-mail).

SUPPLEMENTARY INFORMATION: The Climate Change Science Program is an interagency endeavor, with 13 participating Federal agencies and departments. One or more of the agencies that comprise CCSP will have the lead responsibility for preparing each product. The national and international research community is anticipated to play a major role in preparation of many of the products. See Chapter 2 of the Strategic Plan for the U.S. Climate Change Science Program for a detailed description of the products.

To ensure consistency and transparency in the processes that will be used by the lead and supporting CCSP agencies in preparing the products, the guidelines describe the roles of different parties and the steps to be followed in each of three phases of the preparation process—developing the prospectus, drafting and revising the document, and final approval and publication of each product. This process of product development will facilitate involvement of the research community and the public in ensuring that the products meet the highest standards of scientific excellence. The guidelines also encourage transparency by ensuring that public information about the status of the products will be provided on the CCSP web site (see **ADDRESSES**).

Comments on the draft guidelines were solicited during a public comment period from 29 March 2004 to 7 May 2004. The guidelines have been revised extensively in response to these comments and input from the National Research Council (NRC) provided during a meeting of the NRC's Coordinating Committee on Global Change held in Washington, DC on 8–9 April 2004.

Dated: December 6, 2004.

James R. Mahoney,

Assistant Secretary of Commerce for Oceans and Atmosphere and Director, U.S. Climate Change Science Program.

[FR Doc. 04–27264 Filed 12–10–04; 8:45am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Entry of Shipments of Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Apparel in Excess of 2004 Agreement Limits or Certain China Safeguard Limits

December 9, 2004.

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

ACTION: Directive to Commissioner, Customs and Border Protection.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

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

In a **Federal Register** Notice published on June 25, 2004, CITA announced that it had come to CITA's attention that some textile and apparel products may be shipped in excess of agreed quota limits in 2004 with the expectation that those shipments will be allowed entry upon the expiration of the limits, and CITA noted that shipments exported in excess of agreed limits are a violation of the terms of those agreements. (69 FR 35586) In that Notice, CITA expressly reserved the right to deny entry to goods that have been shipped in excess of agreed limits or to stage entry for goods exported in excess of agreed limits. In order to carry

out those agreements, including the World Trade Organization (WTO) Agreement on Textiles and Clothing (ATC), the Report of the Working Party on the Accession of China to the WTO (Accession Agreement), and certain bilateral textile agreements with countries that are not Members of the WTO, CITA is directing the Commissioner, Customs and Border Protection, to stage entry of goods exported in 2004 in excess of ATC, Accession Agreement, or bilateral textile agreement limits.

For all shipments exported in 2004 that exceed the applicable 2004 agreed quota limit from WTO Members and from countries with bilateral textile agreements expiring on December 31 that are not WTO Members, entry will not be permitted until February 1, 2005. From February 1 through February 28, 2005, entry will be permitted to goods in an amount equal to 5 percent of the applicable 2004 base quota limit. For each succeeding month, beginning on the first day of the month and extending through the last day of the month, entry will be permitted to goods in an amount equal to 5 percent of the applicable base 2004 quota limit, until all shipments in excess of the quota limits have been entered.

For all shipments exported from China that exceed the applicable Accession Agreement safeguard limits for categories 222, 349/649, and 350/650, which apply to goods in these categories exported from China between December 24, 2003 and December 23, 2004, entry will not be permitted until January 24, 2005. From January 24 through February 23, 2005, entry will be permitted to goods in an amount equal to 5 percent of the applicable safeguard limit. For each succeeding period, beginning on the 24th of the month and extending through the 23rd of the following month, entry will be permitted to goods in an amount equal to 5 percent of the applicable base safeguard limit, until all shipments in excess of safeguard limits have been entered.

2004 quota base limits can be found on the Web at *http://otexa.ita.doc.gov* under ''Summary of Agreements.''

James C. Leonard, III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

Commissioner, *Customs and Border Protection, Washington, DC 20229, December 9, 2004.*

Dear Commissioner: This directive provides instructions on permitting entry to goods shipped in excess of 2004 quota limits, for WTO Members or countries with expiring bilateral textile agreements, and in excess of China safeguard limits imposed in 2003.

For all shipments exported in 2004 that exceed the applicable 2004 agreed quota limit from WTO Members and from countries with bilateral textile agreements expiring on December 31 that are not WTO Members, you are directed to deny entry until February 1, 2005, subject to the following procedure. From February 1 through February 28, 2005, you are directed to permit entry to goods in an amount equal to 5 percent of the applicable 2004 base quota limit. For each succeeding month, beginning on the first day of the month and extending through the last day of the month, you are directed to permit entry to goods in an amount equal to 5 percent of the applicable base 2004 quota limit, until all shipments in excess of the quota limits have been entered.

For all shipments exported from China that exceed the applicable safeguard limits for categories 222, 349/649, and 350/650, you are directed to deny entry until January 24, 2005, subject to the following procedure. From January 24 through February 23, 2005, you are directed to permit entry to goods in an amount equal to 5 percent of the applicable safeguard limit. For each succeeding period, beginning on the 24th of the month and extending through the 23rd of the following month, you are directed to permit entry to goods in an amount equal to 5 percent of the applicable base safeguard limit, until all shipments in excess of safeguard limits have been entered.

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

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 04–27374 Filed 12–9–04; 2:48 pm]

BILLING CODE 3510–DS–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed renewal of its National Senior Service Corps (Senior Corps) Grant Application. This application is used by current and prospective grantees to apply for sponsorship of projects under the Retired and Senior Volunteer Program (RSVP); the Foster Grandparent Program (FGP); the Senior Companion Program (SCP); the Senior Demonstration Program (SDP); and the Special Volunteer Program—Homeland Security (SVP). Completion of the Grant Application is required to be considered for or obtain sponsorship.

Copies of the information collection requests can be obtained by contacting the office listed in the address section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by February 11, 2005.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, National Senior Service Corps; Attention Ms. Angela Roberts, Associate Director, Room 9305; 1201 New York Avenue, NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 6010 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) By fax to: (202) 565–2743, Attention Ms. Angela Roberts, Associate Director.

(4) Electronically through the Corporation's e-mail address system: *aroberts@cns.gov.*

FOR FURTHER INFORMATION CONTACT: Angela Roberts, (202) 606–5000, ext. 111, or by e-mail at *aroberts@cns.gov.*

SUPPLEMENTARY INFORMATION:

The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submissions of responses).

Background: The Senior Corps Grant Application is completed by applicant organizations interested in sponsoring a Senior Corps program. The application is completed electronically using the Corporation's web-based grants management system, eGrants.

Current Action: The Corporation seeks to renew and revise the current application. When revised, the application will include additional instructions to clarify narrative and work plan sections; will contain an updated list of ''Service Categories'' used by applicants to identify the types of needs the national service participants will meet; and will contain current references used in the grants management system. The application will otherwise be used in the same manner as the existing application. The Corporation also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on March 31, 2005.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: National Senior Service Corps Grant Application.

OMB Number: 3045–0035.

Agency Number: SF 424–NSSC.

Affected Public: Current and prospective sponsors of National Senior Service Corps Grants.

Total Respondents: 1,513.

Frequency: Annually, with exceptions.

Average Time Per Response: Averages 13.2 hours. Estimated at 16.5 hours for first time respondents; 15 hours for continuation sponsors; 5 hours for revisions.

Estimated Total Burden Hours: 20,027 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): $6,497.

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

Dated: December 7, 2004.

Tess Scannell,

Director, National Senior Service Corps.

[FR Doc. 04–27203 Filed 12–10–04; 8:45 am]

BILLING CODE 6050–SS–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the Air Force Scientific Advisory Board. The purpose of the meeting is to kickoff the four approved fiscal year 2005 studies as directed by Air Force leadership. The studies are ''Automatic Target Recognition'', ''Domain Integrations'', ''System of Systems Engineering'', and ''Air Force Operations in Urban Environments''. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: January 10–14, 2005.

ADDRESSES: 1560 Wilson Blvd, Suite 400, Arlington, VA 22209–2404.

FOR FURTHER INFORMATION CONTACT: Major Kyle Gresham, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington, DC 20330–1180, (703) 697–4808.

Albert F. Bodnar,

Air Force Federal Register Liaison Officer.

[FR Doc. 04–27275 Filed 12–10–04; 8:45 am]

BILLING CODE 5001–05–M

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the Air Force Scientific Advisory Board. The purpose of the meeting is to present and discuss the findings of the 2004 Science and Technology Quality Review of Air Force Research Laboratory programs. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: January 19, 2005.

ADDRESS: 1670 Air Force Pentagon, Room 4E916, Washington, DC 20330–1670.

FOR FURTHER INFORMATION CONTACT: Major Kyle Gresham, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington, DC 20330–1180, (703) 697–4808.

Albert F. Bodnar,

Air Force Federal Register Liaison Officer.

[FR Doc. 04–27276 Filed 12–10–04; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Boards Membership

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Army.

DATES: *Effective Date:* December 11, 2004.

FOR FURTHER INFORMATION CONTACT: Marilyn Ervin, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army, Manpower & Reserve Affairs, 111 Army, Washington, DC 20301–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the U.S. Army Corps of Engineers are:

1. MG Robert Griffin (Chair), Deputy Commanding General.
2. Dr. James Houston, Director, Engineer Research and Development Center.
3. BG Robert Crear, Commander, Mississippi Valley Division.
4. MG Don Riley, Director, Directorate of Civil Works.
5. Mr. Dwight Beranek, Deputy Director, Directorate of Military Programs.
6. Dr. Susan Duncan, Director of Human Resources.
7. Mr. Stephen Browning, Programs Director, South Pacific Division.
8. Mr. Frank Oliva, Regional Business Director, Pacific Ocean Division.

9. Ms. Kristine Allaman, Director, Strategy and Integration Directorate.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 04–27269 Filed 12–10–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, DoD.

ACTION: Notice of a computer matching program.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended (5 U.S.C. 552a), requires agencies to publish advanced notices of any proposed or revised computer matching program by the matching agency for public comment. The Department of Defense (DoD), Defense Manpower Data Center (DMDC), as the matching agency under the Privacy Act, is hereby given notice to the record subjects to a computer matching program between Department of Veterans Affairs, Office of Inspector General (VA OIG) and the Department of Defense (DoD) that their records are being matched by computer. The purpose of the computer matching program is to attempt to verify eligibility for VA Compensation and Pension (C&P) benefits by matching veteran's record of those benefits with the military service record of veterans eligible for those benefits for themselves or their beneficiaries.

DATES: This proposed action will become effective January 12, 2005, and matching may commence unless changes to the matching program are required due to public comments or by Congressional or by Office of Management and Budget concerns. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 1901 South Bell Street, Suite 920, Arlington, VA 22202–4512.

FOR FURTHER INFORMATION CONTACT: Mr. Vahan Moushegian, Jr. at (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended (5 U.S.C. 552a), the VA OIG and DMDC have concluded an agreement to conduct a computer matching program between agencies. The purpose of the computer matching program is to attempt to verify eligibility for VA C&P benefits by matching veteran's record of those benefits with the military service record of veterans eligible for those benefits for themselves or their beneficiaries.

The parties to this agreement have determined that a computer matching program is the most efficient, expeditious, and effective means of obtaining and processing the information needed by VA OIG to verify the military service record of veterans eligible for VA (C&P) benefits, to identify potential fraudulent payments to fictitious veterans, and to identify payments that should be adjusted where the beneficiary is not entitled to all or part of the VA C&P benefits received. The principal alternative to using a computer matching program for identifying such individuals would be to conduct a manual comparison of all veterans or their beneficiaries receiving VA (C&P) benefits with the other files. Conducting a manual match, however, would clearly impose a considerable administrative burden, constitute a greater intrusion on the individual's privacy, and would result in additional delay in the eventual response to possible fraud and abuse. By comparing the information received through the computer matching program between VA OIG and DMDC on a recurring basis, information on successful matches (hits) can be provided to VA to initiate research on these discrepancies, thus assuring that benefit payments are proper.

A copy of the computer matching agreement between VA OIG and DoD is available upon request. Requests should be submitted to the address caption above or to the Department of Veterans Affairs, Office of Inspector General (52CO), 810 Vermont Avenue NW., Washington, DC 20420.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published on June 19, 1989, at 54 FR 25818.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on December 1, 2004, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records about Individuals'', dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: December 7, 2004.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

NOTICE OF A COMPUTER MATCHING PROGRAM AGREEMENT BETWEEN OFFICE OF THE INSPECTOR GENERAL THE DEPARTMENT OF VETERANS AFFAIRS AND THE DEFENSE MANPOWER DATA CENTER, THE DEPARTMENT OF DEFENSE FOR VERIFICATION OF ELIGIBILITY

A. PARTICIPATING AGENCIES:

Participants in this computer matching program are the Department of Veterans Affairs, Office of Inspector General (VA OIG) and the Department of Defense (DoD), Defense Manpower Data Center (DMDC). The VA OIG is the source agency, *i.e.,* the activity disclosing the records for the purpose of the match. The DoD is the specific recipient activity or matching agency, *i.e.,* the agency that actually performs the computer matching.

B. PURPOSE OF THE MATCH:

Upon the execution of this agreement, VA will provide and disclose VA Compensation and Pension (C&P) and Veterans Assistance Discharge Systems (VADS) records to DMDC to identify individuals that have not separated from military service and/or confirm elements of military service relevant to the adjudication of VA benefits. VA OIG will use this information to initiate an independent verification process to determine eligibility and entitlement to VA benefits.

C. AUTHORITY FOR CONDUCTING THE MATCH:

The authority to conduct this match is 5 U.S.C. App. 3, the Inspector General Act of 1978 (IG Act). The IG Act authorizes the VA OIG to conduct audits and investigations relating to the programs and operations of VA. IG Act, section 2. In addition, section 4 of the IG Act provides that the IG will conduct activities designed to promote economy and efficiency and to prevent and detect fraud and abuse in VA's programs and operations.

D. RECORDS TO BE MATCHED:

The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

1. VA will use personal data from the following Privacy Act record system for the match: Compensation, Pension, Education and Rehabilitation Records—

VA, 58VA21/22, first published at 41 FR 9294, March 3, 1976, and last amended at 66 FR 47725, September 13, 2001, with other amendments as cited therein.

2. DoD will use personal data from the following Privacy Act record system for the match: Defense Manpower Data Center Data Base—S322.10 DMDC, published in the **Federal Register** at 69 FR 31974 on June 8, 2004.

3. Agencies must publish ''routine uses'' pursuant to subsection (b)(3) of the Privacy Act for those systems of records from which they intend to disclose information. The systems of records described above contain appropriate routine use provisions that pertain to disclosure of information between the agencies.

E. DESCRIPTION OF COMPUTER MATCHING PROGRAM:

VA, as the source agency, will provide DMDC with two electronic files, the C&P and VADS files. The C&P file contains names of veterans, SSNs, and compensation and pension records. The VADS file contains names of veterans, SSNs, and DD214 data. Upon receipt of the electronic files, DMDC will perform a match using the SSNs in the VA C&P file, and the VADS file against the DMDC Active Duty Transaction, Reserve Transaction, and Reserve Master files. DMDC will provide VA OIG an electronic listing of VA C&P and VADS records for which there is no matching record from any of the three DMDC files, and an electronic listing of records that contain data that are inconsistent with data contained in the VA C&P or VADS files. VA OIG is responsible for verifying and determining that the data on the DMDC electronic reply file are consistent with the VA source file and for resolving any discrepancies or inconsistencies on an individual basis.

F. INCLUSIVE DATES OF THE MATCHING PROGRAM:

The effective date of the matching agreement and date when matching may actually begin shall be at the expiration of the 40-day review period for OMB and Congress, or 30 days after publication of the matching notice in the Federal Register, whichever date is later. The parties to this agreement may assume OMB and Congressional concurrence if no comments are received within 40 days of the date of the transmittal letter. The 40-day OMB and Congressional review period and the mandatory 30-day public comment period for the Federal Register publication of the notice will run concurrently. Matching will be conducted when the review/publication requirements have been satisfied and thereafter on an annual basis. By agreement between VA OIG and DMDC, the matching program will be in effect for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. ADDRESS FOR RECEIPT OF PUBLIC COMMENTS OR INQUIRIES:

Director, Defense Privacy Office, 1901 South Bell Street, Suite 920, Arlington, VA 22202–4512. Telephone (703) 607–2943.

[FR Doc. 04–27250 Filed 12–10–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF ENERGY

[Docket Nos. EA–164–B]

Application to Export Electric Energy; Constellation Energy Commodities Group, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Constellation Energy Commodities Group, Inc. (Constellation) (formerly Constellation Power Services Inc. (CPS)) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before January 12, 2005.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On January 23, 1998, the Office of Fossil Energy (FE) of the Department of Energy (DOE) issued Order No. EA–164 authorizing Constellation Power Source, Inc. (CPS) to transmit electric energy from the United States to Canada as a power marketer. That two-year authorization expired on January 23, 2000. On February 22, 2000, FE issued Order No. EA–164–A authorizing CPS to transmit electric energy from the United States to Canada as a power marketer for an additional five-year term that will expire on February 22, 2005.

CPS, which has changed its name to Constellation, filed an application with FE on November 29, 2004, to renew the export authority contained in Order No. EA–164–A for a five-year term.

Constellation proposes to export electric energy to Canada and to arrange for the delivery of those exports over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company.

The construction of each of the international transmission facilities to be utilized by Constellation, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to these applications should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the dates listed above.

Comments on Constellation's application to export electric energy to Canada should be clearly marked with Docket EA–164–B. Additional copies are to be filed directly with Lisa M. Decker, Esq., Vice President and Counsel, Constellation Energy Commodities Group, Inc., 111 Market Place, Suite 500, Baltimore, Maryland 21202.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy home page at *http://www.fe.doe.gov.* Upon reaching the Fossil Energy home page, select ''Electricity Regulation,'' and then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC on December 7, 2004.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Fossil Energy.

[FR Doc. 04–27257 Filed 12–10–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–278–A]

Applications to Export Electric Energy; Direct Commodities Trading, Inc

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Direct Commodities Trading, Inc., (DCT) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before January 12, 2005.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On May 19, 2003, the Office of Fossil Energy (FE) of the Department of Energy (DOE) issued Order No. EA–278 authorizing DCT to transmit electric energy from the United States to Canada as a power marketer. That two-year authorization will expire on May 19, 2005.

On November 15, 2004, the FE received an application from DCT to renew its authorization to transmit electric energy from the United States Canada for terms of five years. DCT, a Canadian corporation, is a power marketer that does not own or control any electric generation or transmission facilities nor does it have any franchised service territory in the United States.

DCT proposes to export electric energy to Canada and to arrange for the delivery of those exports over the international transmission facilities owned by New York Power Authority and Niagara Mohawk Power Corporation.

The construction of each of the international transmission facilities to be utilized by DCT, as more fully described in the applications, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to these applications should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the dates listed above.

Comments on the DCT application to export electric energy to Canada should be clearly marked with Docket EA–278–A. Additional copies are to be filed directly with Jean-Jacques Taza, DCT Inc., 5413 St-Laurent Blvd., Suite 209, Montreal, Quebec, Canada, H2T 1S5.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.doe.gov*. Upon reaching the Fossil Energy Home page, select ''Electricity Regulation,'' and then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC on December 7, 2004.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Fossil Energy.

[FR Doc. 04–27258 Filed 12–10–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Dockets No. EA–153–B]

Application To Export Electric Energy; Edison Mission Marketing & Trading, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Edison Mission Marketing & Trading, Inc. (EMMT) has applied to renew the authority to transmit electric energy from the United States to Canada formerly held by Citizens Power Sales pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before January 12, 2005.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On October 1, 1997, FE issued Order No. EA–153 authorizing Citizens Power Sales, LLC (Citizens) to transmit electric energy from the United States to Canada as a power marketer. On January 11, 2000, in Order No. EA–153–A, FE renewed Citizens' authorization to export electric energy to Canada for a five year term that will expire on January 11, 2005. On October 26, 2000, Edison Mission Marketing & Trading, Inc. (EMMT) notified FE that Citizens merged with and into EMMT effective September 1, 2000.

On November 17, 2004, EMMT filed an application with FE for renewal of the export authority contained in Order No. EA–153–A for an additional five-year term. EMMT proposes to export electric energy to Canada and to arrange for the delivery of those exports over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, Vermont Electric Company and Vermont Electric Transmission Company.

The construction of each of the international transmission facilities to be utilized by EMMT, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with

§§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of the petition and protest should be filed with the DOE on or before the dates listed above.

Comments on the EMMT application to export electric energy to Canada should be clearly marked with Docket EA–153–B. Additional copies are to be filed directly with Joseph C. Bell, Jolanta Sterbenz, Geo F. Hobday, Jr., Hogan & Hartson, L.L.P., 555 Thirteenth Street, NW., Washington, DC 20004–1109 *and* Robert F. Viola, Counsel, Edison Mission Marketing & Trading, Inc., 160 Federal Street, Boston, Massachusetts 02110–1776, Karen A. Bell, Assistant Counsel, Edison Mission Marketing & Trading, Inc., 160 Federal Street, Boston, Massachusetts 02110–1776.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.doe.gov*. Upon reaching the Fossil Energy Home page, select ''Electricity Regulation,'' and then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC, on December 7, 2004.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Fossil Energy.

[FR Doc. 04–27256 Filed 12–10–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL05–5–000]

Inquiry Regarding Income Tax Allowances; Request for Comments; Notice of Extension of Time

December 9, 2004.

On December 8, 2004, the Association of Oil Pipe Lines (AOPL), Interstate Natural Gas Association of America (INGAA), and Edison Electric Institute (EEI) (together, Movants) filed a motion for an extension of time to file comments in response to the Commission's Request For Comments issued December 2, 2004, in the above-docketed proceeding. Movants state that an extension is necessary because the current deadline for filing comments, December 22, 2004, falls during the holiday season and it is difficult to assemble the resources required to respond to the significant and complex policy issues addressed in the Request For Comments. The Movants further state that interested parties outside the regulated industries who may not yet be aware of the Commission's inquiry would also benefit from additional time to comment.

Upon consideration, notice is hereby given that an extension of time to file comments on the December 2 Request For Comments is granted to and including January 21, 2005, as requested by Movants.

Magalie R. Salas,

Secretary.

[FR Doc. 04–27376 Filed 12–10–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03–563–045 and EL04–102–005]

Devon Power LLC; Notice Of Compliance Filing

December 3, 2004.

Take notice that on November 29, 2004, Devon Power, LLC submitted a report updating progress made in the siting within the New England control area, with particular emphasis on progress within Designated Congested Areas for ISO New England Inc., in compliance with the Commission's order issued June 2, 2004, 107 FERC ¶ 61,240 (2004).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on December 20, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3600 Filed 12–10–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER05–51–000]

Quiet Light Trading, LLC; Notice Of Issuance Of Order

December 6, 2004.

Quiet Light Trading, LLC (QLT) filed an application for market-based rate authority, with an accompanying tariff. The proposed rate tariff provides for wholesale sales of energy and capacity at market-based rates. QLT also requested waiver of various Commission regulations. In particular, QLT requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by QLT.

On December 2, 2004, the Commission granted the request for blanket approval under part 34, subject to the following:

[A]ny person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by QLT should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004). Quiet Light Trading, LLC, 109 FERC ¶ 61, 251 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest, is January 3, 2005.

Absent a request to be heard in opposition by the deadline above, QLT is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise

in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of QLT, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of QLT's issuances of securities or assumptions of liability.

Copies of the full text of the Commission's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3599 Filed 12–10–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL05–5–000]

Inquiry Regarding Income Tax Allowances; Request for Comments

December 2, 2004.

1. On July 20, 2004, the Court of Appeals for the District of Columbia Circuit issued an opinion in *BP West Coast Producers, LLC* v. *FERC.*[1] In reviewing a series of orders involving SFPP, L.P.,[2] the court held, among other things, that the Commission had not adequately justified its policy of providing an oil pipeline limited partnership with an income tax allowance equal to the proportion of its limited partnership interests owned by corporate partners. In that case, SFPP, Inc., the corporate partner owned some 42.7 percent of SFPP, L.P.'s limited partnership interests. Thus, under the Commission's ruling in the Opinion No. 435 orders, SFPP, L.P. was permitted an income tax allowance for 42.7 percent of the net operating (pre-tax) income expected from operations. Pursuant to the so-called Lakehead income tax allowance doctrine,[3] SFPP, L.P. was denied an income tax allowance equal to the 57.3 percent of its limited partnership interests that were held by non-corporate partners. The rationales for this doctrine the court rejected include: (1) The double taxation of corporate earnings, (2) the equalization of returns between different types of publicly held interests,[4] and (3) encouraging capital formation and investment.

2. The Commission is seeking comments on whether the court's ruling applies only to the specific facts of the SFPP, L.P. proceeding,[5] or also extends to other capital structures involving partnership and other forms of ownerships. For example, should the court's reasoning apply to partnerships in which: (1) All the partnership interests are owned by investors without intermediary levels of ownership; (2) the only intermediary ownership is a general partnership; (3) all the partnership interests are owned by corporations; and (4) the corporate ownership of the partnership interests is minimal, such as a 1 percent general partnership interest of a master limited partnership? If the court's decision precludes an income tax allowance for a partnership or other ownership interests under any of these situations, will this result in insufficient incentives for investment in energy infrastructure? Or will generally the same amount of investment occur through other ownership arrangements? Are there other methods of providing an opportunity to earn an adequate return that are not dependent on the tax implications of a particular capital structure?

3. The Commission invites interested persons to submit comments on the issues and specific questions identified in this notice. Comments are due by December 22, 2004. Comments must refer to Docket No. PL05–5–000.

By direction of the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 04–27375 Filed 12–10–04; 8:45 am]

BILLING CODE 6717–01–P

[1] *BP West Coast Producers, LLC* v. *FERC,* 374 F.3d 1263 *(BP West Coast), reh'g denied,* 2004 U.S. App. LEXIS 20976–98 (2004).

[2] *Opinion No. 435* (86 FERC ¶ 61,022 (1999)), *Opinion No. 435–A* (91 FERC ¶ 61,135 (2000)), *Opinion No.* 435–B (96 FERC ¶ 61,281 (2000)), and an *Order on Clarification and Rehearing* (97 FERC ¶ 61,138 (2001)) (collectively the Opinion No. 435 orders.)

[3] *Lakehead Pipe Line Company,* L.P., 71 FERC ¶ 61,388 (1995), *reh'g denied,* 75 FERC ¶ 61,181 (1998) *(Lakehead).*

[4] These were the stock of the corporate partner (which involves two layers of taxation of SFPP, L.P. earnings) and the limited partnership interests (which involve only one).

[5] Now pending before the Commission on remand and rehearing in Docket Nos. OR92–8–000, *et al.*, and OR96–2–000, *et al.*, respectively.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG05–19–000, et al.]

Texas Genco, L.P., et al.; Electric Rate and Corporate Filings

November 3, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Texas Genco, LP

[Docket No. EG05–19–000]

Take notice that on October 28, 2004, Texas Genco, LP (Genco) tendered for filing an application for a determination of exempt wholesale generator status, pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended (PUHCA), 15 U.S.C. 79z–5a(a)(1) (2000), and subchapter T, part 365 of the regulations of the Federal Energy Regulatory Commission 18 CFR part 365 (2004).

Genco states that it is a limited partnership organized and existing under the laws of the State of Texas that will continue to own an interest in an electric generating facility with an aggregate maximum capacity of approximately 2,500 megawatts located in Texas. Genco states that it is and will continue to be engaged directly, or indirectly through one or more affiliates as defined in section 2(a)(11)(B) of PUHCA, and exclusively in the business of owning eligible facilities, and selling electric energy at wholesale.

Comment Date: 5 p.m. eastern time on November 18, 2004.

2. TransCanada Hydro Northeast Inc.

[Docket No. EG05–20–000]

On October 29, 2004, TransCanada Hydro Northeast Inc. (TC Hydro NE), a Delaware corporation with its principal place of business in Westborough, Massachusetts, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

TC Hydro NE states it will operate hydroelectric assets with a total generating capacity of approximately 560 MW located in Massachusetts, New

Hampshire and Vermont (the hydro assets). TC Hydro NE further states that the hydro assets are interconnected to the transmission system of New England Power.

Comment Date: 5 p.m. eastern time on November 19, 2004.

3. City of Pasadena, California

[Docket No. EL05–18–000]

Take notice that on October 29, 2004, the City of Pasadena, California (Pasadena) submitted for filing a Petition for Declaratory Order and Request for Waiver of Filing Fee on Behalf of the City of Pasadena, California. Pasadena's Petition requests that the Commission issue an order: (1) accepting Pasadena's Transmission Revenue Requirement (TRR) and Transmission Owner (TO) Tariff submitted with Pasadena's Petition for filing effective as of the later of January 1, 2005 or the effective date of a Transmission Control Agreement acceptable to Pasadena, (2) approving Pasadena's TRR, (3) waiving the filing fee for Pasadena's petition, and (4) granting any other relief or waivers as may be necessary or appropriate for approval or implementation of Pasadena's TRR and TO Tariff.

Comment Date: 5 p.m. eastern time on November 19, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3602 Filed 12–10–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–19–000]

Columbia Gas Transmission Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed Line A–5 Replacement Project and Request for Comments on Environmental Issues

December 6, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Line A–5 Replacement Project involving construction and operation of facilities by Columbia Gas Transmission Corporation (Columbia) in Orange and Rockland Counties, New York.[1] These facilities would consist of about 8.8 miles of 30-inch-diameter pipeline, modifications to three existing measurement and regulation (M&R) stations, and related facilities. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with State law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility on My Land? What Do I Need To Know?'' was attached to the project notice Columbia provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Columbia wants to replace existing 8- and 16-inch-diameter pipeline on its Line A–5 with 30-inch-diameter pipeline. Columbia presently is conducting a Line A–5 Age and Condition replacement program to replace sections of its aging Line A–5 to ensure safety and continuity of service. Under the Age and Condition program, the 8.8 miles of pipeline normally would be replaced with 10-inch-diameter pipeline. However, Columbia proposes instead to install 30-inch-diameter pipeline in anticipation of increased firm demand for natural gas in the northeast and to avoid re-entering and disturbing sensitive areas along the existing pipeline right-of-way again in the near future to install the larger diameter pipeline. Columbia seeks authority to:

- Construct and operate 8.8 miles of 30-inch-diameter pipeline between its existing Tuxedo/Central Hudson M&R Station in Orange County, New York, and its existing Ramapo M&R Station in Rockland County, New York, replacing 8- and 16-inch-diameter pipeline on its Line A–5;
- Modify its existing Tuxedo/Central Hudson M&R Station at project milepost (MP) 0.0 in Orange County, New York;
- Modify its existing Sloatsburg M&R Station at MP 5.3 in Rockland County, New York;
- Modify its existing Ramapo M&R Station at MP 8.8 in Rockland County, New York; and
- Abandon in place about 1 mile of Line A–5 where Columbia would install a section of 30-inch-diameter pipeline by horizontal directional drill (HDD) between MPs 1.87 and 2.12 to cross New York Route 17, the Metro North Railroad, the Ramapo River, and Interstate 87.

Orange and Rockland Utilities (ORU) would relocate about 475 feet of its 4-inch-diameter distribution pipeline that is currently located adjacent to Columbia's Line A–5 east of the Sloatsburg M&R Station. The ORU pipeline would be moved about 15 feet from its present location, but would be installed within the construction right-

[1] Columbia's application was filed with the Commission under section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

of-way for the Line A–5 Replacement Project.

The location of the project facilities is shown in Appendix 1.

Land Requirements for Construction

Construction of the proposed facilities would require about 139.8 acres of land. This acreage includes all of the construction workspaces, storage/contractor yards, and access roads. About 38.8 acres of the construction work area would be within the existing Line A–5 right-of-way. Following construction, about 54.3 acres would be maintained for operation of the pipeline. About 4.9 acres would be new permanent right-of-way. The remaining 85.5 acres of land would be restored and allowed to revert to its former use.

Typically, pipeline construction would require a 75-foot-wide construction right-of-way. However, in areas with steep terrain and large amounts of rock, an additional 25 feet of temporary workspace would be required. In residential areas and within waterbodies and wetlands, the construction right-of-way width would be restricted to 75 feet. Extra workspaces would be required at road, waterbody, and wetland crossings, and at the entry and exit points of the HDD. Columbia would use about 12.5 acres of land as storage/contractor yards during construction of the project. Nine access roads would be used for the project affecting about 8.3 acres. Most of these are existing roads, however they would require widening for use by construction vehicles.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we [2] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Land use.
- Water resources, fisheries, and wetlands.
- Cultural resources.
- Vegetation and wildlife.
- Air quality and noise.
- Endangered and threatened species.
- Hazardous waste.
- Public safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, State, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission(s official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 5.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Columbia. This preliminary list of issues may be changed based on your comments and our analysis.

- Eight residences have been identified within 50 feet of the construction right-of-way.
- A proposed residential development has been identified between MPs 1.7 and 1.9 of the pipeline.
- Seven private water wells would be within 150 feet of the construction right-of-way.
- Thirty nine waterbodies would be crossed including 1 ephemeral, 14 intermittent, and 15 perennial waterbodies.
- About 3,899 feet of wetlands would be crossed affecting about 3.94 acres of wetlands.
- Two trout fisheries would be crossed.
- Two federally threatened or endangered species or their habitats may be affected.
- Six State threatened or endangered species or their habitats may be affected.
- About 55.4 acres of forest would be cleared for construction permanently affecting about 1.6 acres.
- Cultural resources may be affected.
- Blasting would be required for pipeline construction.
- Steep slopes may be a potential hazard during construction.
- Pipeline construction would cross public land including the Sterling Forest State Park (MP 0.0 to 0.1 and MP 0.4 to 0.8), Harriman State Park (MP 2.1 to 5.3 and MP 5.4 to 7.9), and Kakiat County Park (MP 7.9 to 8.7). Contractor/Storage yards would be in Harriman State Park (near the intersection of New York Routes 17 and 17A), and in the Samuel Fisher Mount Ivy Environmental County Park along U.S. Route 202.
- A total of 14 hiking trails would be crossed in Harriman State Park and Kakiat County Park.
- Operation of the HDD would be noisy.
- Safety.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. 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 letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 2.
- Reference Docket No. CP05–19–000
- Mail your comments so that they will be received in Washington, DC on or before January 5, 2005.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we

[2] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (Appendix 4). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's eFiling system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see Appendix 2).[3] 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 environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities. By this notice we are also asking governmental agencies, especially those in Appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link 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. Go to *www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3601 Filed 12–10–04; 8:45 am]

BILLING CODE 6717–01–P

[3] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

ENVIRONMENTAL PROTECTION AGENCY

[OPA–2004–0010, FRL–7847–5]

Agency Information Collection Activities: Proposed Collection; Comment Request; Renewal of Information Collection Request (ICR) for the Oil Pollution Prevention Regulation for Certain Facilities to Prepare and Maintain an Oil Spill Prevention, Control and Countermeasure (SPCC) Plan, EPA ICR #0328.11, OMB Control Number 2050–0021

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on August 31, 2005. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 11, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OPA–2004–0010, to EPA online using EDOCKET (our preferred method), by e-mail to *superfund.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, 1301 Constitution Ave., NW., EPA West, Suite B–102, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Hugo Paul Fleischman, EPA Oil Program, Mail Code 5203G, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–603–8769; fax number: 703–603–9116; email address: *fleischman.hugo@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OPA–2004–0010, which is available for public viewing at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Superfund

Docket is (202) 566–0276. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

Affected entities: The industries that are likely to be covered by the SPCC regulation fall into many North American Industrial Classification System (NAICS) categories, including those associated with petroleum and non-petroleum oil production, processing (refining), distribution, and consumption. The specific private industry sectors subject to this action include, but are not limited to: (1) Crop and Animal Production (NAICS 111–112): (2) Crude Petroleum and Natural Gas Extraction (NAICS 211111); (3) Coal Mining, Non-Metallic Mineral Mining and Quarrying (NAICS 2121/2123/213114/213116); (4) Electric Power Generation, Transmission, and Distribution (NAICS 2211); (5) Heavy Construction (NAICS 234); (6) Petroleum and Coal Products Manufacturing (NAICS 324); (7) Other Manufacturing (NAICS 31–33); (8) Petroleum Bulk Stations and Terminals (NAICS 42271); (9) Gasoline Stations/Automotive Rental and Leasing (NAICS 4471/5321); (10) Heating Oil Dealers (NAICS 454311); (11) Transportation (including Pipelines), Warehousing, and Marinas (NAICS 482–486/488112–48819/ 4883/48849/492–493/71393); (12) Elementary and Secondary Schools, Colleges (NAICS 6111–6113); (13) Hospitals/Nursing and Residential Care Facilities (NAICS 622–623).

Title: Renewal of Information Collection Request (ICR) for the Oil Pollution Prevention regulation (40 CFR part 112) for certain facilities to prepare and maintain an Oil Spill Prevention, Control, and Countermeasure (SPCC) Plan

Abstract: The Oil Pollution Prevention regulation, found at 40 CFR part 112, outlines requirements for both prevention of and response to oil spills. The prevention aspect of this regulation is also known as the SPCC regulation. It was originally promulgated on December 11, 1973, at 38 FR 34164, under the authority of section 311(j)(1)(C) of the CWA. The regulation established spill prevention procedures, methods, and equipment requirements for non-transportation-related onshore and offshore facilities with aboveground oil storage capacity greater than 1,320 gallons (or greater than 660 gallons in a single tank), or buried underground oil storage capacity greater than 42,000 gallons. Regulated facilities are also limited to those that, because of their location, could reasonably be expected to discharge oil into the navigable waters of the United States or adjoining shorelines.

On July 17, 2002, at 67 FR 47042, EPA published final amendments to the SPCC rule. The final rule included new subparts outlining the requirements for different classes of oil; revised the applicability of the regulation; amended the requirements for completing SPCC Plans; and made other modifications. The final rule also contained a number of provisions designed to decrease regulatory burden on facility owners and operators subject to the rule, while preserving environmental protection. The rule was effective August 16, 2002. The rule included compliance dates in § 112.3(a) and (b); however, the original compliance dates were extended for eighteen months on April 7, 2003 (68 FR 18890). On August 11, 2004, EPA extended by an additional eighteen months the compliance dates in § 112.3(a) and (b), and amended the compliance deadline in § 112.3(c) (69 FR 48794).

The Oil Pollution Prevention regulation requires that an SPCC Plan be prepared in accordance with good engineering practices and be approved by a person with the authority to commit the resources necessary to implement the SPCC Plan. SPCC Plans address the following three areas: (1) Operating procedures that prevent oil spills; (2) Control measures installed to prevent a spill from reaching navigable waters; and (3) Countermeasures to contain, clean up, and mitigate the effects of an oil discharge that could reach navigable waters. Each SPCC Plan, while unique to the facility it covers, must include certain standard elements to ensure compliance with the regulations.

The primary data collection activities required by the Oil Pollution Prevention regulation are the preparation and maintenance of the SPCC Plan along with preparing records of inspections and tests. In preparing a Plan, the owner or operator of a new facility must prepare and implement an SPCC Plan in accordance with the guidelines set forth in 40 CFR part 112 before beginning facility operations. Section 112.3 requires the owner or operator to maintain a copy of the SPCC Plan at the facility, if the facility is normally attended for at least four hours per day or, if not, at the nearest field office. In the event of certain discharges of oil into navigable waters, a facility owner or operator must submit information described in § 112.4(a) to the Regional Administrator within 60 days. Additionally, the facility owner or operator must amend his Plan in accordance with § 112.7 whenever there is a change in the facility's design, construction, operation, and maintenance that materially affects the facility's potential to discharge oil into navigable waters.

EPA does not collect SPCC Plans or related records from facilities on a routine basis. Preparation, implementation, and maintenance of the SPCC Plan by the facility helps prevent oil discharges and mitigate the environmental damage caused by such discharges. Therefore, the primary user of the data is the facility itself. For example:

- Accumulating the necessary data requires that the facility staff analyze the strengths and weaknesses of the facility for preventing oil discharges, facilitating safety awareness, and promoting appropriate modifications to facility design and operations;
- Having the required information in a single document promotes efficient response in the event of a discharge;
- Implementing the Plan according to the specifications of 40 CFR part 112 requires meeting certain design and operational standards that reduce the likelihood of an oil discharge;

• Keeping inspection records promotes important maintenance, facilitates leak detection, and demonstrates compliance with the SPCC requirements; and

• Reviewing the Plan periodically ensures the implementation of more effective spill prevention control technology.

Although the facility is the primary user of the data, EPA uses the data in certain situations. EPA's primary use of the data contained in an SPCC Plan is to ensure that a facility is in full compliance with all elements of the SPCC regulation, including design and operation specifications and inspection requirements. EPA reviews SPCC Plans as part of EPA's inspection program and when information is submitted because of an oil discharge. A Regional Administrator may require a facility owner or operator to amend the SPCC Plan if he finds that the facility has not met the requirements of the regulation or that Plan amendment is necessary to prevent and contain discharges of oil. If a facility does not amend its SPCC Plan, it may face civil penalties under the Clean Water Act.

State and local governments are also users of the data. The information provided in SPCC Plans (*e.g.*, facility configuration, capabilities, and potential risks) is not necessarily available elsewhere and can greatly assist local emergency preparedness planning efforts. The Plan should be compatible and coordinated with local emergency plans, including those developed under Title III of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99–499). Coordination with state governments is facilitated by the provision in § 112.4(c) requiring that, after certain discharges, information on the discharge be sent to the relevant state agencies. The flexibility with respect to formatting proposed in this rule promotes greater coordination with State planning efforts because the use of plans prepared pursuant to state regulations is encouraged.

EPA is currently involved in an effort to estimate the universe of facilities regulated by the SPCC rule. The purpose of this effort is to include the full range of industries and number of affected facilities impacted by this rule. Given that the information used in this ICR is based on analysis and data collected between 1990 and 1996, we believe more current data will more accurately reflect today's situation and give EPA and the universe of regulated facilities a truer picture of the impact of the regulation.

None of the information to be gathered for this collection is believed to be confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: An estimated 427,211 existing facilities and 4,372 new facilities are subject to the SPCC regulations in the first year of this ICR period. The breakdown by facility size is estimated to be 355,550 small facilities, 64,283 medium facilities, and 11,750 large facilities subject to the information collection activities. A 1 percent annual growth rate is assumed to continue for the duration of this ICR.

The total hour burden to the entire regulated community over the three-year period covered by the renewal ICR is approximately 5,196,061 hours, or 1,732,020 hours annually. The net annual public reporting and recordkeeping burden for this collection of information, for newly regulated facilities is estimated to range from 35.1 to 65.2 hours per facility, with an average burden of approximately 38.0 hours, including time for reviewing instructions and gathering the data needed. The net annual public reporting and recordkeeping burden for facilities already regulated by the Oil Pollution Prevention regulation is estimated to range from 3.5 to 7.35 hours. These average annual burden estimates take into account the varied frequencies of response for individual facilities according to characteristics specific to those facilities, including frequency of oil discharges and facility modifications.

For the typical existing small, medium, and large facility, the estimated total annual baseline costs for all information collection activities required by the SPCC regulation are $200, $199, and $345 per facility, respectively. For typical new small, medium, and large facility, the total annual baseline costs for all information collection activities required by the Oil Pollution Prevention regulation are estimated to be $2,695, $2,744, and $3,354 per facility, respectively. Estimated annual costs for new facilities are higher than for existing facilities because of the greater expense associated with initially preparing the Plan. Starting in the third year of this ICR, the net annualized capital and start-up costs for all facilities average $0.3 million, and net annualized labor and O&M costs are $74.5 million and $26.3 million, respectively.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: November 29, 2004.

Dana S. Tulis,

Deputy Director, Office of Emergency Management.

[FR Doc. 04–27262 Filed 12–10–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7847–3]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Settlement Agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement, to address a lawsuit filed by

Automotive Refrigeration Products Institute, Automotive Aftermarket Industry Association, and Interdynamics (collectively, ''Petitioners''): *Automotive Refrigeration Products Institute, and Automotive Aftermarket Industry Association, et al.* v. *EPA,* No. 04–1158 (DC Cir.) (consolidated with No. 04–1159). On May 11, 2004, Petitioners filed petitions for review challenging the EPA's final rule entitled ''Protection of Stratospheric Ozone; Refrigerant Recycling Substitute Refrigerants'' published on March 12, 2004 (69 FR 11945). Under the terms of the proposed settlement agreement, EPA will undertake rulemaking acting to make certain corrections to the rule at issue. EPA will provide notice in the **Federal Register** and an opportunity for public comment. No later than 60 days after the date this Agreement becomes final, EPA shall sign either a notice of proposed rulemaking or a notice of direct final rulemaking and concurrent proposal to correct definitions of ''refrigerant'' and ''technician'' and to ensure that it remains illegal to knowingly vent certain substances during described activities.

DATES: Written comments on the proposed settlement agreement must be received by January 12, 2005.

ADDRESSES: Submit your comments, identified by docket ID number OGC–2004–0011, online at *http://www.epa.gov/edocket* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Wordperfect or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Padmini Singh, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–5641.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement

Petitioners filed petitions for review of EPA's final rule entitled ''Protection of Stratospheric Ozone; Refrigerant Recycling; Substitute Refrigerants, 69 FR 11945 (March 12, 2004), challenging the final rule. Once implemented the Settlement Agreement (the ''Agreement'') would resolve these petitions for review. The Agreement, which is subject to CAA section 113(g), provides that EPA shall sign either a notice of proposed rulemaking or a notice of direct final rulemaking and concurrent proposal to correct the definitions of ''refrigerant'' and ''technician.'' In addition, EPA will propose to amend 40 CFR 82.154(a) to ensure that it will continue to be illegal to knowingly vent pure HFCs, pure PFCs, class I or class II ozone-depleting substance, and blends of these substances during the service, maintenance, repair, or disposal of appliances.

The Agreement also provides that within five days of its execution by the Parties but before the Agreement becomes final, the Parties shall file a joint motion with the Court notifying it of this Agreement and requesting that this case be held in abeyance pending implementation of the terms of the Agreement. Petitioners agree to voluntarily dismiss this case within 30 days of final agency action if EPA takes action as described in the Agreement.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement

A. How Can I Get A Copy of the Settlement?

EPA has established an official public docket for this action under Docket ID No. OGC–2004–0011 which contains a copy of the settlement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in EPA's electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical

difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: December 2, 2004.

Lisa K. Friedman,

Associate General Counsel, Air and Radiation Law Office, Office of General Counsel.

[FR Doc. 04–27259 Filed 12–10–04; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Amendment to Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on December 6, 2004 (69 FR 70443) of the regular meeting of the Farm Credit Administration Board (Board) scheduled for December 9, 2004. This notice is to amend the agenda by moving an item from the open to the closed session of that meeting.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board were open to the public (limited space available), and parts were closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The agenda for December 9, 2004, is amended by moving the following item to the closed session as follows:

Closed Session*

- FCS of America Termination Summary.

Dated: December 9, 2004.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 04–27380 Filed 12–9–04; 3:05 pm]

BILLING CODE 6705–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 27, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Charles C. Brooks, Crawford, Georgia; to acquire additional voting shares of TCB Bancshares, Inc., Crawford, Georgia, and thereby indirectly acquire voting shares of The Commercial Bank, Crawford, Georgia.

Board of Governors of the Federal Reserve System, December 7, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–27255 Filed 12–10–04; 8:45 am]

BILLING CODE 6210–01–S

* Session Closed-Exempt pursuant to 5 U.S.C. 552b(c)(4), (8) and (9).

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 6, 2004.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. SBT Bancshares, Inc., Irving, Texas, and SBT Bancshares of Delaware, Inc., Wilmington, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of State Bank of Texas, Irving, Texas.

Board of Governors of the Federal Reserve System, December 7, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–27254 Filed 12–10–04; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0204]

General Services Administration Acquisition Regulation;Information Collection; Commercial Delivery ScheduleClause and Notice of Shipment

AGENCY: Office of the Chief Acquisition Officer, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding commercial delivery schedule clause and notice of shipment.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: February 11, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Jeritta Parnell, Procurement Analyst, Contract Policy Division, at telephone (202) 501–4082 or via e-mail to jeritta.parnell@gsa.gov.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Regulatory Secretariat (V), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0204, Commercial Delivery Schedule Clause and Notice of Shipment in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Commercial Delivery Schedule (Multiple Award Schedule) clause required offerors to provide their commercial delivery terms and conditions. FSS awards contracts to commercial firms under terms and conditions that mirror commercial practices for the supplies and services. In order to ensure the Government obtains the supplies within the offeror's commercial delivery timeframe, the offeror must provide the information requested in the GSAR clause, Commercial Delivery Schedule (Multiple Award Schedule). Such a notice is necessary when preparations need to be made for docking arrangements, storage, trans-shipment of materials handling equipment of supplies and equipment upon delivery, labor and inside delivery at destination.

B. Annual Reporting Burden

Total Responses annually: 10,305
Hours Per Response: .26
Total Burden Hours: 2679
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (V), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 3090–0204, Commercial Delivery Schedule Clause and Notice of Shipment, in all correspondence.

Dated: November 30, 2004.

Laura Auletta

DirectorContract Policy Division

[FR Doc. 04–27209 Filed 12–10–04; 8:45 am]

BILLING CODE 6820–61–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0007]

General Services Administration Acquisition Regulation; Information Collection; GSA Form 527, Contractor's Qualifications and Financial Information

AGENCY: Office of the Chief Finance Officer, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration has submitted to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding GSA Form 527, Contractor's Qualifications and Financial Information. A request for public comments was published in the **Federal Register** at 69 FR 56769, September 22, 2004. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: January 12, 2005.

FOR FURTHER INFORMATION CONTACT: Michael J. Kosar, Accountant, Office of the Chief Financial Officer, Office of Finance, at (202) 501–2029 or via email to mike.kosar@gsa.gov.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Ms. Jeanette Thornton, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (V), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control Number 3090–0007, GSA Form 527, Contractor's Qualifications and Financial Information, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

GSA Form 527 is used to determine the financial capability of prospective contractors as to whether they meet the financial responsibility standards in accordance with the Federal Acquisition Regulation and the General Services Administration Acquisition Manual.

B. Annual Reporting Burden

Respondents: 2,940

Responses Per Respondent: 1.2

Total Responses: 3,528

Hours Per Response: 2.5

Total Burden Hours: 8,820

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 3090–0007, GSA Form 527, Contractor's Qualifications and Financial Information, in all correspondence.

Dated: December 3, 2004.

Michael W. Carleton,

Chief Information Officer.

[FR Doc. 04–27210 Filed 12–10–04; 8:45 am]

BILLING CODE 6820–34–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–05AO]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–371–5976 or send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Health Communication Planning, Implementation, and Evaluation for People with Disabilities—New—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Center on Birth Defects and Developmental Disabilities (NCBDDD) at CDC promotes the health of babies, children, and adults with disabilities. As part of these efforts the Center is actively involved in improving the health and wellness of people with disabilities. Of particular interest is how health information is communicated to people with disabilities. This project involves the conduct of an e-mail survey for an initiative evaluating the effectiveness of health communication materials and strategies developed for people with disabilities by North Carolina, New Mexico, and New York with the support of health promotion grants from CDC. The survey data will be analyzed to evaluate awareness of the state-developed materials among health care providers, human services providers and consumer advocates using these materials, their impressions of and satisfaction with the materials, the impact of the materials, and suggestions for improvement. Data will be collected using an on-line self-reporting survey distributed via e-mail and administered by linking to a web-based questionnaire. The results will be used to develop a training handbook to assist state agencies and public health officials in planning, developing, and implementing health communication materials for people with disabilities. There are no costs to respondents except their time to participate in the survey.

Annualized Burden Table:

Survey	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Review E-mailed cover letter	150	1	5/60	12.5
Electronic	150	1	5/60	12.5
Web-based survey	150	1	8/60	20
Total	150			45

Dated: December 3, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–27185 Filed 12–10–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–05AQ]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call (404) 371–5978 or send comments to Sandi Gambescia, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Performance Measurement Tracking Project for Grantee Sites in Cooperative Agreement with the Division of Oral Health—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and brief description: In 2000, the Surgeon General published the first ever report on oral health in America to alert Americans to the full meaning of oral health and its importance to general health and wellbeing. Included in the framework for action was the charge to build an effective oral health infrastructure that meets the oral health needs of all Americans and integrates oral health

effectively into overall health planning. In response, CDC awarded funds for cooperative agreements to 13 demonstration sites for the planning and implementation of oral health capacity infrastructure building and demonstration delivery programs.

Building infrastructure enables the demonstration sites to develop the capacity to achieve Healthy People 2010 objectives and reach many more Americans than a single local program could reach by sustaining health gains beyond the funding cycle. Infrastructure development encompasses many activities, each of which can be accomplished in a myriad of methods by the grantees. To summarize and track vital development information across grantee sites, a performance measurement tracking project must be established for the demonstration sites. Obtaining uniform data on performance will allow the construction of summary reports to assist future sites and not-yet-funded oral health infrastructure development programs. Performance measurement and tracking for this project would describe the implementation of each site's infrastructure model in relation to environmental context and state characteristics. The results would provide evidence for the essential implementation strategies for effective infrastructure development as defined by the consensus-based Association of State and Territorial Dental Directors' (ASTDD) model. The results would be used to structure flexible guidelines for infrastructure development and identify high-priority activities enabling additional sites to efficiently plan and implement cost-effective oral health improvement activities.

Additionally, this project will assist in the development of objectives and indicators of sustainability resulting in the ability of these demonstration programs to meet the needs of their constituents beyond the seed-funding period. The objectives of the Performance Measurement Tracking project are to:

1. Evaluate infrastructure development activity characteristics among the funded sites.
2. Synthesize progress and promote cross-collaboration among grantees.
3. Make progress indicators available to non-funded sites.
4. Promote positive infrastructure growth among funded and non-funded sites.

These objectives will be attained through a family of uniform evaluation reporting documents designed to evaluate demographic, extent, and culture climate of infrastructure development activities. One respondent from each site will submit the activity-tracking document semiannually. Non-funded sites actively involved in infrastructure development are welcome to submit tracking information to further provide information for all sites.

Annualized Burden Table:

Respondents	Number of respondents per year	Number of responses per respondent	Avg. burden per response (in hours)	Total annual burden (in hours)
Demonstration Site Grantees	13	2	45/60	20
Total				20

Dated: December 3, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–27189 Filed 12–10–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–05–0461X]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Sexually Transmitted Diseases Laboratory Test Method Survey—New—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

CDC is requesting OMB approval to survey public health laboratories about the volume of testing and type of laboratory testing methods for sexually transmitted diseases (STD). In October 2002, CDC published ''Screening Tests to Detect *Chlamydia trachomatis* and *Neisseria gonorrhoeae* Infections'' (MMWR 2002:51 (No. RR–15)). The purpose of this publication was to provide information for public health laboratories regarding the most effective testing methodologies for *Chlamydia trachomatis* and *Neisseria gonorrhoeae.* Because testing practices could affect the resources available to public health departments for STD screening and surveillance programs, it is critical to monitor the capacity and current practices of public health laboratories to appropriately test for these diseases.

The objectives of this proposed data collection are to: (1) Collect information about the volume of and type of testing for chlamydia and gonorrhea performed in laboratories; (2) collect information about antimicrobial susceptibility testing for gonorrhea; and (3) collect information about the volume and type of testing for herpes simplex virus (HSV), syphilis, human papillomavirus (HPV), bacterial vaginosis, and trichomoniasis performed in laboratories. This survey will build on data collected in 2001 by the Association of Public Health Laboratories on laboratory test methods and the volume of testing.

CDC anticipates collecting this data using an on-line survey of 140 public health laboratories. The survey will take approximately 20 minutes to complete; there is no cost to respondents except their time to participate. The annualized burden for this data collection will be 47 hours.

Annualized Burden Table:

Respondents	No. of respondents	Responses per respondent	Average burden per response (in hours)
State labs	50	1	20/60
City/County labs	80	1	20/60
Other Infertility Prevention Project Labs	10	1	20/60

Dated: December 3, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–27190 Filed 12–10–04; 8:45 am]

BILLING CODE 4163–18–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–05–0395X]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Increasing Cervical Cancer Screening in Never or Rarely Screened Black Women: Phase 1—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Black women in the United States have higher incidence of cervical cancer than White women and higher mortality from cervical cancer than White women. Cancer mortality data from 1974–1994 for Black women show stable, geographic patterns of cervical cancer mortality predominantly in the southeastern part of the United States. While screening rates of Black women are shown to be similar to White women, subgroups of Black women may remain unscreened or under-screened (more than three years since the last Pap test), specifically those who are medically uninsured or underinsured or live in rural areas of the country. Screening rates are particularly low for women without access to health care.

The purpose of this project is to conduct formative research to better understand why some Black women ages 50 to 64 do not participate in cervical cancer screening. The proposed study will use focus groups and personal interviews to gather information that will be used to guide future intervention strategies to increase cervical cancer screening in never or rarely screened Black women. There is no cost to respondents except their time to participate. The estimated annualized burden is 158 hours.

ANNUALIZED BURDEN TABLE

Respondents	Form	No. of respondents	No. of responses per respondent	Avg. burden per response (in hours)
Women potentially eligible	Initial eligibility screening for focus group	270	1	7/60
Eligible women	Confirmation of eligibility for focus group	90	1	10/60
Eligible women	Reminder phone call for focus group participant.	90	1	3/60
Focus group participants	Informed consent form	60	1	5/60
Focus group participants	Focus group participant	60	1	1.5
Focus group participants	Health literacy assessment	60	1	12/60

Dated: December 3, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–27191 Filed 12–10–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–05AP]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–371–5976 or send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c)

ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Spanish-language Folic Acid Communication Research and Creative Production—New—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Pregnancies and births affected by spina bifida or anencephaly have profound physical, emotional, and financial effects on families and communities. Recent data from the National Birth Defects Prevention Network surveillance system shows that folic acid food fortification has resulted in an approximate overall 25% decline in Neural Tube Defect (NTD) affected pregnancies. Since food fortification in 1998, the number of babies born in the United States with these serious birth defects has declined. Before food fortification, CDC estimated that there were about 4,000 NTD-affected pregnancies each year. Since 1999, CDC has observed a decline so that the CDC National Center of Birth Defect and Developmental Disabilities now estimate that, annually, there are about 3,000 NTD-affected pregnancies.

Despite these exciting developments, Hispanic women in the United States remain the most vulnerable for having an NTD-affected pregnancy. The specific reason for this increased risk remains a mystery. What we do know is that they have a higher risk than Caucasian and African American women in the United States. Surveys conducted by CDC in 1999 and 2000 also showed that Hispanic women had the lowest reported folic acid knowledge and consumption. In 1995 and 1996 during the pre-fortification period, the prevalence of spina bifida and anencephaly among Hispanic women was about 10 per 10,000 /births or pregnancies compared to about 8 per 10,000 among Whites and almost 6 per 10,000 among Blacks. Because Hispanic women still have the highest rate among the 3 racial/ethnic groups, CDC continues to make reaching them its top priority.

CDC is interested in continuing to reach Spanish-speaking Hispanic women in the United States. Preliminary results from the Spanish Folic Acid Campaign Evaluation Survey (SFACES) have shown that a strategy that combines local outreach efforts and paid/earned media efforts is effective. However, CDC does not anticipate budgetary increases that could make a national-level Spanish language campaign possible. Also, CDC is concerned that the SFACES campaign materials, which were developed in 1999, may be becoming ''dated.'' While CDC has no hard evidence that they are no longer effective, CDC does want to examine their effectiveness in a robust manner before decisions are made about whether to keep using them in outreach efforts in selected communities throughout the U.S. CDC is also interested in developing a deeper understanding of sub-groups of women within the Spanish-speaking Hispanic population and developing effective communication strategies for reaching them.

This project includes a systematic communication research and product development process involving, and ultimately serving, Spanish-speaking Hispanic women. These activities include:

a. Developing a multivariate audience-segmentation scheme using existing data from Spanish-speaking Hispanic women;

b. Assessing the effectiveness of current campaign materials with the identified audience segments;

c. Conducting qualitative research with audience segments;

d. Developing audience profiles for each audience segment;

e. Developing draft communication plans based on audience profiles that outlines potential outreach strategies;

f. Presenting the possibilities to key internal and external stakeholders to solicit input;

g. Developing and testing concepts, messages, and materials along with implementation plans for their use; and,

h. Producing master quality copies of each material in formats that CDC and partners can use for mass production and dissemination.

There are no costs to respondents except their time to participate in the survey.

ANNUALIZED BURDEN TABLE

Respondents	No. of respondents	No. of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Hispanic girls, 13–18 (interviews)	60	1	30/60	30
Hispanic girls, 13–18 (2 focus groups)	24	1	1.5	36
Parents of Hispanic girls, 13–18 (interviews)	30	1	30/60	15
Hispanic women, 19–35 (interviews)	120	1	30/60	60
Hispanic women, 19–35 (4 focus groups)	48	1	1.5	72
Materials distributors (3 focus groups)	36	1	1.5	54
Total	318			267

Dated: December 3, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–27192 Filed 12–10–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

CDC/HRSA Advisory Committee on HIV and STD Prevention and Treatment: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the CDC/HRSA Advisory Committee on HIV and STD Prevention and Treatment, of the Department of Health and Human Services, has been renewed for a 2-year period extending through November 25, 2006.

FOR FURTHER INFORMATION CONTACT: Ron Valdiserri, M.D., Executive Secretary, CDC/HRSA Advisory Committee on HIV and STD Prevention and Treatment, 1600 Clifton Road, NE., m/s E–07, Atlanta, Georgia 30333. Telephone 404/639–8002, or fax 404/639–3125.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: December 6, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–27186 Filed 12–10–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Mine Safety and Health Research Advisory Committee (MSHRAC): Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Mine Safety and Health Research Advisory Committee, National Institute for Occupational Safety and Health (NIOSH), of the Department of Health and Human Services, has been renewed for a 2-year period extending through November 30, 2006.

FOR FURTHER INFORMATION CONTACT: Jeffery L. Kohler, Ph.D., Executive Secretary, Mine Safety and Health Research Advisory Committee, Centers for Disease Control and Prevention, of the Department Of Health Human Services, NIOSH, 626 Cochran Mill Road, M/S P–05, Pittsburgh, Pennsylvania 15236. Telephone 412–386–5301, fax 412–386–5300, e-mail *JKOHLER@cdc.gov.*

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: December 6, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–27187 Filed 12–10–04; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Health Statistics (NCHS), Board of Scientific Counselors

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), National Center for Health Statistics (NCHS) announces the following committee meeting.

Name: Board of Scientific Counselors (BSC), NCHS.

Times and Dates: 2 p.m.–5:30 p.m., January 27, 2005. 8:30 a.m.–2 p.m., January 28, 2005.

Place: NCHS Headquarters, 3311 Toledo Road, Hyattsville, Maryland 20782.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This committee is charged with providing advice and making recommendations to the Secretary; the Director, CDC; and Director, NCHS, regarding the scientific and technical program goals and objectives, strategies, and priorities of NCHS.

Matters To Be Discussed: The agenda will include welcome remarks by the Director, NCHS; introductions of members and key NCHS staff; scientific presentations and discussions; and an open session for comments from the public.

SUPPLEMENTARY INFORMATION: Requests to make an oral presentation should be submitted in writing to the contact person listed below by close of business, January 14, 2005. All requests to make oral comments should contain the name, address, telephone number, and organizational affiliation of the presenter. Written comments should not exceed five single-spaced typed pages in length and should be received by the contact person listed below by close of business, January 14, 2005.

Agenda items are subject to change as priorities dictate.

FOR FURTHER INFORMATION CONTACT: Robert Weinzimer, Executive Secretary, NCHS, 3311 Toledo Road, Room 7108, Hyattsville, Maryland 20782, telephone (301) 458–4565, fax (301) 458–4021.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–27188 Filed 12–10–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Recordkeeping/Reporting Requirement Under Emergency Review by the Office of Management and Budget (OMB)

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 proved 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: December 6, 2004.

Robert Sargis,

Reports Clearance.

[FR Doc. 04–27243 Filed 12–10–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0526]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry: Fast Track Drug Development Programs—Designation, Development, and Application Review

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the proposed collection of information concerning requests for fast track designation by sponsors of investigational new drugs (INDs) and applicants for new drug approvals or biological licenses as provided in the guidance for industry on fast track drug development programs.

DATES: Submit written or electronic comments on the collection of information by February 11, 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: JonnaLynn P. Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

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 comment 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.

Guidance for Industry: Fast Track Drug Development Programs—Designation, Development, and Application Review (OMB Control Number 0910–0389)—Extension

Section 112(a) of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115) amended the Federal Food, Drug, and Cosmetic Act (the act) by adding section 506 (21 U.S.C. 356). The section authorizes FDA to take appropriate action to facilitate the development and expedite the review of new drugs, including biological products, intended to treat a serious or life-threatening condition and that demonstrate the potential to address an unmet medical need. Under section 112(b), FDA issued guidance to industry on fast track policies and procedures outlined in section 506 of the act. The guidance discusses collections of information that are specified under section 506 of the act, other sections of the Public Health Service Act (the PHS Act), or implementing regulations. The guidance describes three general areas involving collections of information: (1) Fast track designation requests, (2) pre-meeting packages, and (3) requests to submit portions of an application. Of these, fast track designation requests and pre-meeting packages, in support of receiving a fast track program benefit, provide for additional collections of information not covered elsewhere in statute or regulation. Information in support of fast track designation or fast track program benefits that has previously been submitted to the agency, may, in some cases, be incorporated into the request by referring to the information rather than resubmitting it.

Under section 506(a)(1) of the act, an applicant who seeks fast track designation is required to submit a request to the agency showing that the product meets the statutory standard for designation, i.e., that: (1) The product is intended for a serious or life-threatening condition and (2) the product has the potential to address an unmet medical need. Mostly, the agency expects that information to support a designation request will have been gathered under existing provisions of the act, the PHS Act, or the implementing regulations. If such information has already been submitted to the agency, the information may be summarized in the fast track designation request. The guidance recommends that a designation request include, where applicable, additional information not specified elsewhere by statute or regulation. For example, additional information may be needed to show that a product has the potential to address an unmet medical need where an approved therapy exists for the serious or life-threatening condition to be treated. Such information may include clinical data, published reports, summaries of data and reports, and a list of references. The amount of information and discussion in a designation request need not be voluminous, but it should be sufficient to permit a reviewer to assess whether the criteria for fast track designation have been met.

After the agency makes a fast track designation, a sponsor or applicant may submit a pre-meeting package which may include additional information supporting a request to participate in certain fast track programs. As with the request for fast track designation, the agency expects that most sponsors or applicants will have gathered such information to meet existing requirements under the act, the PHS Act, or implementing regulations. These may include descriptions of clinical safety and efficacy trials not conducted under an IND (i.e., foreign studies), and information to support a request for accelerated approval. The discussion of such information in a pre-meeting package may be summarized if it has already been previously submitted to FDA under an OMB approved collection of information. Consequently, FDA anticipates that the additional collection of information solely attributed to the guidance will be minimal.

Under section 506(c) of the act, a sponsor must submit sufficient clinical data for the agency to determine, after preliminary evaluation, that a fast track product may be effective. Section 506(c) also requires that an applicant provide a schedule for the submission of information necessary to make the application complete before FDA can commence its review. The guidance does not provide for any new collection of information regarding the submission of portions of an application that is not required under section 506(c) or any other provision of the act. All forms referred to in the guidance have a current OMB approval: FDA Forms 1571 (OMB control number 0910–0014, expires September 30, 2002); 356h (OMB control number 0910–0338, expires March 31, 2003); and 3397 (OMB control number 0910–0297, expires February 29, 2004).

Respondents to this information collection are sponsors and applicants who seek fast track designation under section 506 of the act. The agency estimates the total annual number of respondents submitting requests for fast track designation to the Center for Biologics Evaluation and Research (CBER) and the Center for Drug Evaluation and Research (CDER) will be approximately 45. To obtain this estimate, FDA averaged the number of requests for fast track designation received by CBER and CDER in the 3-year period of 1998 to 2000. For these 3 years, CBER and CDER together received a yearly average of 53 requests from 45 respondents. The rate of submissions is not expected to change significantly in the next few years. FDA estimates that the number of hours needed to prepare a request for fast track designation may range between 40 and 80 hours per request, depending on the complexity of each request, with an average of 60 hours per request, as indicated in table 1 of this document.

Not all requests for fast track designation may meet the statutory standard. Of the average 53 requests made per year, the agency granted 33 requests for fast track designation. For each of the 33 granted requests, FDA estimates that a pre-meeting package was submitted to the agency. FDA estimates that a pre-meeting package needs more preparation time than needed for a designation request because the issues may be more complex and the data may need to be more developed. FDA estimates that the preparation hours for a pre-meeting package may range between 80 and 120 hours per package, with an average of 100 hours per package, as indicated in table 1 of this document.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Designation Request	45	1.18	53	60	3,180
Pre-meeting Packages	33	1.00	33	100	3,300
Total					6,480

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: December 6, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–27198 Filed 12–10–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

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

Proposed Project: State-by-State Self Assessment of Trauma Care Systems—Reinstatement (OMB No. 0915–0259)

HRSA proposes to collect data from the 56 States and Territories on their current trauma care systems to assess progress since the initial survey in fiscal year 2002. This information will be used to establish a national strategy to assist in future grant opportunities to the States to improve or enhance their basic systems infrastructure in trauma care delivery, as well as their collection and usage of quality trauma data.

HRSA will be collaborating with partners from within HRSA's Healthcare Systems Bureau, Division of Healthcare Preparedness (DHP), Bioterrorism Hospital Preparedness Program; HRSA's Office of Rural Health Policy; and HRSA's Maternal and Child Health Bureau. In addition, HRSA will collaborate with the Office of Public Health Emergency Preparedness; the Agency for Healthcare Research and Quality; the Centers for Disease Control and Prevention's Center for Injury Prevention and Control; the National Highway Traffic and Safety Administration's Emergency Medical Services (EMS) Division; and affiliated professional organizations through the DHP Trauma Program's National Trauma-EMS Stakeholder Group. HRSA has included national performance measures for Trauma/EMS for this project in accordance with the requirements of the ''Government Performance and Results Act (GPRA) of 1993'' (Public Law 103–62). This Act requires the establishment of measurable goals for Federal programs that can be reported as part of the budgetary process, thus linking funding decisions with performance.

The estimated response burden is as follows:

Type of form	Number of respondents	Responses per respondent	Burden hours per response	Total burden hours
Self Assessment questionnaire	56	1	10	560
Total	56			560

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: November 29, 2004.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 04–27199 Filed 12–10–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Loan Repayment Program for Repayment of Health Professions Educational Loans Announcement Type: Initial CFDA Number: 93.164

Dates: Please see Section IV, 3.

I. Funding Opportunity Description

The Indian Health Service (IHS) estimated budget request for Fiscal Year (FY) 2005 includes $12,974,300 for the Indian Health Service (IHS) Loan Repayment Program (LRP) for health professional educational loans (undergraduate and graduate) in return for full-time clinical service in Indian health programs.

This program announcement is subject to the appropriation of funds.

This notice is being published early to coincide with the recruitment activity of the IHS, which competes with other Government and private health management organizations to employ qualified health professionals.

This program is authorized by Section 108 of the Indian Health Care Improvement Act (IHCIA) as amended, 25 U.S.C. 1601 et seq. The IHS invites potential applicants to request an application for participation in the LRP.

Funds appropriated for the LRP in FY 2005 will be distributed among the health professions as follows: allopathic/osteopathic practitioners will receive 27 percent, registered nurses 20 percent, mental health professional 10 percent, dentists 12 percent, pharmacists 10 percent, optometrists 5 percent, physician assistants/advanced practice nurses 6 percent, podiatrists 4 percent, physical therapists 2 percent, other professions 4 percent. This requirement does not apply of the number of applicants from these groups respectively, is not sufficient to meet the requirement.

II. Award Information

It is anticipated that $12,974,300 will be available to support approximately 258 competing awards averaging $46,300 per award for a two year contract. One year contract continuations will receive priority consideration in any award cycle. Applicants selected for participation in the FY 2005 program cycle will be expected to begin their service period no later than September 30, 2005.

III. Eligibility Information

1. Eligible Applicants

Pursuant to section 108(b), to be eligible to participate in the LRP, an individual must:

(1)(A) Be enrolled—

(i) In a course of study or program in an accredited institution, as determined by the Secretary, within any State and be scheduled to complete such course of study in the same year such individual applies to participate in such program; or

(ii) In an approved graduate training program in a health profession; or

(B) Have a degree in a health profession and a license to practice in a state; and

(2)(A) Be eligible for, or hold an appointment as a Commissioned Officer in the Regular or Reserve Corps of the Public Health Service (PHS); or

(B) Be eligible for selection for civilian service in the Regular or Reserve Corps of the (PHS); or

(C) Meet the professional standards for civil service employment in the IHS; or

(D) Be employed in an Indian health program without service obligation; and

(E) Submit to the Secretary an application for a contract to the Loan Repayment Program. The Secretary must approve the contract before the disbursement of loan repayments can be made to the participant. Participants will be required to fulfill their contract service agreements through full-time clinical practice at an Indian health program site determined by the Secretary. Loan repayment sites are characterized by physical, cultural, and professional isolation, and have histories of frequent staff turnover. All Indian health program sites are annually prioritized within the Agency by discipline, based on need or vacancy.

Section 108 of the IHCIA, as amended by Public Laws 100–713 and 102–573, authorizes the IHS LRP and provides in pertinent part as follows:

> (a)(1) The Secretary, acting through the Service, shall establish a program to be known as the Indian Health Service Loan Repayment Program (hereinafter referred to as the ''Loan Repayment Program'') in order to assure an adequate supply of trained health professionals necessary to maintain accreditation of, and provide health care services to Indians through, Indian health programs.

Section 4(n) of the IHCIA, as amended by the Indian Health Care Improvement Technical Corrections Act of 1996, Pub. L. 104–313, provides that:

> ''Health Profession'' means *allopathic medicine*, family medicine, internal medicine, pediatrics, geriatric medicine, obstetrics and gynecology, podiatric medicine, nursing, public health nursing, dentistry, psychiatry, osteopathy, optometry, pharmacy, psychology, public health, social work, marriage and family therapy, chiropractic medicine, environmental health and engineering, and allied health profession, *or any other health profession*.

For the purposes of this program, the term ''Indian health program'' is defined in Section 108(a)(2)(A), as follows:

(A) The term ''Indian health program'' means any health program or facility funded, in whole or in part, by the Service for the benefit of Indians and administered—

(i) Directly by the Service;

(ii) By any Indian tribe or tribal or Indian organization pursuant to the contract under—

(I) The Indian Self-Determination Act, or

(II) Section 23 of the Act of April 30, 1908, (25 U.S.C. 47), popularly know as the Buy Indian Act; or

(iii) By an urban Indian organization pursuant to title V of this act. Section 108 of the IHCIA, as amended by Public Laws 100–713 and 102–573, authorizes the IHS to determine specific health professions for which Indian Health Loan Repayment contracts will be awarded. The list of priority health professions that follow are based upon the need of the IHS as well as upon the needs of the American Indians and Alaska Natives.

(a)Medicine: Allopathic and Osteopathic
(b) Nurse: Associate and B.S. Degree
(c) Clinical Psychology: Ph.D only
(d) Social Work: Masters level only
(e) Chemical Dependency Counseling: Baccalaureate and Masters level
(f) Dentistry
(g) Dental Hygiene
(h) Pharmacy: B.S., Pharm.D.
(i) Optometry
(j) Physician Assistant
(k) Advanced Practice Nurses: Nurse Practitioner, Certified Nurse Midwife, Registered Nurse Anesthetist (Priority consideration will be given to Registered Nurse Anesthetists.)
(l) Podiatry: D.P.M.
(m) Physical Therapy: M.S. and D.P.T.
(n) Diagnostic Radiology Technology: Certificate, Associate, and B.S.
(o) Medical Technology: B.S.
(p) Public Health Nutritionist/ Registered Dietitian
(q) Engineering (Civil and Environmental): B.S. (Engineers must provide environmental engineering services to be eligible)
(r) Environmental Health (Sanitarian): B.S.
(s) Health Records: R.H.I.T. and R.H.I.A.
(t) Respiratory Therapy
(u) Ultrasonography

2. Cost Sharing or Matching

Not applicable.

3. Other Requirements

Interested individuals are reminded that the list of eligible health and allied health professions is effective for applicants for FY 2005. These priorities will remain in effect until superseded.

IV. Application and Submission Information

1. Address To Request Application Package

Application materials may be obtained by calling or writing to the address below. In addition, completed applications should be returned to: IHS Loan Repayment Program, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852, PH: 301/ 443–3396 [between 8 a.m. and 5 p.m. (EST) Monday through Friday, except Federal holidays].

2. Content and Form of Application Submission

Applications must be submitted on the form entitled Application for the Indian Health Service Loan Repayment Program,'' identified with the Office of Management and Budget approval number of OMB 0917–0014 (expires 12/31/05).

3. Submission Dates and Times

Completed applications may be submitted to the IHS Loan Repayment Program, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852. Applications for the FY 2005 LRP will be accepted and evaluated monthly beginning February 18, 2005 and will continue to be accepted each month thereafter until all funds are exhausted for FY 2005. Subsequent monthly deadline dates are scheduled for Friday of the second full week of each month.

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks are *not* acceptable as proof of timely mailing.)

Applicants received after the monthly closing date will be held for consideration in the next monthly funding cycle. Applicants who do not receive funding by September 30, 2005, will be notified in writing.

4. Intergovernmental Review

This program is not subject to review under Executive Order 12372.

5. Funding Restrictions

Not applicable.

6. Other Submission Requirements

All applicants must sign and submit to the Secretary, a written contract agreeing to accept repayment of educational loans and to serve for the applicable period of obligated service in a priority site as determined by the Secretary, and submit a signed affidavit attesting to the fact that they have been informed of the relative merits of the U.S. PHS Commissioned Corps and the Civil Service as employment options.

V. Application Review Information

1. Criteria

The IHS has identified the positions in each Indian health program for which there is a need or vacancy and ranked those positions in order of priority by developing discipline-specific prioritized lists of sites. Ranking criteria for these sites include the following:

(a) Historically critical shortages caused by frequent staff turnover;

(b) Current unmatched vacancies in a Health Profession Discipline;

(c) Projected vacancies in a Health Profession Discipline;

(d) Ensuring that the staffing needs of Indian health programs administered by an Indian Tribe or Tribal or health organization receive consideration on an equal basis with programs that are administered directly by the Service;

(e) Giving priority to vacancies in Indian health programs that have a need for health professionals to provide health care services as a result of individuals having breached LRP contracts entered into under this section.

Consistent with this priority ranking, in determining applications to be approved and contracts to accept, the IHS will give priority to applications made by American Indians and Alaska Natives and to individuals recruited through the efforts of Indian Tribes or Tribal or Indian organizations.

2. Review and Selection Process

Loan Repayment Awards will be made only to those individuals serving at facilities which have a site score of 70 or above during the first and second quarters and the first month of the third quarter of FY 2005, if funding is available.

One or all of the following factors may be applicable to an applicant, and the applicant who has the most of these factors, all other criteria being equal, would be selected.

(a) An applicant's length of current employment in the IHS, Tribal, or urban program.

(b) Availability for service earlier than other applicants (first come, first served).

(c) Date the individual's application was received.

3. Anticipated Announcement and Award Dates

Not applicable.

VI. Award Administration Information

1. Award Notices

Notice of awards will be mailed on the last working day of each month. Once the applicant is approved for participation in the LRP, the applicant will receive confirmation of his/her loan repayment award and the duty site at which he/she will serve his/her loan repayment obligation.

2. Administrative and National Policy Requirements

Applicants may sign contractual agreements with the Secretary for 2 years. The IHS will repay all, or a portion of the applicant's health profession educational loans (undergraduate and graduate) for tuition expenses and reasonable educational and living expenses in amounts up to $20,000 per year for each year of contracted service. Payments will be made annually to the participant for the purpose of repaying his/her outstanding health profession educational loans. Payment of health profession education loans will be made to the participant within 120 days, from the date the contract becomes effective.

In addition to the loan repayments, participants are provided tax assistance payments in an amount not less than 20 percent and not more than 39 percent of the participant's total amount of loan repayments made for the taxable year involved. The loan repayments and the tax assistance payments are taxable income and will be reported to the Internal Revenue Service (IRS). The tax assistance payment will be paid to the IRS directly on the participant's behalf. LRP award recipients should be aware that the IRS may place them in a higher tax bracket than they would otherwise have been prior to their award.

3. Reporting

Any individual who enters this program and satisfactorily completes his or her obligated period of service may apply to extend his/her contract on a year-by-year basis, as determined by the IHS. Participants extending their contracts will receive up to the maximum amount of $20,000 per year plus an additional 20 percent for Federal Withholding. Participants who were awarded loan repayment contracts prior to FY 2000 will be awarded extensions up to the amount of $30,000 a year and 31 percent in tax subsidy if funds are available, and will not exceed the total of the individual's outstanding eligible health profession educational loans.

Any individual who owes an obligation for health professional service to the Federal Government, a State,or other entity is not eligible for the LRP unless the obligation will be completely satisfied before they begin service under this program.

VII. Agency Contacts

Please address inquiries to Ms. Jacqueline K. Santiago, Chief, IHS Loan Repayment Program, 801 Thompson Avenue, Suite 120, Rockville, Maryland

20852, PH: 301/443–3396 [between 8 a.m. and 5 p.m. (EST) Monday through Friday, except Federal holidays].

VIII. Other Information

The IHS Area Offices and Service Units are authorized to provide additional funding to make awards to applicants in the LRP, but must be in compliance with any limits in the appropriation and Section 108 of the Indian Health Care Improvement Act not to exceed the amount authorized in the IHS appropriation (up to $27,000,000 for FY 2005.)

Should an IHS Area Office contribute to the LRP, those funds will be used for only those sites located in that Area. Those sites will retain their relative ranking from the national site-ranking list. For example, the Albuquerque Area Office identifies supplemental monies for dentists. Only the dental positions within the Albuquerque Area will be funded with the supplemental monies consistent with the national ranking and site index within that Area.

Should an IHS Service Unit contribute to the LRP, those funds will be used for only those sites located in that Service Unit. Those sites will retain their relative ranking from the national site-ranking list. For example, Chinle Service Unit identifies supplemental monies for pharmacists. The Chinle Service Unit consists of two facilities, namely the Chinle Comprehensive Health Care Facility and the Tsaile PHS Indian Health Center. The national ranking will be used for the Chinle Comprehensive Health Care Facility (Score = 44) and the Tsaile PHS Indian Health center (Score = 46). With a score of 46, the Tsaile PHS Indian Health Center would receive priority over the Chinle Comprehensive Health care Facility.

Dated: December 6, 2004.

Charles W. Grim,

Assistant Surgeon General Director, Indian Health Service.

[FR Doc. 04–27200 Filed 12–10–04; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HOMELAND SECURITY

Science and Technology Directorate; Submission for Review; Revision of Currently Approved Information Collection Requests for Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (SAFETY ACT)—Application Kit and Forms 002 Through 005

AGENCY: Department of Homeland Security, Science and Technology Directorate.

ACTION: Notice; 60-day notice request for review and comments.

SUMMARY: The Department of Homeland Security (DHS) invites the general public and other Federal agencies to comment on revised information collection requests (ICRs) 1640–0001, 1640–0002, 1640–0003, 1640–0004, 1640–0005, and 1640–0006, SAFETY ACT Application Kit and Forms 003 through 007. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) DHS is soliciting comments on the revisions for the approved information collection requests. The ICRs previously were published in the **Federal Register** on October 16, 2003, at 68 FR 59696, allowing for OMB review and a 60-day public comment period, and on February 20, 2004 at 69 FR 7978 to allow for an additional 30-day public comment period. The revised ICR submissions set forth in this Notice incorporate comments received by DHS as applicable.

Discussion of Comments and Changes

Application Preparation Burden

Six commenters expressed concern that the amount and type of information required in the Application Kit is burdensome, if not prohibitive, and that only large companies will be able to bring to bear the preparation resources required to answer all of the questions. One commenter estimated costs in excess of $1M to prepare applications for its various Anti-Terrorism Technologies (ATTs). Other commenters estimated the preparation effort at 1000 staff hours or more per application. Commenters also expressed the opinion that some of the information being requested—particularly financial information—is not relevant to the evaluation of applications against the criteria of the Act.

The Department has been, and continues to remain, sensitive to concerns about the application process, and the perceived difficulty of preparing and submitting an application. Consequently, the Department specifically solicited comments on the Application Kit and process in the Interim Rule. Based on both the comments received concerning the initial Application Kit as well as the experience of the Office of SAFETY Act Implementation (OSAI) with the applications filed to date, OSAI has published numerous Frequently Asked Questions on its Web site as well as undertaken a substantial revision of the Application Kit.

The Department is very sensitive to the perceived difficulty, and required monetary and personnel resources required to complete an Application for SAFETY Act Benefits. In order to obtain specific data on this issue, in July 2004 the Director of the Office of SAFETY Act Implementation personally spoke with each company that submitted a full application to obtain feedback regarding the time and effort that companies invested in completing the application. The responses indicated that the amount of time was proportional to the size of the company, with small to medium sized organizations spending considerably less time compiling the information required to complete the application then did large corporations with more cumbersome internal bureaucratic processes. Overall, it appears it takes most organizations approximately 150 hours to complete the full application utilizing the prior version of the application kit. The shortest time reported was 25 hours and the most was 1000. Discussions with the single applicant that spent the 1000 hours revealed that the time resulted from its team approach and consequent internal staffing decisions coupled with the numerous internal approval processes necessary prior to submission of the application, not from the complexity of the application itself. Confirmation of this assessment came from discussions with two applicants of similar size; one reported its application took no more than 100 hours across the entire company and the other reported 200 hours. Based on this information, the Department is confident that it is the business practices of the particular applicant that resulted in the extraordinary investment of time in completing the application, and not the application itself or the Department's implementation of the SAFETY Act.

The Department agrees that some of the financial information requested in the existing Application kit is not essential to the evaluation of every application. The Department has decided to limit the amount of financial information requested as part of the initial submission and to supplement

the information as needed throughout the evaluation process. The revised Application Kit reflects these changes.

Certifying ''Accuracy and Completeness''

Two commenters expressed the opinion that it is unreasonable to require applicants to certify the application as ''accurate and complete'' under penalty of perjury when some of the questions require the applicant provide answers on a ''best guess'' basis. In particular, the answers to the questions related to threat estimates, potential casualties, and potential casualty reductions were cited as questions whose answers may be essentially unknowable.

The Department agrees that it would be unreasonable to expect applicants to certify the accuracy of their speculative or predictive estimates of future events and risks, and does not believe that the application requires such a certification. The language of the certification is qualified by the phrase ''to the best of my knowledge and belief.'' Since the Applicant either knows, or is able to obtain, accurate factual information about the Applicant's ATT and business enterprise, the Department believes the certification is appropriate to factual information. Conversely, since estimates are by definition not factual information, the Department believes the certification only requires that estimates be provided in good faith with a reasonable belief they are as accurate as possible at the time of submission. The Department believes this burden is easily met if the Applicant provides sufficient additional information to allow the Department to understand the basis for the estimate, including both a description of the assumptions utilized and the analytical process applied. Nevertheless, the language of the Certification has been changed in the new application to clarify the distinction and make clear that only factual information is being certified as true and correct.

Bias Toward Product-based ATTs

Despite the assurances of the Interim Rule, particularly in the responses to comments on the Notice of Proposed Rulemaking, four commenters thought that the language of the Rule and of the Application Kit implicitly assumed product-like ATTs. The commenters seemed particularly concerned about the wording of the Application Kit.

While the Department is aware that some of the language in the prior version appears biased towards products, the Department believes this version adequately addresses this objection. In particular, the revised Application Kit makes clear that design services, integration services, consulting services, engineering services, software development, software integration, studies and analyses, threat assessments, and so forth are all Technologies under the SAFETY Act.

DATES: Written comments should be received on or before February 11, 2005 to be assured consideration.

ADDRESSES: Science and Technology Directorate, Attn: SAFETY Act, 245 Murray Drive, Bldg. 410 (RDS), Washington, DC 20528 and Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for Homeland Security, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Erin O'Connell, (703) 575–4510 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Direct all written comments to both the Department of Homeland Security and the Office of Information and Regulatory Affairs at the addresses listed in this notice. A copy of the information collection requests with applicable supporting documentation may be obtained by calling the contact listed above.

The Office of Management and Budget is particularly interested in comments which:

(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, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Analysis:

OMB Number: 1640–0001.

Title: Support Anti-terrorism by Fostering Effective Technologies Act of 2002 ''Application for SAFETY Act Benefits.

Frequency: On occasion.

Affected Public: Business or other for profit and not-for-profit institutions.

Estimated Number of Respondents: 750 respondents.

Estimated Time per Response: 40–160 hours per response (average = 100 hours per response).

Total Burden Hours: 75,000.

Total Burden Cost: (capital/startup): None.

Total Burden Cost: (operating/maintaining): None.

OMB Number: 1640–0002.

Title: Support Anti-terrorism by Fostering Effective Technologies Act of 2002—Registration of a Seller of Anti-Terrorism Technology (DHS–S&T–I–SAFETY–003).

Frequency: On occasion.

Affected Public: Business or other for profit, not-for-profit institutions.

Estimated Number of Respondents: 1,800.

Estimated Time per Response: 10–30 minutes (average = 20 minutes).

Total Burden Hours: 600.

Total Burden Cost: (capital/startup): None.

Total Burden Cost: (operating/maintaining): None.

OMB Number: 1640–0003.

Title: Support Anti-terrorism by Fostering Effective Technologies Act of 2002—Request for Pre-Application Consultation (DHS–S&T–I SAFETY 004).

Frequency: On occasion.

Affected Public: Business or other for profit, not-for-profit institutions.

Estimated Number of Respondents: 1,500.

Estimated Time per Response: 4–24 hours (average = 18 hours).

Total Burden Hours: 27,000.

Total Burden Cost: (capital/startup): None.

Total Burden Cost: (operating/maintaining): None.

OMB Number: 1640–0004.

Title: Support Anti-terrorism by Fostering Effective Technologies Act of 2002—Application for Modification to SAFETY Act Benefits (DHS–S&T–I SAFETY 005).

Frequency: On occasion.

Affected Public: Business or other for profit, not-for-profit institutions.

Estimated Number of Respondents: 150.

Estimated Time per Response: 2–12 hours (average = 8).

Total Burden Hours: 1,200.

Total Burden Cost: (capital/startup): None.

Total Burden Cost: (operating/maintaining): None.

OMB Number: 1640–0005.

Title: Support Anti-terrorism by Fostering Effective Technologies Act of 2002—Request for Transfer of SAFETY Act Benefits (DHS–S&T–I SAFETY 006).

Frequency: On occasion.

Affected Public: Business or other for profit, not-for-profit institutions.

Estimated Number of Respondents: 50.

Estimated Time per Response: 1–8 hours (average = 6).

Total Burden Hours: 300.

Total Burden Cost: (capital/startup): None.

Total Burden Cost: (operating/maintaining): None.

Description: The SAFETY ACT provides incentives for the development and deployment of Anti-Terrorism Technologies (ATTs) by creating a system of ''risk management'' and a system of ''litigation management.'' The purpose of the SAFETY ACT is to ensure that the threat of liability does not deter potential manufacturers or sellers of ATTs from developing and commercializing technologies that could significantly reduce the risks or mitigate the effects of terrorist events. Without these protections, important technologies are not being deployed to prevent harm resulting from a terrorist attack.

Dated: December 7, 2004.

Mark Emery,

Deputy, Chief Information Officer.

[FR Doc. 04–27272 Filed 12–10–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4513–N–18]

Credit Watch Termination Initiative

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice advises of the cause and effect of termination of Origination Approval Agreements taken by HUD's Federal Housing Administration (FHA) against HUD-approved mortgagees through the FHA Credit Watch Termination Initiative. This notice includes a list of mortgagees which have had their Origination Approval Agreements terminated.

FOR FURTHER INFORMATION CONTACT: The Quality Assurance Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–8000; telephone (202) 708–2830 (this is not a toll free number). Persons with hearing or speech impairments may access that number through TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: HUD has the authority to address deficiencies in the performance of lenders' loans as provided in HUD's mortgagee approval regulations at 24 CFR 202.3. On May 17, 1999 (64 FR 26769), HUD published a notice on its procedures for terminating Origination Approval Agreements with FHA lenders and placement of FHA lenders on Credit Watch status (an evaluation period). In the May 17, 1999 notice, HUD advised that it would publish in the **Federal Register** a list of mortgagees, which have had their Origination Approval Agreements terminated.

Termination of Origination Approval Agreement: Approval of a mortgagee by HUD/FHA to participate in FHA mortgage insurance programs includes an Origination Approval Agreement (Agreement) between HUD and the mortgagee. Under the Agreement, the mortgagee is authorized to originate single family mortgage loans and submit them to FHA for insurance endorsement. The Agreement may be terminated on the basis of poor performance of FHA-insured mortgage loans originated by the mortgagee. The termination of a mortgagee's Agreement is separate and apart from any action taken by HUD's Mortgagee Review Board under HUD's regulations at 24 CFR part 25.

Cause: HUD's regulations permit HUD to terminate the Agreement with any mortgagee having a default and claim rate for loans endorsed within the preceding 24 months that exceeds 200 percent of the default and claim rate within the geographic area served by a HUD field office, and also exceeds the national default and claim rate. For the 20th review period, HUD is terminating the Agreement of mortgagees whose default and claim rate exceeds both the national rate and 200 percent of the field office rate.

Effect: Termination of the Agreement precludes that branch(s) of the mortgagee from originating FHA-insured single family mortgages within the area of the HUD field office(s) listed in this notice. Mortgagees authorized to purchase, hold, or service FHA insured mortgages may continue to do so.

Loans that closed or were approved before the termination became effective may be submitted for insurance endorsement. Approved loans are (1) those already underwritten and approved by a Direct Endorsement (DE) underwriter employed by an unconditionally approved DE lender and (2) cases covered by a firm commitment issued by HUD. Cases at earlier stages of processing cannot be submitted for insurance by the terminated branch; however, they may be transferred for completion of processing and underwriting to another mortgagee or branch authorized to originate FHA insured mortgages in that area. Mortgagees are obligated to continue to pay existing insurance premiums and meet all other obligations associated with insured mortgages.

A terminated mortgagee may apply for a new Origination Approval Agreement if the mortgagee continues to be an approved mortgagee meeting the requirements of 24 CFR 202.5, 202.6, 202.7, 202.8 or 202.10 and 202.12, if there has been no Origination Approval Agreement for at least six months, and if the Secretary determines that the underlying causes for termination have been remedied. To enable the Secretary to ascertain whether the underlying causes for termination have been remedied, a mortgagee applying for a new Origination Approval Agreement must obtain an independent review of the terminated office's operations as well as its mortgage production, specifically including the FHA-insured mortgages cited in its termination notice. This independent analysis shall identify the underlying cause for the mortgagee's high default and claim rate. The review must be conducted and issued by an independent Certified Public Accountant (CPA) qualified to perform audits under Government Auditing Standards as provided by the General Accounting Office. The mortgagee must also submit a written corrective action plan to address each of the issues identified in the CPA's report, along with evidence that the plan has been implemented. The application for a new Agreement should be in the form of a letter, accompanied by the CPA's report and corrective action plan. The request should be sent to the Director, Office of Lender Activities and Program Compliance, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–8000 or by courier to 490 L'Enfant Plaza, East, SW., Suite 3214, Washington, DC 20024.

Action: The following mortgagees have had their Agreements terminated by HUD:

Mortgagee name	Mortgagee branch address	HUD office jurisdictions	Termination effective date	Home ownership centers
America's Mortgage Resource, Inc	3317 N I–10 Service Road, Metairie, LA 70003.	New Orleans, LA	9/10/2004	Denver.
American Union Mortgage, Inc	5250 S. Commerce Dr., Ste 101, Murray, UT 84107.	Salt Lake City, UT	9/10/2004	Denver.
ARK LA TEX Financial Services LLC	4137 S Sherwood Forest Blvd., Baton Rouge, LA 70816.	New Orleans, LA	10/4/2004	Denver.
Fieldstone Mortgage Company	6243 I H 10 W, Ste 205, San Antonio, TX 78201.	San Antonio, TX	9/10/2004	Denver.
Gateway Funding Diversified Mtg Srvs LP	300 Welsh Rd, Bldg 5, Horsham, PA 19044	Philadelphia, PA	9/10/2004	Philadelphia.
Hamilton Mortgage Corporation	1 Independence Dr., Ste 416, Birmingham, AL 35209.	Birmingham, AL	10/5/2004	Atlanta.
Major Mortgage	13300 Old Blanco Rd. Ste 304, San Antonio, TX 78216.	San Antonio, TX	10/5/2004	Denver.
Major Mortgage	2660 South Rainbow Blvd. D104, Las Vegas, NV 89146.	Las Vegas, NV	10/5/2004	Santa Ana.
Mortgage Plus of America Corp	940 N 10th Street, Ste 200 Kalamazoo, MI 49009.	Grand Rapids, MI	9/10/2004	Philadelphia.
Old American Mortgage, Inc	4516 South, 700 East #100, Murray, UT 84107.	Salt Lake City, UT	10/5/2004	Denver.
Pan American Financial Corp	Roosevelt Ave, 1505 2nd Floor, Guaynabo, PR 00968.	San Juan, PR	10/5/2004	Atlanta.
Summit Financial Mortgage LLC	7586 W Jewell Ave, Ste 101, Lakewood, CO 80232.	Denver, CO	9/10/2004	Denver.
Villa Mortgage, Inc	2796 Mack Road, Fairfield, OH 45014	Cincinnati, OH	10/6/2004	Philadelphia.

Dated: December 6, 2004.

Sean Cassidy,

General Deputy Assistant Secretary for Housing.

[FR Doc. 04–27207 Filed 12–10–04; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Comprehensive Conservation Plans and an Environmental Impact Statement for Monomoy and Nomans Land Island National Wildlife Refuges

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of intent.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare Comprehensive Conservation Plans (CCP) for Monomoy and Nomans Land Island National Wildlife Refuges (NWR) and an associated Environmental Impact Statement (EIS). The CCPs/EIS will present management alternatives and analyze the effects of implementing the management actions. The refuges are a part of the Eastern Massachusetts NWR Complex and are located in Barnstable and Dukes Counties, Massachusetts, respectively. The EIS will be prepared pursuant to section 102(2)C of the National Environmental Policy Act and its implementing regulations. The CCPs of three refuges within the Eastern Massachusetts NWR Complex (Great Meadows, Oxbow, and Assabet River NWRs) are in final development, and the remaining three refuges of the Eastern Massachusetts NWR Complex (Mashpee, Massasoit, and Nantucket NWRs) will be evaluated under separate process(es).

This notice amends previous notices, published on February 24, 1999, that stated an EIS would be developed for all eight units of the complex (previously called Great Meadows National Wildlife Refuge Complex), and on February 15, 2001, that stated an EIS would be developed for three units (Monomoy, Nantucket, and Nomans Land Island NWRs). Comments already received for these refuges under the previous notices will be considered. The Service invites agencies, groups, and the public to submit any additional comments concerning the scope of issues to be addressed, as well as possible management alternatives and environmental impacts to consider in the EIS. We will hold public meetings regarding the CCP process in the near future. Notices of such meetings will be advertised in the local newspaper, announced on the refuge Web site, and sent to the refuge CCP mailing list. If you would like to be included on the mailing list, please contact Bill Perry at the address listed below.

The Service is furnishing this notice in compliance with the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd *et seq.*):

(1) To advise other agencies and the public of our intentions, and

(2) To obtain suggestions and information on the scope of issues to include in the environmental documents.

DATES: Inquire at the following address for dates of planning activity. Comments concerning the scope of issues to be addressed must be submitted by January 27, 2005.

Send Comments To: Bill Perry, Refuge Planner, 73 Weir Hill Road, Sudbury, Massachusetts 01776, or e-mail comments to *northeastplanning@fws.gov* with a subject line stating ''Monomoy and Nomans Land Island NWRs.''

FOR FURTHER INFORMATION CONTACT: Bill Perry, Refuge Planner, 73 Weir Hill Road, Sudbury, Massachusetts 01776, 978–449–4661 extension 32, or e-mail *Bill_Perry@fws.gov.* Information will be periodically updated on the refuge Web site at *http://monomoy.fws.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the National Wildlife Refuge Improvement Act of 1997, all lands within the National Wildlife Refuge System are to be managed in accordance with an approved CCP. The CCP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. The planning process will consider many elements, including habitat and wildlife management, habitat protection, public use, and cultural resources. Public input into this planning process is essential. The CCP

will provide other agencies and the public with a clear understanding of the desired conditions for the refuges and how the Service will implement management strategies.

The Service has already solicited information from the public via open houses, meetings, and written comments. Special mailings, newspaper articles, and announcements will continue to inform people in the general area near the refuges of the time and place of opportunities for further public input to the CCP.

The Eastern Massachusetts NWR Complex is a diverse group of coastal and inland refuges. Habitats include forest, field, riparian, barrier island beach, freshwater marsh, and pond. Monomoy NWR contains 7,604 acres in a combination of land and open water. With the exception of approximately 300 acres, all of the land area is a designated Federal Wilderness Area. Nomans Land Island NWR contains 628 acres.

Review of this project will be 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 laws and regulations, and Service policies and procedures for compliance with those regulations. Concurrent with the CCP process we will conduct a wilderness review of Nomans Land Island and the non-wilderness portion of South Monomoy Island and incorporate a summary of the review into the CCP. Wilderness review is the process we use to determine if we should recommend National Wildlife Refuge System lands and waters to Congress for wilderness designation.

We estimate that the draft environmental documents will be available December 2005 for public review and comment.

Dated: October 1, 2004.

Marvin E. Moriarty,

Regional Director, U.S. Fish and Wildlife Service, Hadley, Massachusetts.

[FR Doc. 04–27279 Filed 12–10–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Post-Delisting Monitoring Plan for the Tinian Monarch (*Monarcha takatsukasae*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability for review and comment.

SUMMARY: The U.S. Fish and Wildlife Service (we) announces the availability of the Draft Post-delisting Monitoring Plan for the Tinian Monarch (*Monarcha takatsukasae*) (Monitoring Plan). We propose to monitor the status of the Tinian monarch over a 5-year period from 2005 to 2010 through regular field surveys of the distribution and abundance of the Tinian monarch, regular field surveys for brown treesnakes (*Boiga irregularis*) on Tinian, and tracking of land use and development on Tinian. We solicit review and comment on this Monitoring Plan from local, State and Federal agencies, and the public.

DATES: We will accept and consider all public comments received on or before January 12, 2005.

ADDRESSES: Copies of the Monitoring Plan are available by request from Dr. Eric VanderWerf, Hawaiian Bird Recovery Coordinator, U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Blvd., Box 50088, Honolulu, Hawaii 96850 (telephone: (808) 792–9400; fax: (808) 792–9580). This Monitoring Plan is also available on the World Wide Web at *http://pacificislands.fws.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Eric VanderWerf, Hawaiian Bird Recovery Coordinator, at the above Honolulu address or at (808) 792–9400.

SUPPLEMENTARY INFORMATION:

Background

The Tinian monarch, or Chuchurican Tinian in the Chamorro language, is a forest bird endemic to the island of Tinian in the Mariana Archipelago in the western Pacific Ocean. The Tinian monarch inhabits a variety of forest types on Tinian, including native limestone forest, secondary vegetation consisting primarily of non-native plants, and nearly pure stands of introduced tangantangan (*Leucaena leucocephala*).

The Tinian monarch was listed as endangered on June 2, 1970 (35 FR 8491), because its population was reported to be critically low due to the destruction of native forests by pre-World War II (WW II) agricultural practices, and by military activities during WW II. We conducted forest bird surveys on Tinian in 1982, which resulted in a population estimate of 39,338 Tinian monarchs. On November 1, 1985, we published a proposed rule to delist the Tinian monarch (50 FR 45632). Based on comments received, we instead downlisted the Tinian monarch, and a final rule reclassifying it from endangered to threatened was published on April 6, 1987 (52 FR 10890). There is no recovery plan specifying delisting criteria for the Tinian monarch. A study of Tinian monarch breeding biology in 1994 and 1995 resulted in a population estimate of approximately 52,900 birds. In 1996, a replication of the 1982 surveys yielded a population estimate of 55,720 birds. The 1996 survey also found a significant increase in forest density since 1982, indicating an improvement in Tinian monarch habitat quality.

On February 22, 1999, we published a proposed rule to remove the Tinian monarch from the Federal List of Endangered and Threatened Wildlife (64 FR 8533). That proposal was based primarily on information from population surveys and demographic research, which indicated the Tinian monarch has increased in number or is stable, and that the primary listing factor, loss of habitat, has been ameliorated. On September 21, 2004, we published a final rule removing the Tinian monarch from the Federal List of Endangered and Threatened Wildlife (69 FR 65367).

Section 4(g)(1) of the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*), requires that we implement a system, in cooperation with the States, to monitor for no fewer than 5 years the status of all species that have recovered and been removed from the Federal List of Endangered and Threatened Wildlife and Plants. The purpose of post-delisting monitoring is to verify that a species delisted due to recovery remains secure from risk of extinction after it has been removed from the protections of the Act.

On December 7, 2002, we mailed letters to 18 scientific experts on the Tinian monarch and the brown treesnake, asking for scientific review of the Monitoring Plan. We received nine responses to our request. We carefully considered the comments of the reviewers and used them to improve the Monitoring Plan.

We propose to monitor the status of the Tinian monarch over a 5-year period from 2005 to 2010 in cooperation with the Commonwealth of the Northern Mariana Islands Division of Fish and Wildlife, the U.S. Geological Survey, the U.S. Department of Agriculture, and the U.S. Navy through regular field surveys of the distribution and abundance of the Tinian monarch, regular field surveys for brown treesnakes on Tinian, and by tracking changes in land use and development on Tinian. If data from this monitoring effort, or from some other source, indicate that the Tinian

monarch is experiencing significant declines in abundance or distribution or that it requires protective status under the Act for some other reason, we can initiate listing procedures including, if appropriate, emergency listing.

Public Comments Solicited

We will accept written comments and information during this comment period. If you wish to comment, you may submit your comments and materials concerning this monitoring plan by any of these methods:

1. You may submit written comments and information my mail, facsimile, or in person to the Hawaiian Bird Recovery Coordinator at the above Honolulu address (*see* **ADDRESSES**).

2. You may send comments by electronic mail (e-mail) to: *monarch_pdmp@r1.fws.gov.* If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include your name and return address in your e-mail message.

Comments and materials received, as well as supporting documentation used in preparation of the Monitoring Plan, will be available for inspection, by appointment, during normal business hours at the above Honolulu address (*see* **ADDRESSES**).

Author

The primary author of this document is Dr. Eric A. VanderWerf, Hawaiian Bird Recovery Coordinator (*see* **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: November 15, 2004.

David Wesley,

Acting Regional Director, Region 1, Fish and Wildlife Service.

[FR Doc. 04–27022 Filed 12–10–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Meeting of the California Desert District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will participate in a field tour of the BLM-administered public lands on Friday, January 7, 2005, from 7:30 a.m. to 5 p.m., and meet in formal session on Saturday, January 8, from 8 a.m. to 5 p.m. The Saturday meeting will be held in the Pinnacles Room in the Kerr McGee Community Center, located at 100 W. California Avenue, Ridgecrest, California.

The Council and interested members of the public will depart for a field tour at 7:30 a.m. from the parking lot of the Heritage Inn Hotel, which is located at 1050 North Norma in Ridgecrest, California. The public is welcome to participate in the tour, but should plan on providing their own transportation, drinks, and lunch.

Agenda items tentatively scheduled for the Saturday Council meeting will include reports by Advisory Council members, the District Manager and the five District field office managers. Additional briefings to be scheduled.

The Advisory Council also confirmed meetings on the following dates:

—April 1–2
—June 24–25
—September 23–24

Each meeting will include a field tour on Friday from 7:30 a.m. to 5 p.m. and a public meeting on Saturday from 8 a.m. to 5 p.m. Once finalized, the locations and agenda topics will be published in the **Federal Register** and posted on BLM's California State Web page at *http://www.ca.blm.gov/news.* Click on Advisory Councils and scroll down to the California Desert District Advisory Council.

All Desert District Advisory Council meetings are open to the public. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is scheduled at the end of the meeting for topics not on the agenda.

Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, Public Affairs Office, 22835 Calle San Juan De Los Lagos, Moreno Valley, California 92553. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

FOR FURTHER INFORMATION CONTACT: Doran Sanchez, BLM California Desert District Public Affairs Specialist (951) 697–5220.

Dated: December 6, 2004.

Alan Stein,

Assistant District Manager.

[FR Doc. 04–27194 Filed 12–10–04; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–100–05–1310–DB]

Notice of Meeting of the Pinedale Anticline Working Group's Reclamation Task Group

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting and cancellation.

SUMMARY: In accordance with the Federal Land Policy and Management Act (1976) and the Federal Advisory Committee Act (1972), the U.S. Department of the Interior, Bureau of Land Management (BLM) Pinedale Anticline Working Group (PAWG) Reclamation Task Group (subcommittee) will meet in Pinedale, Wyoming, for a business meeting. Task Group meetings are open to the public.

DATES: The PAWG Reclamation Task Group meeting scheduled for December 8, 2004 at the Pinedale Library is cancelled. The PAWG Reclamation Task Group will conduct meetings on the following dates: January 4, 2005, from 9 a.m. until 4 p.m.; January 19, 2005, from 6 p.m. until 8 p.m. and; February 9, 2005, from 9 a.m. until 4 p.m.

ADDRESSES: All meetings of the PAWG Reclamation Task Group will be held in the Lovatt room of the Pinedale Library at 155 S. Tyler Ave., Pinedale, WY.

FOR FURTHER INFORMATION CONTACT: Dessa Dale, BLM/Reclamation TG Liaison, Bureau of Land Management, Pinedale Field Office, 432 E Mills St., P.O. Box 768, Pinedale, WY, 82941; (307) 367–5321.

SUPPLEMENTARY INFORMATION: The Pinedale Anticline Working Group (PAWG) was authorized and established with release of the Record of Decision (ROD) for the Pinedale Anticline Oil and Gas Exploration and Development Project on July 27, 2000. The PAWG advises the BLM on the development and implementation of monitoring plans and adaptive management decisions as development of the Pinedale Anticline Natural Gas Field (PAPA) proceeds for the life of the field.

After the ROD was issued, Interior determined that a Federal Advisory Committees Act (FACA) charter was required for this group. The charter was signed by Secretary of the Interior, Gale Norton, on August 15, 2002, and renewed on August 13, 2004. An announcement of committee initiation and call for nominations was published in the **Federal Register** on February 21, 2003, (68 FR 8522). PAWG members

were appointed by Secretary Norton on May 4, 2004.

At their second business meeting, the PAWG established seven resource-or activity-specific Task Groups, including one for reclamation. Public participation on the Task Groups was solicited through the media, letters, and word-of-mouth.

The agenda for these meetings will include information gathering and discussion related to developing a reclamation monitoring plan to assess the impacts of development in the Pinedale Anticline gas field, and identifying who will do and who will pay for the monitoring. Task Group recommendations are due to the PAWG in February, 2005. At a minimum, public comments will be heard just prior to adjournment of the meeting.

Dated: December 2, 2004.

Priscilla E. Mecham,

Field Office Manager.

[FR Doc. 04–27211 Filed 12–10–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–100–05–1310–DB]

Notice of Meeting of the Pinedale Anticline Working Group's Air Quality Task Group

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (1976) and the Federal Advisory Committee Act (1972), the U.S. Department of the Interior, Bureau of Land Management (BLM) Pinedale Anticline Working Group (PAWG) Air Quality Task Group (subcommittee) will meet in Pinedale, Wyoming, for a business meeting. Task Group meetings are open to the public.

DATES: The next PAWG Air Quality Task Group meeting is scheduled for January 4, 2005, from 8 a.m. until 5 p.m. A second meeting will occur on January 25, 2005, from 8 a.m. to 5 p.m.

ADDRESSES: The January 4 PAWG Air Quality Task Group meeting will be held in the Questar office at 907 W. Wilson St., Pinedale, WY. The January 25 meeting will be held in the Shell office at 205 S. Entertainment Lane, Pinedale, WY.

FOR FURTHER INFORMATION CONTACT: Susan Caplan, BLM/Air Quality TG Liaison, Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Rd., Cheyenne, WY, 82009, or PO Box 1828, Cheyenne, WY, 82003; (307) 775–6031.

SUPPLEMENTARY INFORMATION: The Pinedale Anticline Working Group (PAWG) was authorized and established with release of the Record of Decision (ROD) for the Pinedale Anticline Oil and Gas Exploration and Development Project on July 27, 2000. The PAWG advises the BLM on the development and implementation of monitoring plans and adaptive management decisions as development of the Pinedale Anticline Natural Gas Field (PAPA) proceeds for the life of the field.

After the ROD was issued, Interior determined that a Federal Advisory Committees Act (FACA) charter was required for this group. The charter was signed by Secretary of the Interior, Gale Norton, on August 15, 2002, and renewed on August 13, 2004. An announcement of committee initiation and call for nominations was published in the **Federal Register** on February 21, 2003, (68 FR 8522). PAWG members were appointed by Secretary Norton on May 4, 2004.

At their second business meeting, the PAWG established seven resource-or activity-specific Task Groups, including one for Air Quality. Public participation on the Task Groups was solicited through the media, letters, and word-of-mouth.

The agenda for this meeting will include information gathering and discussion related to developing an air quality monitoring plan to assess the impacts of development in the Pinedale Anticline gas field, and identifying who will do and who will pay for the monitoring. Task Group recommendations are due to the PAWG in February, 2005. At a minimum, public comments will be heard just prior to adjournment of the meeting.

Dated: December 2, 2004.

Priscilla E. Mecham,

Field Office Manager.

[FR Doc. 04–27212 Filed 12–10–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–600–05–1610–DF]

Notice of Public Meetings, Northwest Colorado Resource Advisory Council Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

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) Northwest Colorado Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Northwest Colorado RAC meetings will be held Jan. 21, 2005; Feb. 9, 2005; May 12, 2005; Aug. 11, 2005; and Nov. 10, 2005.

ADDRESSES: The Northwest Colorado RAC meetings will be held Jan. 21, 2005, at the Bill Heddles Recreation Center, located at 530 Gunnison River Dr., Delta, CO; Feb. 9, 2005, at the Battlement Mesa Activity Center, located at 0398 Arroyo Drive, Parachute, CO; May 12, 2005, at the BLM White River Field Office, located at 73544 Hwy. 64, Meeker, CO; Aug. 11, 2005, at the Wattenberg Center, Jackson County Fairgrounds, located at 686 County Road 42, Walden, CO; and Nov. 10, 2005, at the BLM Grand Junction Field Office located at 2815 H Rd. in Grand Junction, CO. All Northwest Colorado RAC meetings, with the exception of the Feb. 9, 2005 meeting, will begin at 8 a.m. and adjourn at approximately 3 p.m., and public comment periods regarding matters on the agenda will be at 2 p.m. during each meeting. The Feb. 9, 2005 meeting will begin at 2 p.m. and adjourn at 6 p.m. with a public comment period scheduled for 3 p.m.

FOR FURTHER INFORMATION CONTACT: Jamie Connell, BLM Glenwood Springs Field Office Manager, 50629 Hwy. 6&24, Glenwood Springs, CO; telephone 970–947–2800; or Melodie Lloyd, Public Affairs Specialist, 2815 H Rd., Grand Junction, CO, telephone 970–244–3097.

SUPPLEMENTARY INFORMATION: The Northwest Colorado RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of public land issues in Colorado.

The purpose of the Feb. 9, 2005 meeting is to discuss resource management-related topics for the Roan Plateau Draft Resource Management Plan. Topics of discussion for all other Northwest Colorado RAC meetings may include the BLM National Sage Grouse Conservation Strategy, committee reports, fire management, land use planning, invasive species management, energy and minerals management, travel management, wilderness, wild horse herd management, land exchange proposals, cultural resource management, and other issues as appropriate.

These meetings are open to the public. The public may present written

comments to the RACs. Each formal RAC meeting will also have time, as identified above, allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

Dated: December 7, 2004.

John E. Husband,

Little Snake Field Office Manager and Designated Federal Officer for the Northwest Colorado RAC.

[FR Doc. 04–27277 Filed 12–10–04; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

Oil and Gas Management Plan, Draft Environmental Impact Statement Big Thicket National Preserve, Texas

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of the Oil and Gas Management Plan/Draft Environmental Impact Statement for Big Thicket National Preserve.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(C), the National Park Service announces the availability of an Oil and Gas Management Plan/Draft Environmental Impact Statement (OGMP/DEIS) for Big Thicket National Preserve, Texas.

When the Preserve was created, surface ownership within the area was acquired by the U.S. Government. Private entities or the State of Texas retained the subsurface mineral interests in these lands. Thus, the federal government does not own any of the subsurface oil and gas rights in the Preserve, yet the National Park Service is required by its laws, policies and regulations to protect the Preserve from any actions, including oil and gas operations that may adversely impact or impair Preserve resources and values.

The OGMP/DEIS analyzes three alternatives that could be implemented over the next 15–20 years. Each alternative defines a direction for long-term management of existing and anticipated oil and gas operations associated with the exercise of nonfederal oil and gas interests underlying the Preserve, and existing transpark oil and gas pipelines and activities in their associated rights-of-way, while protecting Preserve resources, visitor use and experience, and human health and safety, and preventing impairment to Preserve resources and values. This is a programmatic management plan. No ground-disturbing operations would result directly from the management decisions made in this document. Prior to approving individual projects, further environmental analysis, in accordance with NEPA, would be completed.

Alternative A, No Action, is required under the National Environmental Policy Act and establishes a baseline for comparison with the two action alternatives, B and C. No Action is based on Current Legal and Policy Requirements (CLPR) and is a continuation of current oil and gas management direction in the Preserve. Performance standards and specific resource protection goals would continue to be applied on a case-by-case basis under the No Action alternative. Geophysical exploration operations may be permitted on 80,670 acres (91 percent of the Preserve) of which 52,272 acres (59 percent of the Preserve) would have timing stipulations; and drilling and production operations may be permitted on 80,639 acres (91 percent of the Preserve). No operations would be permitted within 500 feet of waterways.

Alternative B, the agency Preferred Alternative, defines Preserve-wide resource-specific performance standards that would be applied to all existing and new oil and gas operations. In this alternative, Special Management Areas (SMAs) would be formally designated for areas where Preserve resources and values are particularly susceptible to adverse impacts from oil and gas operations, and operating stipulations specific to each SMA would be applied. Nonfederal oil and gas operations could be permitted under CLPR in all other areas of the Preserve that are not designated as SMAs. Geophysical exploration operations may be permitted on 76,620 acres (87 percent of the Preserve) of which 52,272 acres (59 percent of the Preserve) would have timing stipulations; and drilling and production operations may be permitted on up to 41,859 acres (47 percent of the Preserve). No operations would be permitted within 500 feet of waterways.

Alternative C, the Environmentally Preferred Alternative, also defines park-wide resource-specific performance standards that would be applied to all current and new oil and gas operations. Similar to Alternative B, SMAs would be designated with specific operating stipulations for oil and gas operations. Geophysical exploration may be permitted on 48,475 acres (55 percent of the Preserve) and with a timing stipulation on 52,272 acres (59 percent of the Preserve); and drilling and production operations may be permitted on 41,859 acres (47 percent of the Preserve). No operations would be permitted within 500 feet of waterways.

Impacts are analyzed on the following topics: nonfederal oil and gas development, air quality, geologic resources, water resources, floodplains, vegetation, wetlands, fish and wildlife, species of special concern, cultural resources, visitor use and experience, and adjacent land uses and resources.

DATES: The National Park Service will accept comments from the public on the Draft Environmental Impact Statement for a minimum of 60 days after publication of this notice.

ADDRESSES: The OGMP/DEIS will be available for public review and comment at the following locations:

Office of the Superintendent, Big Thicket National Preserve Headquarters, 3785 Milam Street, Beaumont, Texas 77701–4724, Telephone: 409–839–2690, ext. 223.

Office of Minerals/Oil and Gas Support, Intermountain Region, National Park Service, 1100 Old Santa Fe Trail, Santa Fe, New Mexico 87501, Telephone: 505–988–6095.

Planning and Environmental Quality, Intermountain Region, National Park Service, 12795 W. Alameda Parkway, Lakewood, Colorado 80228, Telephone: 303–969–2377.

Office of Public Affairs, Department of the Interior, 18th and C Streets NW., Washington, DC 20240, Telephone: 202–208–6843, *http://www.nps.gov/bith/pphtml/documents.html.*

FOR FURTHER INFORMATION CONTACT: Linda Dansby, EIS Project Manager, Office of Minerals/Oil and Gas Support, Intermountain Region, Santa Fe, New Mexico 87504–0728, telephone 505–988–6095.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit your comments by any one of the following methods: You may mail comments to Linda Dansby, EIS Project Manager, Office of Minerals/Oil and Gas Support, Intermountain Region, Santa Fe, New Mexico 87504–0728, telephone 505–988–6095. You may also comment via the Internet to *bith_eis@nps.gov.* Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: Big Thicket National Preserve DEIS/O&GMP'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at 505–988–6095. You may also go to the Planning, Environment and Public Comment website at *http://parkplanning.nps.gov*

for further information regarding the comment due date, and to submit comments. Finally, you may hand-deliver comments to the Project Manager at 1100 Old Santa Fe Trail, Santa Fe, New Mexico. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. 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.

Dated: November 12, 2004.

John T. Crowley,

Acting Director, Intermountain Region, National Park Service.

[FR Doc. 04–27240 Filed 12–10–04; 8:45 am]

BILLING CODE 4312–CB–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Rocky Boy's/North Central Montana Regional Water System, Water Conservation Plan

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of finding.

SUMMARY: The Rocky Boy's/North Central Montana Regional Water System Act of 2002 (Pub. L. 107–331) authorized construction of the Rocky Boy's/North Central Montana Regional Water System in north-central Montana. To meet the requirements of the Act, the Chippewa Cree Tribe and the North Central Montana Regional Water Authority developed and submitted a water conservation plan to Reclamation.

FOR FURTHER INFORMATION CONTACT: Doug Oellermann, Bureau of Reclamation, Montana Area Office, PO Box 30107, Billings, Montana 59107–0137, or at (406) 247–7333 or by e-mail at *doellermann@gp.usbr.gov*.

SUPPLEMENTARY INFORMATION:

Finding

The Chippewa Cree Tribe and the North Central Montana Regional Water Authority submitted the ''Water Conservation Plan, Rocky Boy's/North Central Montana Regional Water System'' dated September 2004, that includes prudent and reasonable water conservation measures for the operation of the Rocky Boy's/North Central Montana Regional Water System that have been shown to be economically and financially feasible.

In addition to authorizing construction of the Rocky Boy's/North Central Montana Regional Water System, the Act authorizes appropriations of $202,880,000 to Reclamation. The Act states under section 906(3) that ''The Secretary shall not obligate funds for construction of the core system or the noncore system until the Secretary publishes a written finding that the water conservation plan developed under section 911(a) includes prudent and reasonable water conservation measures for the operation of the Rocky Boy's/North Central Montana Regional Water System that have been shown to be economically and financially feasible.''

The requirements for the conservation plan are described under section 911 of the Act that states:

''(a) In General—The Tribe and the Authority shall develop and incorporate into the final engineering report a water conservation plan that contains—

''(1) a description of water conservation objectives;

''(2) a description of appropriate water conservation measures; and

''(3) a time schedule for implementing the water conservation measures to meet the water conservation objectives.

''(b) Purpose—The water conservation plan under subsection (a) shall be designed to ensure that users of water from the core system, on-reservation water distribution systems, and the noncore system will use the best practicable technology and management techniques to conserve water.''

To fulfill the requirements of section 911, the Chippewa Cree Tribe and the North Central Montana Regional Water Authority transmitted a water conservation plan (Plan) to Reclamation, dated September 2004. The Plan fulfills all the requirements of the Act as discussed below.

In fulfillment of section 911(a)(1), the Plan contains six reasonable and prudent water conservation objectives appropriate for the pre-construction phase of this multi-phase project:

1. Keep system per capita water use below 196 gallons per capita per day.
2. Keep variable operation and maintenance costs under Final Engineering Report (FER) levels.
3. Develop drought/emergency preparedness plans to deal with a 12-hour project shutdown.
4. Initiate education/outreach and public involvement efforts.
5. Limit Tiber Reservoir withdrawals to FER levels.
6. Extend the life of the project by conserving water.

To accomplish these objectives, and in fulfillment of section 911(a)(2) of the Act, the Plan identifies 15 water conservation measures (Table 1–1 of the Plan) to be implemented starting in Year 1 of construction with full implementation scheduled by Year 5, the second year that treated water will be delivered to non-core users.

Pre-Water Delivery

1. Meter all water deliveries.
2. Adopt water-conserving rate structure for off-reservation systems.
3. Initiate education/outreach and public involvement efforts.
4. Secure supplies of educational materials.
5. Develop drought/emergency preparedness plans.
6. Work with wholesale water purchasers to develop individual water conservation plans.
7. Develop strategies and any necessary ordinances, regulations, contracts or similar arrangements/documents.
8. Develop design criteria to reflect water conservation considerations.

First Year of Water Delivery

1. Maintain pro-active education/outreach efforts, including public meetings, news articles, etc.
2. Prepare annual report highlighting conservation program problems, successes, cost-benefit comparisons, etc. and make this information available and responsive to the public.
3. Continue to work with wholesale water purchasers and the Rocky Boy Reservation.

Long-Term Water Conservation Program

1. An annual review to identify problems, suggest improvements, and solicit input from concerned parties.
2. Continued outreach/education efforts.
3. Targeted public relations activities.
4. Continued enforcement of applicable rules and regulations.

Reclamation Manual Directives and Standards (WTR 01–01), published in December 1996, identify ''Fundamental Water Conservation Measures'' that are

considered economically and financially feasible and applicable to all water conservation programs. The fundamental measures include a water measurement and accounting system, water pricing structure, and an information and education program. All but one of the water conservation measures included in the Plan are considered by Reclamation as fundamental. The conservation measure which is to develop drought/emergency preparedness plans, while not considered fundamental, is an additional water conservation measure under WTR 01–01 and will not result in increased project cost.

In fulfillment of section 911(a)(3), the plan contains a time schedule for implementing the measures to meet the water conservation objectives. This time scheduled is included with the above description of the objectives and measures.

In fulfillment of section 911(b), Reclamation has reviewed and determined that the water conservation plan has been designed to ensure that the water users will use the best practicable technology and management techniques to conserve water.

Dated: November 8, 2004.

Gerald W. Kelso,

Acting Regional Director, Great Plains Region.

[FR Doc. 04–27278 Filed 12–10–04; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Inv. Nos. TA–131–30 and TA–2104–16]

U.S.—Oman Free Trade Agreement: Advice Concerning the Probable Economic Effect of Providing Duty-Free Treatment for Imports

AGENCY: International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: December 6, 2004.

SUMMARY: Following receipt on December 1, 2004, of a request from the United States Trade Representative (USTR), the Commission instituted investigation Nos. TA–131–30 and TA–2104–16, U.S.—*Oman Free Trade Agreement: Advice Concerning the Probable Economic Effect of Providing Duty-Free Treatment for Imports,* under section 131 of the Trade Act of 1974 and section 2104(b)(2) of the Trade Act of 2002.

FOR FURTHER INFORMATION CONTACT: Information specific to these investigations may be obtained from Robert Carr, Project Leader (202–205–3402; *robert.carr@usitc.gov*), or Eric Land, Deputy Project Leader (202–205–3049; *eric.land@usitc.gov*), Office of Industries, United States International Trade Commission, Washington, DC 20436. For information on the legal aspects of these investigations, contact William Gearhart of the Office of the General Counsel (202–205–3091; *william.gearhart@usitc.gov*). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

Background: On November 15, 2004, the USTR notified the Congress of the President's intent to initiate free trade agreement negotiations with the Sultanate of Oman (Oman). Accordingly, the USTR, pursuant to section 131 of the Trade Act of 1974 (19 U.S.C. 2151), requested the Commission to provide a report including advice as to the probable economic effect of providing duty-free treatment for imports of products of Oman (i) on industries in the United States producing like or directly competitive products, and (ii) on consumers. In preparing the advice, the Commission's analysis will consider each article in chapters 1 through 97 of the Harmonized Tariff Schedule of the United States for which U.S. tariffs will remain after the United States fully implements its Uruguay Round tariff commitments. The import advice will be based on the 2004 Harmonized Tariff System nomenclature and 2003 trade data. The advice with respect to the removal of U.S. duties on imports from Oman will assume that any known U.S. nontariff barrier will not be applicable to such imports. The Commission will note in its report any instance in which the continued application of a U.S. nontariff barrier to such imports would result in different advice with respect to the effect of the removal of the duty.

As also requested, pursuant to section 2104(b)(2) of the Trade Act of 2002 (19 U.S.C. 3804(b)(2)), the Commission will provide advice as to the probable economic effect of eliminating tariffs on imports of certain agricultural products of Oman on (i) industries in the United States producing the product concerned, and (ii) the U.S. economy as a whole.

USTR indicated that the Commission's report will be classified and that USTR considered it to be an interagency memorandum containing pre-decisional advice and subject to the deliberative process privilege. The Commission expects to provide its report to USTR by February 28, 2005.

Public Hearing: A public hearing in connection with these investigations is scheduled to begin at 9:30 a.m. on January 5, 2005, at the United States International Trade Commission Building, 500 E Street SW, Washington, DC. This hearing will be held sequentially with a separate Commission hearing on January 5, 2005, in connection with its investigation *U.S.—UAE FTA: Advice Concerning the Probable Economic Effects of Providing Duty-Free Treatment for Imports* (Inv. Nos. TA–131–31 and TA–2104–17). Requests to appear at the public hearing should be filed with the Secretary, not later than 5:15 p.m., December 17, 2004, in accordance with the requirements in the ''Submissions'' section below. In the event that, as of the close of business on December 17, 2004, no witnesses are scheduled to appear, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary (202–205–1806) after December 17, 2004 to determine whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements or briefs concerning these investigations. All written submissions, including requests to appear at the hearing, statements, and briefs, should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. Any prehearing statements or briefs should be filed not later than 5:15 p.m., December 21, 2004; the deadline for filing posthearing statements or briefs is 5:15 p.m., January 12, 2005. All written submissions must conform with the provisions of § 201.8 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 of the rules requires that a signed original (or a copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by § 201.8 of the rules (see Handbook for

Electronic Filing Procedures, *ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf).*

Any submissions that contain confidential business information must also conform with the requirements of § 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''nonconfidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties.

The Commission may include some or all of the confidential business information submitted in the course of these investigations in the report it sends to the USTR and the President. However, should the Commission publish a public version of this report, such confidential business information will not be published in a manner that would reveal the operations of the firm supplying the information.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Secretary at 202–205–2000.

List of Subjects

Oman, tariffs, and imports.

Issued: December 7, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–27238 Filed 12–10–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–464]

Export Opportunities and Barriers in African Growth and Opportunity Act—Eligible Countries

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: Following receipt on November 15, 2004, of a request from the United States Trade Representative (USTR) under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332 (g)), the Commission instituted investigation No. 332–464, Export Opportunities and Barriers in African Growth and Opportunity Act—Eligible Countries.

Background

As requested by the USTR, in its report the Commission will identify, with respect to each of the 37 sub-Saharan African countries that are eligible for African Growth and Opportunity Act (AGOA) trade preferences, (1) the major economic sectors with the greatest potential for growth in export sales, and (2) domestic and international barriers that impede trade growth in such sectors. The Commission will also include in its report any information it identifies, in the course of its research efforts, concerning private sector initiatives and technical assistance programs that attempt to address such barriers.

As requested by the USTR, the Commission will seek to provide its report by June 30, 2005.

DATES: *Effective Date:* December 6, 2004.

FOR FURTHER INFORMATION CONTACT: Information may be obtained from the project leader, Nannette Christ (202–205–3263 or *nannette.christ@usitc.gov*) or the deputy project leader, Laura Polly (202–205–3408 or *laura.polly@usitc.gov*). For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091, *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of Public Affairs (202–205–1819, *margaret.olaughlin@usitc.gov*).

Public Hearing: A public hearing in connection with this investigation is scheduled to begin at 9:30 a.m. on March 1, 2005, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. All persons have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file a letter with the Secretary, United States International Trade Commission, 500 E St., SW., Washington, DC 20436, no later than the close of business (5:15 p.m.) on February 14, 2005. In addition, persons appearing should file prehearing briefs (original and 14 copies) with the Secretary by the close of business on February 16, 2005. Posthearing briefs should be filed with the Secretary by the close of business on March 11, 2005. In the event that no requests to appear at the hearing are received by the close of business on February 14, 2005, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant may call the Secretary to the Commission (202–205–1806) after February 14, 2005 to determine whether the hearing will be held.

Written Submissions: In lieu of or in addition to appearing at the public hearing, interested persons are invited to submit written statements concerning the investigation. Submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. To be assured of consideration by the Commission, written statements related to the Commission's report should be submitted to the Commission at the earliest practical date, and should be received by the close of business on March 11, 2005. All written submissions, including briefs, must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 of the rules requires that a signed original (or copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential business information (CBI) must be deleted (see the following paragraph for further information regarding CBI). The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted in section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000 or *edis@usitc.gov*).

Any submissions, including briefs, that contain CBI must also conform with the requirements of section 201.6 of the Commission's rules (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages clearly be marked as to whether they are the ''confidential'' or ''non-confidential'' versions, and that the CBI be clearly identified by means of brackets. All written submissions, except for CBI, will be made available for inspection by interested parties.

The Commission may include some or all of the CBI it receives in the report it sends to the USTR. However, the Commission will not publish CBI in the public version of the report in a manner that would reveal the operations of the firm supplying the information. The public version of the report will be made available to the public on the Commission's Web site.

The public record for this report may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing impaired

individuals are advised that information on this matter can be obtained by contacting our TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

List of Subjects

AGOA, Sub-Sahran Africa.

Issued: December 8, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–27265 Filed 12–10–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. Nos. TA–131–31 and TA–2104–17]

U.S.-UAE Free Trade Agreement: Advice Concerning the Probable Economic Effect of Providing Duty-Free Treatment for Imports

AGENCY: International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: December 6, 2004.

SUMMARY: Following receipt on December 1, 2004, of a request from the United States Trade Representative (USTR), the Commission instituted investigation Nos. TA–131–31 and TA–2104–17, *U.S.-UAE Free Trade Agreement: Advice Concerning the Probable Economic Effect of Providing Duty-Free Treatment for Imports,* under section 131 of the Trade Act of 1974 and section 2104(b)(2) of the Trade Act of 2002.

FOR FURTHER INFORMATION CONTACT: Information specific to these investigations may be obtained from Robert Carr, Project Leader (202–205–3402; *robert.carr@usitc.gov*), or Peder Andersen, Deputy Project Leader (202–205–3388; *peder.andersen@usitc.gov*), Office of Industries, United States International Trade Commission, Washington, DC 20436. For information on the legal aspects of these investigations, contact William Gearhart of the Office of the General Counsel (202–205–3091; *william.gearhart@usitc.gov*). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

Background: On November 15, 2004, the USTR notified the Congress of the President's intent to initiate free trade agreement negotiations with the United Arab Emirates (UAE). Accordingly, the USTR, pursuant to section 131 of the Trade Act of 1974 (19 U.S.C. 2151), requested the Commission to provide a report including advice as to the probable economic effect of providing duty-free treatment for imports of products of UAE (i) on industries in the United States producing like or directly competitive products, and (ii) on consumers. In preparing the advice, the Commission's analysis will consider each article in chapters 1 through 97 of the Harmonized Tariff Schedule of the United States for which U.S. tariffs will remain after the United States fully implements its Uruguay Round tariff commitments. The import advice will be based on the 2004 Harmonized Tariff System nomenclature and 2003 trade data. The advice with respect to the removal of U.S. duties on imports from UAE will assume that any known U.S. nontariff barrier will not be applicable to such imports. The Commission will note in its report any instance in which the continued application of a U.S. nontariff barrier to such imports would result in different advice with respect to the effect of the removal of the duty.

As also requested, pursuant to section 2104(b)(2) of the Trade Act of 2002 (19 U.S.C. 3804(b)(2)), the Commission will provide advice as to the probable economic effect of eliminating tariffs on imports of certain agricultural products of UAE on (i) industries in the United States producing the product concerned, and (ii) the U.S. economy as a whole.

USTR indicated that the Commission's report will be classified and that USTR considered it to be an interagency memorandum containing pre-decisional advice and subject to the deliberative process privilege. The Commission expects to provide its report to USTR by February 28, 2005.

Public Hearing: A public hearing in connection with these investigations is scheduled to begin at 9:30 a.m. on January 5, 2005, at the United States International Trade Commission Building, 500 E Street SW., Washington, DC. This hearing will be held sequentially with a separate Commission hearing on January 5, 2005, in connection with its investigation *U.S.-Oman FTA: Advice Concerning the Probable Economic Effects of Providing Duty-Free Treatment for Imports* (Inv. Nos. TA–131–30 and TA–2104–16). Requests to appear at the public hearing should be filed with the Secretary, not later than 5:15 p.m., December 17, 2004, in accordance with the requirements in the ''Submissions'' section below. In the event that, as of the close of business on December 17, 2004, no witnesses are scheduled to appear, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary (202–205–1806) after December 17, 2004 to determine whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements or briefs concerning these investigations. All written submissions, including requests to appear at the hearing, statements, and briefs, should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. Any prehearing statements or briefs should be filed not later than 5:15 p.m., December 21, 2004; the deadline for filing posthearing statements or briefs is 5:15 p.m., January 12, 2005. All written submissions must conform with the provisions of § 201.8 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 of the rules requires that a signed original (or a copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by § 201.8 of the rules (*see* Handbook for Electronic Filing Procedures, *ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf*).

Any submissions that contain confidential business information must also conform with the requirements of § 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''nonconfidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties.

The Commission may include some or all of the confidential business information submitted in the course of these investigations in the report it sends to the USTR and the President. However, should the Commission publish a public version of this report, such confidential business information will not be published in a manner that would reveal the operations of the firm supplying the information.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Secretary at 202–205–2000.

List of Subjects

UAE, tariffs, and imports.

Issued: December 7, 2004

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–27239 Filed 12–10–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60–Day Notice of Information Collection Under Review: Investigator Integrity Questionnaire.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until February 11, 2005. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, please contact Renee Reid, Office of Inspection, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Investigator Integrity Questionnaire.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 8620.7. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: None. ATF utilizes the services of contract investigators to conduct security/suitability investigations on prospective or current employees, as well as those contractors and consultants doing business with ATF. Persons interviewed by contract investigators will be randomly selected to voluntarily complete a questionnaire regarding the investigator's degree of professionalism.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 2,500 respondents will complete a 5 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 208 annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: December 7, 2004.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 04–27231 Filed 12–10–04; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60–Day Notice of Information Collection Under Review: Personnel Security Request.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until February 11, 2005. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Terry L. Cates, Office of Professional Responsibility and Security Operations, Room 2240, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the

use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Personnel Security Request.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF 8620.5. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: None. ATF F 8620.5 is an internal use form to gather preliminary information from an individual desiring access to ATF facilities, information or data. The information requested is necessary to permit ATF to begin the preliminary criminal records search on the applicant.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 1000 respondents will complete a 5 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 83 annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: December 1, 2004.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 04–27234 Filed 12–10–04; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Records and Supporting Data: Importation, Receipt, Storage, and Disposition By Explosives Importers, Manufacturers, Dealers, and Users Licensed Under Title 18 U.S.C. Chapter 40 Explosives.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until February 11, 2005. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gary Patterson, Explosives Industry Programs Branch, Room 7400, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Records and Supporting Data: Importation, Receipt, Storage, and Disposition By Explosives Importers, Manufacturers, Dealers, and Users Licensed Under Title 18 U.S.C. Chapter 40 Explosives.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Recordkeeping Number: ATF REC 5400/3. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. The records used for this collection show the daily activities in the importation, manufacture, receipt, storage, and disposition of all explosive materials covered under 18 U.S.C. Chapter 40 Explosives. They are also used to show where and to whom explosive materials are sent, thereby ensuring that any diversions will be readily apparent and if lost or stolen ATF will be immediately notified.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 50,519 respondents will take 1 hour to maintain records.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 637,570 annual total burden hours associated with this collection.

FOR FURTHER INFORMATION CONTACT: Brenda E. Dyer, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: December 2, 2004.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 04–27235 Filed 12–10–04; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60–Day Notice of Information Collection Under Review: Application for Registration of Firearms Acquired by Certain Governmental Entities.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in

accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until February 11, 2005. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gary Schaible, National Firearms Act Branch, Room 5100, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Registration of Firearms Acquired by Certain Governmental Entities.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 10 (5320.10). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Federal Government. Other: Individual or households; business or other for-profit; State, local or tribal Government. The form is required to be submitted by State and local government entities wishing to register an abandoned or seized and previously unregistered National Firearms Act weapon. The form is required whenever application for such a registration is made.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 1500 respondents will complete a 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 3000 annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: December 7, 2004.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 04–27236 Filed 12–10–04; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Police Public Contact Survey.

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 69, Number 201, page 61526 on October 19, 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 January 12, 2005. 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 and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* Police Public Contact Survey.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* PPCS–1. Bureau of Justice Statistics, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Eligible individuals must be age 16 or older. Other: None. The Police Public Contact Survey fulfills the mandate set forth by the Violent Crime Control and Law Enforcement Act of 1994 to collect, evaluate, and publish data on the use of excessive force by law enforcement personnel. The survey will be conducted as a supplement to the National Crime Victimization Survey in all sample households for a six (6) month period.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to*

respond/reply: A total of approximately 116,500 persons will be eligible for the PPCS questions during July through December 2005. Of the 116,500 eligible persons, we expect approximately 82 percent or 95,900 of the eligible persons will complete a PPCS interview. Of those persons interviewed for the PPCS, we estimate approximately 80 percent or 76,720 persons will complete only the first two (contact screener questions) survey questions. The estimated time to complete the control information on the PPCS form, read the introductory statement, and administer the first two contact screener questions to the respondents is approximately 1.5 minute per person. Furthermore, we estimate that the remaining 20 percent of the interviewed persons or 19,180 persons will report contact with the police. The time to ask the detailed questions regarding the nature of the contact is estimated to take an average of 10 minutes. Respondents will be asked to respond to this survey only once during the six month period.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total annual burden hours associated with this collection are 5,114.

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: December 7, 2004.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 04–27232 Filed 12–10–04; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: National Survey of Supervised Visitation and Safe Exchange Programs.

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 69, Number 154, page 48888 on August 11, 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 January 12, 2005. 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 and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* National Survey of Supervised Visitation and Safe Exchange Programs.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: None. U.S. Department of Justice, Office of Justice Programs, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: The affected public includes the approximately 500 supervised visitation and safe exchange programs who include units of state, Indian tribal and local governments, state or local courts, non-profit organizations and business or other for profit institutions. These programs provide an opportunity for communities to support the supervised visitation and safe exchange of children, by and between parents, in situations involving domestic violence, child abuse, sexual assault, or stalking.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the 500 respondents approximately one hour to complete the survey.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the survey is 500 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: December 7, 2004.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 04–27233 Filed 12–10–04; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting; Sunshine Act

TIME AND DATE: 10 a.m., Thursday, December 16, 2004.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Missouri Member Business Loan Rule Proposed Changes.
2. Texas Member Business Loan Rule Proposed Changes.
3. National Credit Union Share Insurance Fund (NCUSIF) Operating Level for 2005.

RECESS: 11:15a.m.

TIME AND DATE: 11:30 a.m., Thursday, December 16, 2004.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Va 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Administrative Action under section

206(g)(7) of the Federal Credit Union Act. Closed pursuant to exemptions (6) and (8).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, telephone: (703) 581–6304.

Mary Rupp,

Secretary of the Board.

[FR Doc. 04–27390 Filed 12 –9–04; 3:47 pm]

BILLING CODE 7535–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that six meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows:

Folk and Traditional Arts (Infrastructure): January 11, 2005, Room 730. A portion of this meeting, from 4:30 p.m. to 5:30 p.m., will be for policy discussion and will be open to the public. The remainder of the meeting, from 9 a.m. to 4:30 p.m. and from 5:30 p.m. to 6:30 p.m., will be closed.

Media Arts (Arts on Radio and Television): January 12–14, 2005, Room 716. This meeting, from 9 a.m. to 6 p.m. on January 12th and 13th, and from 9 a.m. to 5 p.m. on January 14th, will be closed.

Arts Education (Summer Schools in the Arts): January 13–14, 2005, Room 714. A portion of this meeting, from 2 p.m. to 3 p.m. on January 14th, will be for policy discussion and will be open to the public. The remainder of the meeting, from 9 a.m. to 5:30 p.m. on January 13th and from 9 a.m. to 2 p.m. and 3 p.m. to 4 p.m. on January 14th, will be closed.

Partnership (State Partnership Agreements): January 18–19, 2005, Room 716. This meeting, from 9:30 a.m. to 6 p.m. on January 18th, and from 8:30 a.m. to 3:00 p.m. on January 19th, will be open to the public.

AccessAbility (Leadership Initiatives): January 19, 2005, Room 724. This meeting, which will be held by teleconference from 2 p.m. to 4 p.m., will be closed.

Folk and Traditional Arts (National Heritage Fellowships): January 25–28, 2005, Room 716. This meeting, from 9 a.m. to 7 p.m. on January 25th and 26th, from 9 a.m. to 6:30 p.m. on January 27th, and from 9 a.m. to 3:30 p.m. on January 28th, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of April 14, 2004, these sessions will be closed to the public pursuant to subsection (c)(6) of 5 U.S.C. 552b.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 682–5532, TDY–TDD (202) 682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5691.

Dated: December 7, 2004.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 04–27281 Filed 12–10–04; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–30416]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for APPTEC Laboratory Services, Inc.'s Facility in Camden, NJ

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability.

FOR FURTHER INFORMATION CONTACT: Donna M. Janda, Materials Security and Industrial Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, telephone (610) 337–5371, fax (610) 337–5269; or by e-mail: *dmj@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is issuing a license amendment to AppTec Laboratory Services, Inc. (AppTec) for Materials License No. 29–28152–01, to terminate the license and authorize release of its facility in Camden, New Jersey, for unrestricted use. NRC has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this Notice.

II. EA Summary

The purpose of the action is to authorize the release of the licensee's Camden, New Jersey, facility for unrestricted use. AppTec was authorized by NRC from April 7, 1988, to use radioactive materials for research and development purposes at the site. On July 28, 2004, AppTec requested that NRC release the facility for unrestricted use. AppTec has conducted surveys of the facility and provided information to the NRC to demonstrate that the site meets the license termination criteria in Subpart E of 10 CFR Part 20 for unrestricted use.

The NRC staff has prepared an EA in support of the license amendment. The facility was remediated and surveyed prior to the licensee requesting the license amendment. The NRC staff has reviewed the information and final status survey submitted by AppTec. Based on its review, the staff has determined that there are no additional remediation activities necessary to complete the proposed action. Therefore, the staff considered the impact of the residual radioactivity at the facility and concluded that since the residual radioactivity meets the requirements in Subpart E of 10 CFR Part 20, a Finding of No Significant Impact is appropriate.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of the license amendment to terminate the license and release the facility for unrestricted use. The NRC staff has evaluated AppTec's request and the results of the surveys and has concluded that the completed action complies with the criteria in Subpart E of 10 CFR Part 20. The staff has found that the environmental impacts from the action are bounded by the impacts evaluated by NUREG–1496, Volumes 1–3,

''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities'' (ML042310492, ML042320379, and ML042330385). On the basis of the EA, the NRC has concluded that the environmental impacts from the action are expected to be insignificant and has determined not to prepare an environmental impact statement for the action.

IV. Further Information

Documents related to this action, including the application for the license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this Notice are: the Environmental Assessment (ML043410104); Decommissioning Report for AppTec Laboratory Services, Inc. (ML042320058); and Letter from New Jersey Department of Environmental Protection (ML043290287). Please note that on October 25, 2004, the NRC terminated public access to ADAMS and initiated an additional security review of publicly available documents to ensure that potentially sensitive information is removed from the ADAMS database accessible through the NRC's web site. Interested members of the public may obtain copies of the referenced documents for review and/or copying by contacting the Public Document Room pending resumption of public access to ADAMS. The NRC Public Documents Room is located at NRC Headquarters in Rockville, MD, and can be contacted at (800) 397–4209, (301) 415–4737 or by e-mail to: *pdr@nrc.gov.*

These documents may be viewed electronically at the NRC Public Document Room (PDR), 0 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. The PDR is open from 7:45 a.m. to 4:15 p.m., Monday through Friday, except on Federal holidays.

Dated at King of Prussia, Pennsylvania this 6th day of December, 2004.

For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. 04–27244 Filed 12–10–04; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Interim Final Revision of OMB Circular A–127, ''Financial Management Systems''

AGENCY: Office of Management and Budget (OMB), Executive Office of the President.

ACTION: Notice.

SUMMARY: OMB Circular No. A–127, ''Financial Management Systems,'' dated July 23, 1993, prescribes policies and standards for executive departments and agencies to follow in developing, operating, evaluating, and reporting on financial management systems. This Circular was modified on August 9, 1999 to establish a process for certifying off-the-shelf financial management software for agency use. OMB is issuing this interim final revision to Circular A–127 to incorporate a realignment of responsibilities for issuing financial system requirements and certifying software. These changes revise Sections 7g, 7i, 8d, 9b, and 9c, delete Section 9a(3); and add new Sections 8g and 9d.

DATES: The interim final revision is effective December 7, 2004. Comments on the interim final revision must be received on or before January 3, 2005.

ADDRESSES: Comments on this interim final revision should be in writing and addressed to Wayne Leiss, Chief, Federal Financial Systems Branch, Office of Federal Financial Management, Office of Management and Budget, 725 17th Street, NW., Room 6025, Washington, DC 20503. You are encouraged to submit your comments by facsimile to 202–395–3952, or by e-mail to *wleiss@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Leiss using the address information above. You may also call (202) 395–3993.

SUPPLEMENTARY INFORMATION: OMB is revising Circular A–127, ''Financial Management Systems,'' to improve coordination among the operators of agency financial management systems, vendors of financial management software, E-Gov shared services, and the Department of Treasury. The revisions incorporate the transfer of responsibilities from the Joint Financial Management Improvement Program to the Chief Financial Officers Council and the Office of Federal Financial Management. These updates are effective immediately.

A revised version of the entire Circular will be made available on the OMB Web site (*http://www.whitehouse.gov/omb*). All questions or inquiries concerning OMB Circular A–127 should be addressed to the Office of Federal Financial Management, Federal Financial Systems Branch, telephone number 202–395–3993.

Joshua B. Bolten,

Director.

Transmittal Memorandum No. 3 Revisions to OMB Circular A–127

This Transmittal Memorandum replaces and rescinds Circular A–127 Transmittal Memorandum No. 2, dated June 10, 1999, which revised Circular A–127, ''Financial Management Systems'' dated July 23, 1993. Transmittal Memorandum No. 2 revised Sections 8d and 9b of A–127 and added new Sections 9a(3) and 9c. This Transmittal Memorandum revises Sections 7g, 7i, 8d, 9b, and 9c. It deletes Section 9a(3) and adds new Sections 8g and 9d.

The changes to Circular A–127 are as follows:

- Section 7g: ''Joint Financial Management Improvement Program (JFMIP)'' is replaced by ''Office of Federal Financial Management (OFFM).''
- Section 7i: ''JFMIP'' is replaced by ''OFFM.''
- Section 8d is deleted in its entirety and replaced with the following:

8d(1) Use of ''Off-the-Shelf'' Software. Agencies replacing software to meet core financial system requirements must use ''off-the-shelf'' software that has been tested and certified through the Chief Financial Officers Council (CFOC) software certification process as meeting OFFM core financial system requirements. Agencies may purchase this software or contract for a service that operates this software using the strategy and procurement vehicle they believe will best enable them to meet their needs in a timely and effective manner following the competition requirements associated with the procurement vehicle being used to conduct the acquisition.

OMB policy pertaining to using ''off-the-shelf'' software is contained in OMB Circular A–130 and must be followed when replacing financial management systems.

8d(2) Software Certification Testing. ''Off-the-shelf'' software will be tested to

ensure that it meets core financial system requirements as defined in the Core Financial System Requirements document published by OFFM. The CFOC will coordinate the testing process and issue software certifications. Information on the details of the certification testing process and its results will be available to any interested Federal agency for any certified software package.

• A new Section 8g is added and reads as follows:

8g. Interface Requirements Management. Agencies operating or establishing contracts for financial reporting, transaction processing, or other services that are or will be interfaced to multiple agencies' financial systems must coordinate with OFFM the deployment of these services and changes to them. OFFM will establish interface requirements for these services and incorporate them into the Core Financial System Requirements or other requirement documents, as appropriate. OFFM will consider efficiency and cost-effectiveness when establishing deployment dates for new interface requirements.

• Section 9a(3) is deleted, section 9a(4) is renumbered accordingly.

• Section 9b is revised to read as follows:

9b. GSA Responsibilities. GSA will make procurement vehicles available to agencies for acquiring software that has been certified according to the processes in Section 8d(2).

• Section 9c is revised to read as follows:

9c. CFOC Responsibilities. The CFOC will establish processes for testing ''off-the-shelf'' software supporting core financial system requirements that include:

○ Developing and administering the certification test,

○ Notifying GSA when a software package successfully completes the certification test,

○ Providing interested parties with information on the core financial system requirements and their related testing scenarios, and

○ Providing interested parties with details on the results of the certification tests for certified software packages.

○ A new Section 9d is added and reads as follows:

9d. Transition. All software certifications previously issued by the Joint Financial Management Improvement Program (JFMIP) shall be deemed to have been issued by the CFOC.

All financial management system requirements documents and other guidance issued by the JFMIP are transferred to OFFM and remains in effect until modified. OFFM will issue guidance memoranda as needed to clarify any transition issues. OFFM will issue guidance memoranda as needed to implement the requirements of this Circular.

[FR Doc. 04–27271 Filed 12–10–04; 8:45 am]

BILLING CODE 3110–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review; Comments Request

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency has prepared an information collection request for OMB review and approval and has requested public review and comment on the submission. Comments are being solicited on the need for the information; the accuracy of the Agency's burden estimate; the quality, practical utility and clarity of the information to be collected; and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review, OMB control number 3420–0015 is summarized below.

DATES: Comments must be received within 60-calendar days of publication of this Notice.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT: *OPIC Agency Submitting Officer:* Bruce I. Campbell, Records Management Officer, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; 202/336–8563.

Summary of Form Under Review

Type of Request: Revised Form.

Title: Application for Financing.

Form Number: OPIC–115.

Frequency of Use: One per investor, per project.

Type of Respondents: Business or other institutions (except farms); individuals.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 4.0 hours per project.

Number of Responses: 300 per year.

Federal Cost: $21,600 per year.

Authority for Information Collection: Sections 231 and 234(b) and (c) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The OPIC 115 form is the principal document used by OPIC to determine the investor's and the project's eligibility for debt financing, assess the environmental impact and developmental effects of the project, measures the economic effects for the United States and the host country economy, and collect information for underwriting analysis.

Dated: December 8, 2004.

Eli Landy,

Senior Counsel, Administrative Affairs, Department of Legal Affairs.

[FR Doc. 04–27273 Filed 12–10–04; 8:45 am]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 54; SEC File No. 270–376; OMB Control No. 3235–0427.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Sections 32 and 33 of the Public Utility Holding Company Act of 1935, as amended (''Act''), and rules 53 and 54 under the Act, permit, among other things, utility holding companies registered under the Act to make direct or indirect investments in exempt wholesale generators (''EWGs'') and foreign utility companies (''FUCOs''), as defined in sections 32 and 33 of the Act, respectively, without the prior approval of the Commission, if certain conditions are met. Rule 54 does not create a reporting burden for respondents.

It is estimated that there will be no burden hours associated with rule 54.

These estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

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

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or email to: *David_Rostker@omb.eop.gov;* and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: December 6, 2004.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E4–3603 Filed 12–10–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–13944]

Issuer Delisting; Notice of Application of Nordic American Tanker Shipping Limited To Withdraw Its Common Stock, $.01 Par Value, From Listing and Registration on the American Stock Exchange LLC

December 7, 2004.

On November 12, 2004, Nordic American Tanker Shipping Limited, a Bermuda organization (''Issuer''), filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.01 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'').

The Board of Directors (''Board'') of the Issuer unanimously approved a resolution on November 5, 2004 to withdraw the Issuer's Security from listing on the Amex and to list the Security on New York Stock Exchange, Inc. (''NYSE''). The Board states that it determined to withdraw its Security from the Amex and list the Security on the NYSE for the following reasons: (i) In effort to reduce costs associated with listing its Security on the Amex; and (ii) it is in the best interest of the Issuer. The Issuer states that it expected the Security to begin trading on the NYSE on November 16, 2004.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in Bermuda, in which it is organized, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the withdrawal of the Security from listing on the Amex, and shall not affect its continued listing on the NYSE or its obligation to be registered under Section 12(b) of the Act.[3]

Any interested person may, on or before December 28, 2004, comment on the facts bearing upon whether the application has been made in accordance with the rules of the Amex, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Send an e-mail to *rule-comments@sec.gov.* Please include the File Number 1–13944 or;

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number 1–13944. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. E4–3607 Filed 12–10–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–14863]

Issuer Delisting; Notice of Application of Nasdaq-100 Trust, Series I To Withdraw Its Units of Beneficial Interest in the Nasdaq-100 Trust, Series I, From the American Stock Exchange LLC

December 7, 2004.

On December 1, 2004, Nasdaq-100 Trust, Series I, a New York Trust (''Issuer''), filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its units of beneficial interest in the Nasdaq-100 Trust, Series 1 (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'').

The Board of Directors (''Board'') of Nasdaq Financial Products Services, Inc. (a ''sponsor'') of the Issuer, approved a resolution on August 31, 2004 to withdraw the Issuer's Security from listing on the Amex and to list the Security on the Nasdaq National Market (''Nasdaq''). The Board determined that the reasons for withdrawing its Security from the Amex and listing on the Nasdaq are: (i) It is in the best interest of the Issuer and its shareholders; and (ii) the Issuer is no longer contractually obligated to remain listed on the Amex. Trading in the Security on the Nasdaq commenced on December 1, 2004.

The Issuer stated in its application that it has met the requirements of Amex Rule l8 by complying with all applicable laws in the State of New York, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the withdrawal of the Security from listing on the Amex and from registration under Section 12(b) of the

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 3 15 U.S.C. 781(b).

[4] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

Act,[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before December 28, 2004, comment on the facts bearing upon whether the application has been made in accordance with the rules of the Amex, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

• Send an e-mail to *rule-comments@sec.gov.* Please include the File Number 1–14863 or;

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number 1–14863. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. E4–3606 Filed 12–10–04; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–14763]

Issuer Delisting; Notice of Application of Schuff International, Inc. To Withdraw Its Common Stock, $.001 par Value, From Listing and Registration on the American Stock Exchange LLC

December 7, 2004.

On November 18, 2004, Schuff International, Inc., a Delaware corporation (''Issuer'') filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.001 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'').

The independent members of the Board of Directors (''Board'') of the Issuer unanimously approved a resolution on November 11, 2004 to withdraw the Issuer's Security from listing on the Amex. The Board states that it made its determination to withdraw the Security based on the following reasons: (i) To substantially reduce or eliminate the significant legal, audit, and printing costs associated with filing periodic reports with the Commission, including, in particular, the anticipated increase in costs due to compliance with the Sarbanes-Oxley Act of 2002; (ii) based on information received from the Issuer's transfer agent, there are approximately 126 shareholders of record, which is substantially below the 300 Shareholders of record threshold; and (iii) anticipated reduction in administrative costs and other savings associated with deregistration are in the best interest of the Issuer. The Issuer states that it intends to quote its Security on the Pink Sheets.

The Issuer stated in its application that it has complied with all the applicable laws in effect in Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the withdrawal of the Security from listing on the Amex and from registration under Section 12(b) of the Act,[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78l(b).

[4] 15 U.S.C. 78*1*(g).

Any interested person may, on or before December 28, 2004, comment on the facts bearing upon whether the application has been made in accordance with the rules of the Amex, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

• Send an e-mail to *rule-comments@sec.gov.* Please include the File Number 1–14763 or;

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number 1–14763. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. E4–3605 Filed 12–10–04; 8:45 am]

BILLING CODE 8010–01–P

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50800; File No. SR–Amex–2004–85]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange LLC to Trade the iShares® FTSE/Xinhua China 25 Index Fund

December 6, 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 20, 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. 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 Amex proposes to trade, pursuant to unlisted trading privileges (''UTP''), shares of the iShares®FTSE/Xinhua China 25 Index Fund, which are Index Fund Shares under Amex Rule 1000A.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex Rules 1000A *et seq.* provide standards for listing and trading Index Fund Shares, which are securities issued by an open-end management investment company (open-end mutual fund) for exchange trading. These securities are generally registered under the Investment Company Act of 1940, as amended (''Investment Company Act''), as well as the Act. Index Fund Shares are defined in Amex Rule 1000A as securities based on a portfolio of stocks or fixed income securities that seeks to provide investment results that correspond generally to the price and yield of a specified foreign or domestic stock index or fixed income securities index. The Exchange proposes to trade under Amex Rules 1000A *et seq.*, pursuant to UTP, shares of the iShares® FTSE/Xinhua China 25 Index Fund (''Fund''),[3] a series of the iShares Trust (''Trust'').[4]

The Fund is listed and traded on the New York Stock Exchange, Inc. (''NYSE'')[5] and traded in the over-the-counter market. The information below is intended to provide a description of how the Fund was created, operates and is traded.[6]

As set forth in detail below, the Fund will hold certain securities and other instruments selected to correspond generally to the performance of the FTSE/Xinhua China 25 Index (''Underlying Index''). The Fund was created to qualify as a ''regulated investment company'' (''RIC'') under the Internal Revenue Code (''Code'').[7] Barclays Global Fund Advisors (''Advisor'' or ''BGFA'') is the investment advisor to the Fund. The Advisor is registered under the Investment Advisers Act of 1940. The Advisor is the wholly owned subsidiary of Barclays Global Investors, N.A. (''BGI''), a national banking association. BGI is an indirect subsidiary of Barclays Bank PLC of the United Kingdom. SEI Investments Distribution Co. (''Distributor''), a Pennsylvania corporation and broker-dealer registered under the Act, is the principal underwriter and distributor of Creation Unit Aggregations of iShares.[8] The Distributor is not affiliated with the Exchange or the Advisor. The Trust has appointed Investors Bank & Trust Co. to act as administrator (''Administrator''), custodian, fund accountant, transfer agent, and dividend disbursing agent for the Fund. The performance of the Administrator's duties and obligations will be conducted within the provisions of the Investment Company Act and the rules thereunder. There is no affiliation between the Administrator and the Trust, the Advisor, or the Distributor.

FTSE/Xinhua Index Ltd. (''FXI''),[9] the sponsor and compiler of the FTSE/Xinhua China 25 Index, is not affiliated with the Trust, the Administrator, the Distributor, or with the Advisor or its affiliates.[10] The Fund is not sponsored,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] iShares is a registered trademark of Barclays Global Investors, N.A.

[4] The Trust is registered under the Investment Company Act. On January 22, 2003, the Trust filed with the Commission a Registration Statement for the Fund on Form N–1A under the Securities Act of 1933, as amended, and under the Investment Company Act (File Nos. 333–92935 and 811–09729) (as amended, the ''Registration Statement''). On July 28, 2004, the Trust filed a Form N–1A to update certain Fund information.

On September 8, 2004, the Trust filed with the Commission a Second Amended and Restated Application to Amend Orders under Sections 6(c) and 17(b) of the Investment Company Act for the purpose of exempting the Fund from various provisions of the Investment Company Act and the rules thereunder (the ''Application''). *See Barclays Global Fund Advisors, et al.; Notice of Application,* Investment Company Act Release No. 26597 (September 14, 2004), 69 FR 56105 (September 17, 2004) (File No. 812–12936). The Application requested that the Commission amend a prior order received by the Advisor, the Trust and the Distributor on August 15, 2001, as amended (the ''Prior Order'') to permit the Trust to offer three new International ETFs, including the Fund, and to permit the Fund, along with certain other International ETFs, to invest in certain depositary receipts, as described below. *See also In the Matter of iShares Trust, et al.,* Investment Company Act Release No. 25111 (August 15, 2001) (File No. 812–12254); *In the Matter of iShares, Inc., et al.,* Investment Company Act Release No. 25623 (June 25, 2002); *In the Matter of iShares Trust, et al.,* Investment Company Act Release No. 26006 (April 15, 2003) (relating to Prior Order).

On October 5, 2004, the Commission approved the Application. *See Barclays Global Fund Advisors, et al.,* Investment Company Act Release No. 26626 (October 5, 2004) (''Amended Order'').

[5] *See* Securities Exchange Act Release No. 50505 (October 8, 2004), 69 FR 61280 (October 15, 2004) (SR–NYSE–2004–55).

[6] Much of the information in this filing was taken from the iShares Trust Prospectus dated October 4, 2004 (''Prospectus''), and Statement of Additional Information dated August 1, 2004 (as revised October 5, 2004) (''SAI''), as well as from the Web sites of the NYSE (*http://www.nyse.com*) and iShares (*http://www.iShares.com*). Fund information relating to NAV, returns, dividends, component stock holdings and the like is updated on a daily basis on these Web sites.

[7] *See also infra* note 12.

[8] *See infra* note 25 and accompanying text.

[9] FXI is a Hong Kong incorporated, joint venture company between FTSE, the global index company, and Xinhua Financial Network.

[10] Although FXI is not an affiliated person, or an affiliated person of an affiliated person of the Advisor, an employee of Barclays Global Investors, North Asia Limited (''BGIL''), an affiliate of the Advisor, currently serves as one of the 18 members of the FTSE/Xinhua Index Committee. Telephone conversation between Marija Willen, Associate General Counsel, Amex, and Natasha Cowen, Attorney, Division, Commission, on November 26, 2004. The FTSE/Xinhua Index Committee provides practitioner input into the construction of the FTSE/Xinhua indices and independent oversight to ensure that relevant index construction rules are being followed. The role of the Index Committee is to review the appropriateness of existing Underlying Index rules, to provide oversight to ensure that Underlying Index rules are properly followed and to recommend changes to the rules in response to changes in the underlying market that the Underlying Index seeks to represent. Input from persons or experts (*i.e.,* practitioners) who have applicable industry knowledge of the underlying market the Underlying Index seeks to represent helps ensure that the published Underlying Index

offered, or sold by FXI. FXI is not affiliated with a broker or dealer.

(a) Operation of the Fund [11]

The investment objective of the Fund is to provide investment results that correspond generally to the price and yield performance of the Underlying Index. In seeking to achieve its investment objective, the Fund utilizes ''passive'' indexing investment strategies. The Fund may fully replicate the Underlying Index, but currently intends to use a ''representative sampling'' strategy to track its Underlying Index. A Fund utilizing a representative sampling strategy generally will hold a basket of the component securities of its Underlying Index (''Component Securities''), but it may not hold all of the Component Securities. The Application states that the representative sampling techniques to be used by the Advisor to manage the Fund do not differ from the representative sampling techniques it uses to manage the funds that were the subject of the Prior Order.

From time to time, adjustments may be made in the portfolio of the Fund in accordance with changes in the composition of the Underlying Index or to maintain compliance with requirements applicable to a RIC under the Code.[12] For example, if at the end of a calendar quarter a Fund would not comply with the RIC diversification tests, the Advisor would make adjustments to the portfolio to ensure continued RIC status.

The Underlying Index is a theoretical financial calculation while the Fund is an actual investment portfolio. The performance of the Fund and the Underlying Index will vary somewhat due to transaction costs, market impact, corporate actions (such as mergers and spin-offs) and timing variances. It is expected that, over time, the correlation between the Fund's performance and that of the Underlying Index, before fees and expenses, will be 95% or better. A figure of 100% would indicate perfect correlation. Any correlation of less than 100% is called ''tracking error.'' The Fund's investment objectives, policies, and investment strategies are fully disclosed in the Prospectus and SAI.

The Fund will not concentrate its investments (*i.e.*, hold 25% or more of its assets) in a particular industry or group of industries, except that the Fund will concentrate its investments to approximately the same extent that the Underlying Index is so concentrated. For purposes of this limitation, securities of the U.S. Government (including its agencies and instrumentalities), repurchase agreements collateralized by U.S. Government securities, and securities of State or municipal governments and their political subdivisions, are not considered to be issued by members of any industry.

The Fund will at all times invest at least 80% of its assets in Component Securities and in depositary receipts representing Component Securities (''Depositary Receipts'')[13] and at least half of the remaining 20% of its assets in Component Securities, Depositary Receipts, or stocks included in the Chinese market, but not included in the Underlying Index. To the extent the Fund invests in ADRs, they will be listed on a national securities exchange or Nasdaq. Other Depositary Receipts will be listed on a foreign exchange. The Fund will not invest in any unlisted Depositary Receipts or any listed Depositary Receipts that the Advisor deems to be illiquid or for which pricing information is not readily available.[14] The Fund may also invest up to 10% of its assets in certain futures, options, and swap contracts and cash and cash equivalents, including money market funds advised by the Advisor [15] and other exchange traded funds (including other iShares funds).[16] For example, the Fund may invest in securities not included in the Underlying Index to reflect prospective changes in the

rules and the implementation of such rules adequately reflect current developments in the underlying market. Any such input would be provided in accordance with the published Underlying Index rules and methodology. The index compilation functions of FXI and the FTSE/Xinhua Index Committee are, and will remain, completely separate and independent of the portfolio management functions of BGFA. FXI and the FTSE/Xinhua Index Committee have adopted policies that prohibit the dissemination and use of confidential and proprietary information about the Underlying Index and have instituted procedures designed to prevent the improper dissemination and use of such information. The BGIL employee on the FTSE/Xinhua Index Committee is not and will not be involved in the operations of the Advisor or the Fund, and is and will not be involved in any capacity with the Fund's Board of Trustees. BGI and BGIL have adopted policies that limit the use of confidential and proprietary information about portfolio management decisions to those persons whose duties require and permit them to have access to such information and have instituted procedures designed to prevent the improper dissemination and use of such information. BGIL and BGFA are separate legal entities and do not share employees, office space, trading floors or portfolio management systems.

[11] The information provided herein is based on information included in the Application and the Prior Order. While the Advisor manages the Fund, the Fund's Board of Directors has overall responsibility for the Fund's operations. The composition of the Board is, and would be, in compliance with the requirements of Section 10 of the Investment Company Act. The Fund is subject to and must comply with Section 303A.06 of the NYSE Listed Company Manual, which requires that the Fund have an audit committee that complies with Rule 10A–3 of the Act. 17 CFR 240.10A–3. Section 803(a) of the Amex Company guide imposes the same requirement on Index Fund Shares listed and traded on the Amex pursuant to Amex Rule 1000A *et seq.* Telephone conversation between Marija Willen, Associate General Counsel, Amex, and Natasha Cowen, Attorney, Division, Commission, on November 26, 2004.

[12] In order for the Fund to qualify for tax treatment as a RIC, it must meet several requirements under the Code. Among these is a requirement that, at the close of each quarter of the Fund's taxable year, (1) at least 50% of the market value of the Fund's total assets must be represented by cash items, U.S. government securities, securities of other RICs and other securities, with such other securities limited for the purpose of this calculation with respect to any one issuer to an amount not greater than 5% of the value of the Fund's assets and not greater than 10% of the outstanding voting securities of such issuer; and (2) not more than 25% of the value of its total assets may be invested in securities of any one issuer, or two or more issuers that are controlled by the Fund (within the meaning of Section 851(b)(4)(B) of the Code) and that are engaged in the same or similar trades or business (other than U.S. government securities of other RICs).

''Other securities'' of an issuer are considered qualifying assets only if they meet the following conditions:

The entire amount of the securities of the issuer owned by the company is not greater in value than 5% of the value of the total assets of the company; and the entire amount of the securities of such issuer owned by the company does not represent more than 10% of the outstanding voting securities of such issuer.

Under the second diversification requirement, the ''25% diversification limitation,'' a company may not invest more than 25% of the value of its assets in any one issuer or two issuers or more that the taxpayer controls.

Compliance with the above referenced RIC asset diversification requirements are monitored by the Adviser and any necessary adjustments to portfolio issuer weights will be made on a quarterly basis or as necessary to ensure compliance with RIC requirements. When an iShares fund's underlying index itself is not RIC compliant, the Adviser generally employs a representative sampling indexing strategy (as described in the Prospectus) in order to achieve the fund's investment objective. The Prospectus also gives the Fund additional flexibility to comply with the requirements of the Code and other regulatory requirements and to manage future corporate actions and index changes in smaller markets by investing a percentage of Fund assets in securities that are not included in the Underlying Index or in American Depositary Receipts (''ADRs'') and Global Depositary Receipts (''GDRs'') representing such securities.

[13] For the purposes of this order, ''Depositary Receipts'' are ADRs and GDRs.

[14] In addition, the Exchange understands that all Depositary Receipts must be sponsored (with the exception of certain pre-1984 ADRs that are listed but unsponsored because they were grandfathered). Telephone conversation between Marija Willen, Associate General Counsel, Amex, and Ira Brandriss, Assistant Director, Lisa Jones, Special Counsel, and Natasha Cowen, Attorney, Division of Market Regulation (''Division''), Commission, on November 10, 2004.

[15] *See In the Matter of Master Investment Portfolio, et al.*, Investment Company Act Release No. 25158 (September 18, 2001).

[16] The Fund, as well as any existing iShares fund, is permitted to invest in shares of another iShares fund to the extent that such investment is consistent with the Fund's investment objective, registration statement, and any applicable investment restrictions.

Underlying Index (such as future corporate actions and index reconstitutions, additions, and deletions).

The Fund intends to hold all of the securities in the Underlying Index that are listed on the Hong Kong Stock Exchange. The Fund does not intend to hold any B-shares which are listed on Chinese markets and included in the Underlying Index.[17] The Exchange understands that the Fund does not currently intend to invest in Depositary Receipts but reserves the flexibility to do so.[18] As with the existing iShares funds, BGFA represents that the expected tracking error of the Fund relative to the performance of its Underlying Index will be no more than 5%.

The Exchange believes that these requirements and policies prevent the Fund from being excessively weighted in any single security or small group of securities and significantly reduce concerns that trading in the Fund could become a surrogate for trading in unregistered securities.

(b) Description of the Fund and the Underlying Index (FTSE/Xinhua China 25 Index)

FXI is a Hong Kong incorporated, joint venture company between FTSE, the global index company, and Xinhua Financial Network (''XFN''). The company was created to facilitate the development of real-time indices for the Chinese market that can be used as performance benchmarks and as a basis for derivative trading and index tracking funds. FTSE is an independent company whose sole business is the creation and management of indices and associated data services. FTSE originated as a joint venture between the Financial Times and the London Stock Exchange. FTSE calculates over 60,000 indices daily, including more than 600 real-time indices. XFN is an independent financial information provider that focuses on China's markets. XFN is based in Hong Kong and Beijing.

Index Description

The Underlying Index is designed to represent the performance of the largest companies in the mainland China equity market that are available to international investors. The Underlying Index includes 25 of the largest and most heavily traded Chinese companies. Component Securities are weighted based on the free-float adjusted total market value of their shares, so that securities with higher total market values generally have a higher representation in the Underlying Index. Component Securities are screened for liquidity and weightings are capped to avoid over-concentration in any one stock. The inception date of the Underlying Index was March 2001.

As of October 29, 2004, the Underlying Index's top three holdings were BOC Hong Kong (Holdings), PetroChina, and China Mobile and the Underlying Index's top three industries were oil and gas, telecommunications services, and banks.[19]

As of October 29, 2004,[20] the FTSE/Xinhua China 25 Index components had a total market capitalization of approximately $302 billion and a float-adjusted market capitalization of approximately $47 billion.[21] The average total market capitalization was approximately $12.1 billion and the average float-adjusted market capitalization was approximately $1.9 billion. The ten largest constituents represented approximately 59.8% of the Underlying Index weight. The five highest weighted stocks, which represented 39.7% of the Underlying Index weight, had an average daily trading volume in excess of 31.4 million shares during the past two months. All of the Component Securities traded at least 250,000 shares in each of the previous six months.

Index Methodology

Component Selection Criteria. The FTSE/Xinhua China 25 Index is rule-based and is monitored by a governing committee. The FTSE/Xinhua China 25 Index Committee (''Index Committee'') is responsible for conducting the quarterly review of constituents of the Underlying Index and for making changes to the Underlying Index in accordance with the Underlying Index procedures.[22]

Eligibility. Each Component Security will be a current constituent of the FTSE All-World Index. All classes of equity securities in issue are eligible for inclusion in the Underlying Index subject to conforming with free-float and liquidity restrictions. H shares, Red Chip shares and B shares are eligible for inclusion in the Underlying Index.[23] As of September 24, 2004, only one Component Security was B shares (approximately 1% of the Underlying Index). FXI expects to eventually eliminate B shares from the Underlying Index.

Float-Adjusted Market Capitalization. When calculating a company's index weights, individual constituents' shares held by governments, corporations, strategic partners, or other control groups are excluded from the company's shares outstanding. Shares owned by other companies are also excluded regardless of whether such companies are Underlying Index constituents.

Where a foreign investment limit exists at the sector or company level, the constituent's weight will reflect either the foreign investment limit or the percentage float, whichever is the more restrictive.[24]

Stocks are screened to ensure there is sufficient liquidity to be traded. Factors in determining liquidity include the availability of current and reliable price information and the level of trading volume relative to shares outstanding. Value traded and float turnover are also

[17] *See* infra note 23.

[18] Telephone conversation between Marija Willen, Associate General Counsel, Amex, and Ira Brandriss, Assistant Director, Lisa Jones, Special Counsel, and Natasha Cowen, Attorney, Division, Commission, on November 10, 2004.

[19] Information on Underlying Index constituents was attached to the proposed rule change as Exhibit A, available at the places specified in Item III below.

[20] The information below updates information provided by Amex in the proposed rule change as filed, pursuant to a telephone conversation between Marija Willen, Associate General Counsel, Amex, and Natasha Cowen, Attorney, Division, Commission, on November 16, 2004.

[21] Float-adjusted market capitalization includes shares available in the market for public investment, and reflects free-float adjustments to the Underlying Index in accordance with FTSE's free float rules. Additional information regarding FTSE's free float adjustment methodology is available on *http://www.ftse.com*.

[22] *See also supra* note 10.

[23] ''H'' Shares—H shares are shares of companies incorporated in China and listed and traded on the Hong Kong Stock Exchange. They are quoted and traded in Hong Kong and U.S. dollars. Like other securities trading on the Hong Kong Stock Exchange, there are no restrictions on who can trade H shares.

''Red Chip'' Shares—Red Chip shares are shares of companies incorporated in Hong Kong and trade on the Hong Kong Stock Exchange. They are quoted in Hong Kong dollars. Red Chip companies may be substantially owned directly or indirectly by the Chinese Government and have the majority of their business interests in mainland China.

H shares and Red Chip shares trade on the Hong Kong Stock Exchange, typically on a T + 2 basis, through a central book-entry system that effectively guarantees settlement of exchange trades by broker-dealers.

''B'' Shares—B shares are shares of companies incorporated in China and trade on either the Shanghai or Shenzhen stock exchanges. They are quoted in U.S. dollars on the Shanghai Stock Exchange and Hong Kong dollars on the Shenzhen Stock Exchange. They can be traded by non-residents of the People's Republic of China and also residents of the People's Republic of China with appropriate foreign currency dealing accounts. There is no true ''delivery versus payment'' settlement for B shares. B shares settle in the local markets and cash settles subsequently in foreign depositaries or local banks.

[24] The Exchange understands that there are no foreign ownership limits with the current constituents to the FTSE/Xinhua China 25 Index and that, as such, the percentage float will be used.

analyzed on a monthly basis to ensure ample liquidity. Fundamental analysis is not part of the selection criteria for inclusion or exclusion of stocks from the Underlying Index. The financial and operating conditions of a company are not analyzed.

Index Maintenance and Issue Changes. The Index Committee is responsible for undertaking the review of the Underlying Index and for approving changes of constituents in accordance with the Underlying Index rules and procedures. The FTSE Global Classification Committee is responsible for the industry classification of constituents of the Underlying Index within the FTSE Global Classification System. The FTSE Global Classification Committee may approve changes to the FTSE Global Classification System and Management Rules. FXI appoints the Chairman and Deputy Chairman of the Index Committee. The Chairman chairs meetings of the Committee and represents the Committee in outside meetings. Adjustments to reflect a major change in the amount or structure of a constituent company's issued capital will be made before the start of the Underlying Index calculation on the day on which the change takes effect. Adjustments to reflect less significant changes will be implemented before the start of the Underlying Index calculation on the day following the announcement of the change. All adjustments are made before the start of the Underlying Index calculations on the day concerned, unless market conditions prevent this.

A company will be inserted into the Underlying Index at the periodic review if it rises to 15th position or above when the eligible companies are ranked by full market value before the application of any investibility weightings. A company in the Underlying Index will be deleted at the periodic review if it falls to 36th position or below when the eligible companies are ranked by full market value before the application of any investibility weightings. Any deletion to the Underlying Index will simultaneously entail an addition to the Underlying Index in order to maintain 25 Underlying Index constituents at all times.

Revisions to the Float Adjustments. The Underlying Index is reviewed quarterly for changes in free float. These reviews will coincide with the quarterly reviews undertaken of the Underlying Index as a whole. Implementation of any changes will be after the close of the Underlying Index calculation on the third Friday in January, April, July, and October.

Quarterly Index Rebalancing. The quarterly review of the Underlying Index constituents takes place in January, April, July, and October. Any constituent changes will be implemented on the next trading day following the third Friday of the same month of the review meeting. Details of the outcome of the review and the dates on which any changes are to be implemented will be published as soon as possible after the Index Committee meeting has concluded.

Index Availability. The Underlying Index is calculated in real-time and published every minute during the Underlying Index period (09:15–16:00 Local Hong Kong Time) or (17:15–24:00 U.S. Pacific Daylight Time). It is available real-time directly from FTSE and from the following vendors: Reuters, Bloomberg, Telekurs, FTID and LSE/Proquote. The end of day Underlying Index value is distributed at 16:15 (Local Hong Kong Time). Daily values will also be made available to the Financial Times Asia edition and other major newspapers and will be available at the FTSE Index Services Web site: *http://www.ftse.com.* The Underlying Index uses Hong Kong Stock Exchange trade prices and Reuters real-time spot currency rates. A total return index value that takes into account reinvested dividends is published daily at the end of day. The Underlying Index is not calculated on days that are holidays in Hong Kong.

The daily closing Underlying Index value, historical values, constituents' weighting, constituents' market capitalization and daily percentage changes are publicly available from *http://www.ftsexinhua.com.* All corporate actions and rules relating to the management of the Underlying Index are also available from the Web site.

Exchange Rates and Pricing. The Underlying Index uses Reuters real-time foreign exchange spot rates and local stock exchange real-time security prices. The Underlying Index is calculated in Hong Kong Dollars. Non-Hong Kong Dollar denominated constituent prices are converted to Hong Kong Dollars to calculate the Underlying Index. The Reuters foreign exchange rates and Hong Kong Stock Exchange prices received at the closing time of the Underlying Index are used to calculate the final Underlying Index levels.

(c) Issuance of iShares in Creation Unit Aggregations

The Application states that the issuance and redemption of Creation Unit Aggregations will operate in a manner identical to that of the funds that are the subject of the Prior Order.

(i) *In General.* Shares of the Fund (the ''iShares'') will be issued on a continuous offering basis in groups of 50,000 or more. These ''groups'' of shares are called ''Creation Unit Aggregations.'' The Fund will issue and redeem iShares only in Creation Unit Aggregations.[25]

As with other open-end investment companies, iShares will be issued at the net asset value (''NAV'') per share next determined after an order in proper form is received.

The NAV per share of the Fund is determined as of the close of the regular trading session on the NYSE on each day that the NYSE is open. The Trust sells Creation Unit Aggregations of the Fund only on business days at the next determined NAV of the Fund. Creation Unit Aggregations generally will be issued by the Fund in exchange for the in-kind deposit of equity securities designated by the Advisor to correspond generally to the price and yield performance of the Fund's Underlying Index (''Deposit Securities'') and a specified cash payment. Creation Unit Aggregations generally will be redeemed by the Fund in exchange for portfolio securities of the Fund (''Fund Securities'') and a specified cash payment. Fund Securities received on redemption may not be identical to Deposit Securities deposited in connection with creations of Creation Unit Aggregations for the same day.

All orders to purchase iShares in Creation Unit Aggregations must be placed through an Authorized Participant. An Authorized Participant must be either a ''Participating Party,'' *i.e.*, a broker-dealer or other participant in the clearing process through the National Securities Clearing Corporation (''NSCC'') Continuous Net Settlement System, a clearing agency that is registered with the SEC, or a Depository Trust Company (''DTC'') participant (''DTC Participant''), and in each case, must enter into a Participant Agreement. The Exchange understands that the Fund is currently imposing transaction fees in connection with creation and redemption transactions.[26]

(ii) *In-Kind Deposit of Portfolio Securities.* Payment for Creation Unit Aggregations will be made by the purchasers generally by an in-kind deposit with the Fund of the Deposit Securities together with an amount of cash (''Balancing Amount'') specified by

[25] Each Creation Unit Aggregation consists of 50,000 or more iShares.

[26] Telephone conversation between Marija Willen, Associate General Counsel, Amex, and Ira Brandriss, Assistant Director, Lisa Jones, Special Counsel and Natasha Cowen, Attorney, Division, Commission, on November 10, 2004.

the Advisor in the manner described below. The Balancing Amount is an amount equal to the difference between (1) the NAV (per Creation Unit Aggregation) of the Fund and (2) the total aggregate market value (per Creation Unit Aggregation) of the Deposit Securities (such value referred to herein as the ''Deposit Amount''). The Balancing Amount serves the function of compensating for differences, if any, between the NAV per Creation Unit Aggregation and that of the Deposit Amount.[27] The deposit of the requisite Deposit Securities and the Balancing Amount are collectively referred to herein as a ''Fund Deposit.'' The Advisor will make available to NSCC participants [28] through the NSCC on each business day, prior to the opening of trading on the NYSE (currently 9:30 a.m. eastern standard time), the list of the names and the required number of shares of each Deposit Security included in the current Fund Deposit (based on information at the end of the previous business day) for the Fund. The Fund Deposit will be applicable to the Fund (subject to any adjustments to the Balancing Amount, as described below) in order to effect purchases of Creation Unit Aggregations of the Fund until such time as the next-announced Fund Deposit composition is made available.

The identity and number of shares of the Deposit Securities required for the Fund Deposit for the Fund will change from time to time. The composition of the Deposit Securities may change in response to adjustments to the weighting or composition of the Component Securities. In addition, the Trust reserves the right to permit or require the substitution of an amount of cash ''*i.e.*, a ''cash in lieu'' amount—to be added to the Balancing Amount to replace any Deposit Security that may not be available in sufficient quantity for delivery or that may not otherwise be eligible for transfer. The Trust also reserves the right to permit or require a ''cash in lieu'' amount where the delivery of the Deposit Security by the Authorized Participant would be restricted under the securities laws or where the delivery of the Deposit Security to the Authorized Participant would result in the disposition of the Deposit Security by the Authorized Participant becoming restricted under the securities laws, or in certain other situations. The adjustments described above will reflect changes known to the Advisor on the date of announcement to be in effect by the time of delivery of the Fund Deposit, in the composition of the Underlying Index or resulting from certain corporate actions.

(d) Availability of Information Regarding iShares and the Underlying Index

On each business day the list of names and amount of each security constituting the current Deposit Securities of the Fund Deposit and the Balancing Amount effective as of the previous business day, per outstanding share of the Fund, will be made available. An amount per iShare representing the sum of the estimated Balancing Amount effective through and including the previous business day, plus the current value of the Deposit Securities in U.S. dollars, on a per iShare basis (''Intraday Optimized Portfolio Value'' or ''IOPV'') is currently calculated by an independent third party (''Value Calculator''), such as Bloomberg L.P., every 15 seconds during the NYSE's regular trading hours and disseminated every 15 seconds on the Consolidated Tape.

The IOPV reflects the current value of the Deposit Securities and the Balancing Amount. The IOPV also reflects changes in currency exchange rates between the U.S. dollar and the applicable home foreign currency.

Since the Fund will utilize a representative sampling strategy, the IOPV may not reflect the value of all securities included in the Underlying Index. In addition, the IOPV does not necessarily reflect the precise composition of the current portfolio of securities held by the Fund at a particular point in time. Therefore, the IOPV on a per Fund share basis disseminated during the NYSE's trading hours should not be viewed as a real-time update of the NAV of the Fund, which is calculated only once a day. While the IOPV disseminated by the NYSE at 9:30 a.m. eastern standard time is expected to be generally very close to the most recently calculated Fund NAV on a per Fund share basis, it is possible that the value of the portfolio of securities held by the Fund may diverge from the Deposit Securities values during any trading day. In such case, the IOPV will not precisely reflect the value of the Fund portfolio.

However, during the trading day, the IOPV can be expected to closely approximate the value per Fund share of the portfolio of securities for the Fund except under unusual circumstances (*e.g.*, in the case of extensive rebalancing of multiple securities in a Fund at the same time by the Advisor).

The Exchange believes that dissemination of the IOPV based on the Deposit Securities provides additional information regarding the Fund that is not otherwise available to the public and is useful to professionals and investors in connection with Fund shares trading on the Exchange or the creation or redemption of Fund shares. Since the trading hours of the Hong Kong Stock Exchange do not overlap with regular trading hours in the U.S., it is expected that the Value Calculator, when calculating IOPV, will utilize closing prices (in applicable foreign currency prices) in the principal foreign market for the securities in the Fund portfolio (*i.e.*, the Hong Kong Stock Exchange), and convert the prices to U.S. dollars.

In addition, FTSE will be disseminating a value for the Underlying Index once each trading day, based on closing prices on the Hong Kong Stock Exchange. The NAV for the Fund will be calculated and disseminated daily. The Fund NAV will be calculated by Investors Bank and Trust (''IBT''). IBT will also disseminate the information to BGI, SEI, and others. The Fund NAV will be published in a number of places, including *http://www.iShares.com* and on the Consolidated Tape.

The Underlying Index currently uses the Reuters foreign exchange rate at the close of the index (4 p.m. Hong Kong Time) to compute final Underlying Index values. The Fund uses Reuters/WM foreign exchange rates at 4 p.m. London Time. There will also be disseminated a variety of data with respect to the Fund on a daily basis by means of CTA and CQ High Speed Lines, which will be made available prior to the opening of trading on the NYSE. Information with respect to recent NAV, shares outstanding, estimated cash amount and total cash amount per Creation Unit Aggregation will be made available prior to the opening of the NYSE. In addition, the Web site for the Trust, which will be publicly accessible at no charge, will contain the following information, on a per iShare basis, for the Fund: (a) the prior business day's NAV and the mid-point of the bid-ask price at the time of calculation of such NAV (''Bid/Ask

[27] Where the NAV (per Creation Unit Aggregation) of the Fund exceeds the Deposit Amount, the purchaser pays the corresponding Balancing Amount to the Fund. Where, by contrast, the Deposit Amount exceeds the NAV (per Creation Unit Aggregation) of the Fund, the Balancing Amount is paid by the Fund to the purchaser. Telephone conversation between Marija Willen, Associate General Counsel, Amex, and Natasha Cowen, Attorney, Division, Commission, on November 23, 2004.

[28] Telephone conversation between Marija Willen, Associate General Counsel, Amex, and Natasha Cowen, Attorney, Division, Commission, on November 16, 2004.

Price''),[29] and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

The closing prices of the Fund's Deposit Securities are readily available from, as applicable, the relevant exchanges, automated quotation systems, published or other public sources in the relevant country, or on-line information services such as Bloomberg or Reuters. The exchange rate information required to convert such information into U.S. dollars is also readily available in newspapers and other publications and from a variety of on-line services.

(e) Redemption of iShares

Creation Unit Aggregations of the Fund will be redeemable at the NAV next determined after receipt of a request for redemption. Creation Unit Aggregations of the Fund generally will be redeemed in-kind, together with a balancing cash payment (although, as described below, Creation Unit Aggregations may sometimes be redeemed for cash). The value of the Fund's redemption payments on a Creation Unit Aggregation basis will equal the NAV per the appropriate number of iShares of the Fund. Owners of iShares may sell their iShares in the secondary market, but must accumulate enough iShares to constitute a Creation Unit Aggregation in order to redeem through the Fund. Redemption orders must be placed by or through an Authorized Participant.

Creation Unit Aggregations of the Fund generally will be redeemable on any business day in exchange for Fund Securities and the Cash Redemption Payment (defined below) in effect on the date a request for redemption is made. The Advisor will publish daily through NSCC the list of securities which a creator of Creation Unit Aggregations must deliver to the Fund (''Creation List'') and which a redeemer will receive from the Fund (''Redemption List''). The Creation List is identical to the list of the names and the required numbers of shares of each Deposit Security included in the current Fund Deposit.

In addition, just as the Balancing Amount is delivered by the purchaser of Creation Unit Aggregations to the Fund, the Trust will also deliver to the redeeming beneficial owner in cash the ''Cash Redemption Payment.'' The Cash Redemption Payment on any given business day will be an amount calculated in the same manner as that for the Balancing Amount, although the actual amounts may differ if the Fund Securities received upon redemption are not identical to the Deposit Securities applicable for creations on the same day. To the extent that the Fund Securities have a value greater than the NAV of iShares being redeemed, a cash payment equal to the differential is required to be paid by the redeeming beneficial owner to the Fund. The Trust may also make redemptions in cash in lieu of transferring one or more Fund Securities to a redeemer if the Trust determines, in its discretion, that such method is warranted due to unusual circumstances. An unusual circumstance could arise, for example, when a redeeming entity is restrained by regulation or policy from transacting in certain Fund Securities, such as the presence of such Fund Securities on a redeeming investment banking firm's restricted list.

(f) Dividends and Distributions

Dividends from net investment income will be declared and paid to beneficial owners of record at least annually by the Fund. Distributions of realized securities gains, if any, generally will be declared and paid once a year, but the Fund may make distributions on a more frequent basis to comply with the distribution requirements of the Code and consistent with the Investment Company Act.

Dividends and other distributions on iShares of the Fund will be distributed on a pro rata basis to beneficial owners of such iShares. Dividend payments will be made through the DTC and the DTC Participants to beneficial owners then of record with amounts received from the Fund.

The Trust currently does not intend to make the DTC book-entry Dividend Reinvestment Service (''Service'') available for use by beneficial owners for reinvestment of their cash proceeds, but certain individual brokers may make the Service available to their clients. The SAI will inform investors of this fact and direct interested investors to contact such investor's broker to ascertain the availability and a description of the Service through such broker. The SAI will also caution interested beneficial owners that they should note that each broker may require investors to adhere to specific procedures and timetables in order to participate in the Service and such investors should ascertain from their broker such necessary details. iShares acquired pursuant to the Service will be held by the beneficial owners in the same manner, and subject to the same terms and conditions, as for original ownership of iShares.

Beneficial owners of iShares will receive all of the statements, notices, and reports required under the Investment Company Act and other applicable laws. They will receive, for example, annual and semi-annual reports, written statements accompanying dividend payments, proxy statements, annual notifications detailing the tax status of distributions, IRS Form 1099–DIVs, *etc.* Because the Trust's records reflect ownership of iShares by DTC only, the Trust will make available applicable statements, notices, and reports to the DTC Participants who, in turn, will be responsible for distributing them to the beneficial owners.

(g) Other Issues

(1) *Stop and Stop Limit Orders.* Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Amex Rule 950(f) and Commentary thereto) the price of which is derivatively based upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c) (i–v). The Exchange has designated Index Fund Shares, including iShares, as eligible for this treatment.[30]

(2) *Rule 190.* Amex Rule 190, Commentary .04 applies to Index Fund Shares listed on the Exchange, including iShares. Commentary .04 states that nothing in Amex Rule 190(a) should be construed to restrict a specialist registered in a security issued by an investment company from purchasing and redeeming the listed security, or securities that can be subdivided or converted into the listed security, from the issuer as appropriate to facilitate the maintenance of a fair and orderly market.

(3) *Prospectus Delivery.* The Commission has granted the Trust an exemption from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act.[31] Any product description used in

[29] The Bid-Ask Price of the Fund is determined using the highest bid and lowest offer on the NYSE as of the time of calculation of the Fund's NAV.

[30] *See* Securities Exchange Act Release No. 29063 (April 10, 1991), 56 FR 15652 (April 17, 1991) (SR–Amex–90–31) (regarding Exchange designation of equity derivative securities as eligible for such treatment under Amex Rule 154, Commentary .04(c)).

[31] *See In the Matter of iShares, Inc., et al.*, Investment Company Act Release No. 25623 (June 25, 2002).

reliance on a Section 24(d) exemptive order will comply with all representations made therein and all conditions thereto. The Exchange, in an Information Circular to Exchange members and member organizations, will inform members and member organizations, prior to commencement of trading, of the prospectus or product description delivery requirements applicable to the Fund.

(4) *Information Circular.* The Exchange will distribute an information circular to its members in connection with the trading of the Fund (''Information Circular''). The Information Circular will discuss the special characteristics and risks of trading this type of security. Specifically, the Information Circular will discuss, among other things, what the Fund is, how Fund shares are created and redeemed, the requirement that members and member firms deliver a prospectus or product description to investors purchasing shares of the Fund before, or concurrently with, the confirmation of a transaction, applicable Exchange rules, dissemination information, trading information and the applicability of suitability rules (including Amex Rule 411). The Information Circular will also discuss exemptive, no-action and interpretive relief granted by the Commission from Section 11(d)(1) and certain rules under the Act, including Rule 10a–1, Rule 10b–10, Rule 14e–5, Rule 10b–17, Rule 11d1–2, Rules 15c1–5 and 15c1–6, and Rules 101 and 102 of Regulation M under the Act.

(5) *Trading Halts.* In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Amex Rule 918C(b) in exercising its discretion to halt or suspend trading in Index Fund Shares, including iShares. These factors would include, but are not limited to, (1) the extent to which trading is not occurring in stocks underlying the index; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[32] In addition, trading in iShares will be halted if the circuit breaker parameters under Amex Rule 117 have been reached.

(6) *Suitability.* Prior to commencement of trading, the Exchange will issue an Information Circular informing members and member organizations of the characteristics of the iShares and of applicable Exchange rules, as well as of the requirements of Amex Rule 411 (Duty to Know and Approve Customers).

(7) *Purchases and Redemptions in Creation Unit Aggregations.* In the Information Circular members and member organizations will be informed that procedures for purchases and redemptions of iShares in Creation Unit Aggregations are described in the Prospectus and SAI, and that iShares are not individually redeemable but are redeemable only in Creation Unit Aggregations or multiples thereof.

(8) *Surveillance.* The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the iShares. Specifically, the Amex will rely on its existing surveillance procedures governing Index Fund Shares, which have been deemed adequate under the Act. The Exchange is able to obtain information regarding trading in both the Fund shares and the Component Securities by its members on any relevant market; in addition, the Exchange may obtain trading information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG, including, by way of example, the Hong Kong Stock Exchange.

(9) *Hours of Trading/Minimum Price Variation.* The Fund will trade on the Exchange until 4:15 p.m. (eastern standard time). The minimum price variation for quoting will be $.01.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[33] in general, and furthers the objectives of Section 6(b)(5)[34] 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 mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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. 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–Amex–2004–85 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–Amex–2004–85. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Amex–2004–85 and should be submitted on or before January 3, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities

[32] *See* Amex Rule 918C.

[33] 15 U.S.C. 78f(b).

[34] 15 U.S.C. 78f(b)(5).

exchange.[35] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[36] which requires, among other things, that the Exchange's rules promote just and equitable principles of trade and facilitate transactions in securities, and, in general, protect investors and the public interest.[37]

The Commission believes that the Amex's proposal should advance the public interest by providing investors with increased flexibility in satisfying their investment needs and by allowing them to purchase and sell Fund shares at negotiated prices throughout the business day that generally track the price and yield performance of the targeted Underlying Index.[38]

Furthermore, the Commission believes that the proposed rule change raises no issues that have not been previously considered by the Commission. The Fund is similar in structure and operation to exchange-traded index funds that the Commission has previously approved for listing and trading on national securities exchanges under Section 19(b)(2) of the Act.[39] In addition, as noted above, the Commission has previously approved a substantially similar proposed rule change submitted by the NYSE to list and trade the iShares.[40]

The stocks included in the Underlying Index are among the stocks with the highest liquidity and market capitalization in the Chinese markets. Further, with respect to each of the following key issues, the Commission believes that the Fund satisfies established standards.

A. Fund Characteristics

The Commission believes that the proposed Fund is reasonably designed to provide investors with an investment vehicle that substantially reflects in value the performance of the Underlying Index.[41] Moreover, the Commission finds that, although the value of the Fund's shares will be derived from and based on the value of the securities and cash held in the Fund, the Fund is not leveraged. Accordingly, the level of risk involved in the purchase or sale of Fund shares is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for shares in the Fund is based on a portfolio of securities. The Commission notes that the Fund will at all times invest at least 80% of its assets in Component Securities and in Depositary Receipts and at least half of the remaining 20% of its assets in Component Securities, Depositary Receipts, or in stocks included in the Chinese market, but not included in the Underlying Index.[42] As noted above, the Fund will use a representative portfolio sampling strategy to attempt to track its Underlying Index. Although a representative sampling strategy entails some risk of tracking error, the Advisor will seek to minimize tracking error. It is expected that the Fund will have a tracking error relative to the performance of its Underlying Index of no more than 5%.

The Advisers to the Fund may attempt to reduce tracking error by using a variety of investment instruments, including futures contracts, repurchase agreements, options, swaps and currency exchange contracts; however, these instruments will not constitute more than 10% of the Fund's assets.[43]

The Commission believes that the market capitalization and liquidity of the Component Securities is such that an adequate level of liquidity exists so that the Fund shares should not be susceptible to manipulation.[44] Also, the Commission does not believe that the Fund will be so highly concentrated such that it becomes a surrogate for trading unregistered foreign securities on the Exchange.

While the Commission believes that these requirements should help to reduce concerns that the Fund could become a surrogate for trading in a single or a few unregistered stocks, if the Fund's characteristics changed materially from the characteristics described herein, the Fund would not be in compliance with standards approved herein, and the Commission would expect the Amex to file a proposed rule change pursuant to Rule 19b–4 of the Act. In addition, the Exchange has represented that it will immediately notify the Commission if the Exchange becomes aware of any changes made in the Fund and not represented herein.[45]

B. Disclosure

The Exchange represents that it will circulate the Information Circular detailing applicable prospectus and product description delivery requirements. The Information Circular also will address members'

[35] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[36] 15 U.S.C. 78f(b)(5).

[37] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging or other economic function, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[38] The Commission notes that, as is the case with similar previously approved exchange traded funds, investors in the Fund can redeem shares in Creation Unit Aggregations only. *See, e.g.*, Securities Exchange Act Release No. 43679 (December 5, 2000), 65 FR 77949 (December 13, 2000) (File No. SR–NYSE–00–46); Securities Exchange Act Release No. 50189 (August 12, 2004); 69 FR 51723 (August 20, 2004) (File No. SR–Amex–2004–05).

[39] 15 U.S.C. 78s(b)(2).

[40] *See* Securities Exchange Act Release No. 50505 (October 8, 2004), 69 FR 61280 (October 15, 2004) (SR–NYSE–2004–55).

[41] The FTSE/Xinhua China 25 Index is a free float-adjusted market capitalization weighted index that is designed to represent the performance of the largest companies in the mainland China equity market that are available to international investors. As of October 12, 2004, its constituents had a total market capitalization of approximately $302 billion and a float-adjusted market capitalization of approximately $47 billion.

The Commission notes that although one employee of an affiliate of the Advisor serves on the FTSE/Xinhua Index Committee and provides input to help ensure that the published index rules and the implementation of such rules adequately reflect current developments in the underlying market, such employee is not and will not be involved in the operations of the Advisor or the Fund or be involved in any capacity with the Fund's Board of Trustees. Moreover, the index compilation functions of FXI and the FTSE/Xinhua Index Committee are, and will remain, completely separate and independent of the portfolio management functions of BGFA. FXI and the FTSE/Xinhua Index Committee have adopted policies that prohibit the dissemination and use of confidential and proprietary information about the Underlying Index and have instituted procedures designed to prevent the improper dissemination and use of such information. BGI and BGIL have adopted policies that limit the use of confidential and proprietary information about portfolio management decisions to those persons whose duties require and permit them to have access to such information and have instituted procedures designed to prevent the improper dissemination and use of such information.

[42] The Exchange states that, to the extent the Fund invests in Depositary Receipts, any ADRs will be listed on a national securities exchange or Nasdaq. Other Depositary Receipts will be listed on a foreign exchange. The Fund will not invest in any unlisted Depositary Receipts or any listed Depositary Receipts that the Advisor deems to be illiquid or for which pricing information is not readily available. The Fund currently intends to hold all of the securities in the Underlying Index that are listed on the Hong Kong Stock Exchange.

[43] *See* discussion under Section II.A.1(a) ''Operation of the Fund'' above.

[44] The Exchange states that as of October 29, 2004, the ten largest constituents represented approximately 59.8% of the index weight. The 5 highest weighted stocks, which represented 39.7% of the index weight, had an average daily trading volume in excess of 31.4 million shares during the past two months. All of the Component Securities traded at least 250,000 shares in each of the previous six months.

[45] Telephone conversation between Marija Willen, Associate General Counsel, Amex, and Ira Brandriss, Assistant Director, Lisa Jones, Special Counsel, and Natasha Cowen, Attorney, Division, Commission, on November 10, 2004.

responsibility to deliver a prospectus or product description to all investors and highlight the characteristics of the Funds. The Information Circular will also remind members and member organizations of their suitability obligations, including the requirements of Amex Rule 411. For example, the Information Circular will also inform members that Fund shares are not individually redeemable, but are redeemable only in Creation Unit Aggregations or multiples thereof as set forth in the Prospectus and SAI.[46]

C. Dissemination of Fund Information

With respect to pricing, each day, the NAV for the Fund will be calculated and disseminated by IBT to various sources and made available on *http://www.iShares.com* and on the Consolidated Tape.[47]

During each day the Amex is open for business, the Exchange states that the IOPV of the Underlying Index will be disseminated at regular intervals (every 15 seconds) on the Consolidated Tape. The IOPV will be updated throughout the Exchange trading day to reflect fluctuations in exchange rates between the U.S. dollar and the applicable home foreign currency. The Underlying Index value is available real-time directly from FTSE and from the following vendors: Reuters, Bloomberg, Telekurs, FTID and LSE/Proquote. An end of day closing value for the Underlying Index is available on *http://www.ftsexinhua.com*, along with other Underlying Index information such as historical values, composition and component weighting. The Commission believes that this information will help an investor to determine whether, and to what extent, iShares may be selling at a premium or a discount to NAV.

There will also be disseminated a variety of data with respect to the Fund on a daily basis by means of CTA and CQ High Speed Lines, which will be made available prior to the opening of trading on the NYSE. Information with respect to recent NAV, shares outstanding, estimated cash amount and total cash amount per Creation Unit Aggregation will be made available prior to the opening of the NYSE. In addition, the Web site for the Trust, which will be publicly accessible at no charge, will contain the following information, on a per iShare basis, for the Fund: (a) The prior business day's NAV and the mid-point of the Bid-Ask Price[48] at the time of calculation of such NAV, and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

The closing prices of the Fund's Deposit Securities are available from, as applicable, the relevant exchanges, automated quotation systems, published or other public sources in the relevant country, or on-line information services such as Bloomberg or Reuters. The exchange rate information required to convert such information into U.S. dollars is also readily available in newspapers and other publications and from a variety of on-line services. In addition, the Commission notes that the iShares Web site is and will be publicly accessible at no charge, and will contain the Fund's NAV as of the prior business day, the Bid-Asked Price, and a calculation of the premium or discount of the Bid-Asked Price in relation to the closing NAV.[49]

The Exchange also represents that it will halt trading if the dissemination of the Fund's value ceases and there is no readily available source for obtaining such information.[50]

Based on the representations made in the proposal, the Commission believes that pricing and other important information about the Fund is adequate and consistent with the Act.

D. Trading

The Commission further finds that adequate rules and procedures exist to govern trading of the Fund's shares, pursuant to UTP. Fund shares will be traded pursuant to UTP under Amex Rule 1000A and, unless Amex Rules 1000A *et seq.* stipulate otherwise, are subject to all Amex rules applicable to trading on the Exchange, including, among others, rules governing trading halts.[51]

E. Surveillance

The Exchange represents that it will rely on its existing surveillance procedures governing Index Fund Shares currently trading on the Exchange. The Exchange also represents that it is able to obtain information from the NYSE or any third party regarding trading in both the Fund shares and the Component Securities by its members or member organizations on any relevant market. In addition, the Exchange represents that it may obtain trading information via the ISG from other exchanges who are members or affiliates of the ISG, including, by way of example, the Hong Kong Stock Exchange.

F. Accelerated Approval

The Exchange has requested that the Commission approve the proposed rule change on an accelerated basis. The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[52] for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission has previously approved a substantially similar proposed rule change submitted by the NYSE to list and trade the iShares[53] and does not believe that the proposed rule change raises novel regulatory issues. Consequently, the Commission believes that it is appropriate to permit investors to benefit from the ability to trade these products on the Amex as soon as possible. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,[54] to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–Amex–2004–

[46] *See* discussion under Section II.A.1(a) ''Operation of the Fund,'' above. The Exchange has represented that the Information Circular will also discuss exemptive, no-action, and interpretive relief granted by the Commission from certain rules under the Act.

[47] The Underlying Index currently uses the Reuters foreign exchange rate at the close of the index (4 p.m. Hong Kong Time) to compute final index values. The Fund intends to use Reuters/WM foreign exchange rates at 4 p.m. London Time.

[48] The Bid-Ask Price of the Fund is determined using the highest bid and lowest offer on the NYSE as of the time of calculation of the Fund's NAV.

[49] Additional information available to investors will include data for a period covering at least the four previous calendar quarters (or the life of a Fund, if shorter) indicating how frequently the Fund's shares traded at a premium or discount to NAV based on the Bid-Asked Price and closing NAV, and the magnitude of such premiums and discounts; the Fund Prospectus and two most recent reports to shareholders; and other quantitative information such as daily trading volume.

[50] Telephone conversation between Marija Willen, Associate General Counsel, Amex, and Ira Brandriss, Assistant Director, Lisa Jones, Special Counsel, and Natasha Cowen, Attorney, Division, Commission, on November 10, 2004.

[51] In order to halt the trading of the Fund, the Exchange may consider, among others, factors including: (1) The extent to which trading is not occurring in underlying securities; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Fund shares will be halted if the circuit breaker parameters under Amex Rule 117 have been reached.

[52] 15 U.S.C. 78s(b)(2).

[53] *See* Securities Exchange Act Release No. 50505 (October 8, 2004), 69 FR 61280 (October 15, 2004) (SR–NYSE–2004–55).

[54] 15 U.S.C. 78s(b)(5).

85), is hereby approved on an accelerated basis.[55]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[56]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–27253 Filed 12–10–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50806; File No. SR–FICC–2004–21]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Fee Structure of the Government Securities Division of the Fixed Income Clearing Corporation

December 7, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 9, 2004, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the fee structure of the Government Securities Division (''GSD'') of FICC to reflect a new pricing methodology for GSD's netting services.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend the fee structure of the GSD of FICC to reflect a new pricing methodology for GSD's netting services. The new methodology was established in recognition of the evolution of the government securities marketplace and the growth of electronic trading which have resulted in the GSD processing more high-volume/low-dollar trades with fewer residual positions to settle. FICC believes that the revised fee structure more accurately aligns the costs of FICC's services with its risk exposure. The changes will go into effect on January 1, 2005.

Under the new methodology, netting fees will be calculated based on three components. These components consist of a fixed charge similar to today's fee and two new variable fees that will give FICC the ability to distinguish between smaller and larger ticket values and their associated risk, as well as capture the cost of FICC's settlement infrastructure and risk exposure associated with the post-netting positions requiring settlement.

The new netting fee calculation will be based on the following charges:

(1) A reduced fixed charge of $0.43 per ticket for trades entering the netting process (the current charge is $1.00);

(2) A new charge of $0.012 per $1 million of par value for trades entering the netting process; and

(3) A new charge of $0.052 per $1 million of par value for clearance obligations created as a result of the netting process.

In addition, effective January 1, 2005, the fixed clearance charge will be reduced from the current $2.75 per obligation created to $2.35 per obligation created in order to better align clearance revenues with associated expenses. The applicable charge for comparison services remains unchanged.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[3] and the rules and regulations thereunder applicable to FICC because the proposed change provides for fees that more accurately reflect FICC's costs and risks presented by trades submitted to FICC.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have an impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments relating to the proposed rule change have been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2)[5] thereunder because the proposed rule establishes or changes a due, fee, or other charge. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FICC–2004–21 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–2004–21. 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

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[55] 15 U.S.C. 78s(b)(2).

[56] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by FICC.

[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.ficc.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FICC–2004–21 and should be submitted on or before January 3, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Jill M. Petersen,

Assistant Secretary.

[FR Doc. E4–3609 Filed 12–10–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50797; File No. SR–NSCC–2003–22]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend the Standards of Financial Responsibility Required of Mutual Fund and Insurance Services Applicants and Members That Are Banks, Trust Companies, or Broker-Dealers

December 6, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 10, 2003, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') and on November 29, 2004, amended the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend the standards of financial responsibility required of applicants and members that are banks, trust companies, or broker-dealers using or applying to use NSCC's non-guaranteed services as Mutual Fund/Insurance Services Members under Rule 2 and Fund Members under Rule 51.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change amends Addendum B, ''Standards of Financial Responsibility and Operational Capability,'' and Addendum I, ''Standards of Financial Responsibility and Operational Capability For Fund Members,'' of NSCC's Rules and Procedures to enhance the standards of financial responsibility required of applicants and members that are banks, trust companies, and broker-dealers using or applying to use NSCC's non-guaranteed services as Mutual Fund/Insurance Services Members under Rule 2 and Fund Members under Rule 51.[3] Addendum B establishes financial criteria applicable to Mutual Fund/Insurance Services Members and applicants admitted or seeking admission under Rule 2. Addendum I establishes the financial criteria applicable to Fund Members and applicants admitted or seeking admission under Rule 51.[4]

The proposed rule change (i) raises the minimum excess net capital requirement applicable to such broker-dealer applicants and members from $25,000 in excess net capital to $50,000 in excess net capital and (ii) changes the standards of financial responsibility required of banks and trust companies by reference to different types of criteria than currently used for this purpose. The effective date for the proposed rule change as applied to current members will be one year from the date of Commission approval. The one year period, arrived at after consultations with the affected members, is necessary to allow members that do not meet the increased or changed capital requirements sufficient time to evaluate their options and implement any necessary changes without undue disruption to their customers. The proposed rule change also seeks to amend Addendum I to require an established business history of six months instead of three years which is consistent with the required established business history for applicants for other types of membership in NSCC.

1. Increase of Minimum Excess Net Capital Required of Broker-Dealers Using Mutual Fund and Insurance Services

NSCC's current minimum excess net capital requirement applicable to broker-dealer applicants and members using non-guaranteed services was implemented in 1993.[5] In 1998, NSCC increased its minimum excess net capital requirements under Rule 2 for broker-dealer applicants and members using NSCC guaranteed services from $50,000 to $500,000 subject to certain limited exceptions.[6] At that time, no change was made to the financial requirements applicable to the use of non-guaranteed services. NSCC now believes it is appropriate to do so because of increased transaction volumes and settlement obligations.

NSCC currently has 290 broker-dealer members to which the increased excess

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[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] Mutual Fund Services and Insurance Processing Services are non-guaranteed services.

[4] NSCC has revised Addendum B (Version 1) as set forth in Appendix 1 to NSCC's Rules (Version 2 of Addendum B). Version 1 uses allocation and liquidation components to determine participant clearing fund and Version 2 uses risk-based margining to determine participant clearing fund. NSCC is informing members on a rolling basis when Version 2 is applicable to them. The provisions of Addendum B, which are the subject of this proposed rule change, are identical in Version 1 and Version 2. This proposed rule change would amend both the text of Addendum B (Version 1) and Appendix 1 (Version 2 of Addendum B). Securities Exchange Act Release No. 44431 (June 14, 2001), 66 FR 33280.

[5] Securities Exchange Act Release No. 33525 (January 26, 1994), 59 FR 9805.

[6] Securities Exchange Act Release No. 40081 (June 10, 1998), 63 FR 32905. A municipal securities broker under Rule 15c3–1(a)(8) of the Act is required to maintain $100,000 in excess net capital, and a clearing broker is required to maintain $1,000,000 in excess net capital.

net capital requirement would apply. Thirteen of the 290 broker-dealer members have been identified as not meeting the increased capital requirement. The purpose of delaying effectiveness of the proposed rule change is to allow these thirteen members time in which to obtain and apply additional excess net capital or make alternate arrangements such as clearing through another NSCC member without disruption to their businesses.

NSCC currently requires a larger clearing fund deposit from broker-dealer members which have a minimum excess net capital of less than $50,000 (*i.e.*, a minimum of $10,000–$20,000–$40,000 as compared to $5,000–$10,000–$20,000 depending upon settlement debit history). When the proposed minimum excess net capital requirement is increased to $50,000, the minimum clearing fund requirements currently imposed would no longer be applicable because $50,000 in excess net capital would be required of these broker-dealers in all instances.

2. Amendment to Standards of Financial Responsibility Applied to Banks and Trust Companies Using Mutual Fund Services and Insurance Processing Service

Addendum B currently requires that banks and trust companies that are applying to be or are Mutual Fund/Insurance Services Members under Rule 2 have $100,000 minimum excess net capital over the capital requirement imposed by the applicable state or federal regulatory authority. Addendum I is silent on the criteria applicable to banks and trust companies for purposes of being Fund Members under Rule 51.

Under the proposed rule change, the standards of financial responsibility applicable to banks and trust company applicants and members applying to use or using Mutual Fund Services and Insurance Processing Services would be applicable both to Mutual Fund/Insurance Services Members under Rule 2 and to Fund Members under Rule 51.

Under the proposed standard, a bank or trust company would be required to have a Tier 1 risk-based capital ratio of at least 6% or greater. A trust company which is not required to calculate a risk-based capital ratio by its regulators will be required to have at least $2,000,000 in capital.

As applied to banks, the revised criteria will apply the standard adopted by the Federal Deposit Insurance Corporation (''FDIC'') to compute risk-based capital ratios. The proposed standard of a minimum Tier 1 risk-based capital ratio of 6% is currently categorized as ''well-capitalized'' under the guidelines issued by the Board of Governors of the Federal Reserve System. All current NSCC Mutual Fund/Insurance Services Members and Fund Members that are banks exceed this requirement.

With respect to trust companies, the current standard of $100,000 in excess capital over the capital required by applicable state or federal regulations would be replaced by a requirement that the trust company have $2,000,000 in capital. Since state regulations vary in their respective capital requirements and some states do not a have a capital requirement, the proposed revised criteria would provide a uniform and consistent standard to all trust companies regardless of whether they are members of the Federal Reserve System or subject to nonuniform state regulatory requirements. The proposed $2,000,000 capital requirement is the same capital standard required for membership in The Depository Trust Company.

Some trust companies which are not required to calculate a Tier 1 risk-based capital ratio pursuant to FDIC or Federal Reserve Act requirements calculate this ratio for other purposes. NSCC would therefore accept as an alternative to the minimum $2,000,000 capital requirement the 6% Tier 1 risk-based capital ratio from those trust companies which provide this calculation for regulatory purposes.[7]

NSCC currently has sixty-six bank/trust company members to which the revised capital requirements would apply. Only one trust company has been identified as not meeting the new standard.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[8] and the rules and regulations thereunder applicable to NSCC because it will assure the safeguarding of securities and funds which are in the custody or control of NSCC by enhancing the standards of financial responsibility applicable to NSCC members using NSCC's Mutual Fund Services and Insurance Processing Service and thereby should help NSCC protect itself and its participants from undue financial risk.

[7] The proposed rule change seeks to make a technical amendment to Addendum B regarding the capital standards applicable to bank applicants for full membership under NSCC Rule 2. In particular, the proposed rule change amends Section I.B.2.(a)(i) by replacing the listed components of bank capital with a reference to bank capital as it is defined in the Consolidated Report of Condition (''CALL Report'').

[8] 15 U.S.C. 78q–1.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC believes that the proposed rule change will not impose a 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 relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an E-mail to *rule-comments@sec.gov.* Please include File Number SR–NSCC–2003–22 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–NSCC–2003–22. 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 NSCC and on NSCC's Web site at *http://www.nscc.com/legal/*. 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–NSCC–2003–22 and should be submitted on or before January 3, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E4–3604 Filed 12–10–04; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50810; File No. SR–NYSE–2004–04]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the New York Stock Exchange, Inc. To Amend Its Rules Regarding Listed Company Relations Proceedings

December 7, 2004.

I. Introduction

On February 9, 2004, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules regarding listed company relations proceedings. On March 29, 2004, the NYSE submitted Amendment No. 1 to the proposal.[3] On August 3, 2004, the NYSE submitted Amendment No. 2 to the proposal.[4]

The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on August 20, 2004.[5] The Commission received no comment letters on the proposal. This order approves the proposed rule change, as amended by Amendment Nos. 1 and 2.

II. Description of the Proposal

The Exchange has proposed to remove NYSE Rule 103C, which currently governs listed company relations proceedings, and to replace it with proposed Section 806.1 of the Exchange's Listed Company Manual. The Exchange also has proposed to add a related Policy Note to NYSE Rule 103B, which governs specialist stock allocation. Currently, if a listed company has a non-regulatory dispute with its specialist unit, NYSE Rule 103C provides for a mediation process known as a ''Listed Company Relations Proceeding.'' In order to resolve the issue, this proceeding is facilitated by the Listed Company Relations Subcommittee, a subcommittee of the Quality of Markets Committee (''QOMC''). If the matter remains unresolved, the Subcommittee prepares a report making recommendations to the QOMC. The QOMC, in turn, reviews the Subcommittee's report and makes recommendations to the Exchange's Board of Directors. After reviewing the QOMC's recommendations and giving the parties to the mediation proceeding an opportunity to present their written views, the Board of Directors ultimately is authorized to direct the Allocation Committee to reallocate the listed company's stock to a different specialist unit. The Exchange has stated that the process for a Listed Company Relations Proceeding is ''cumbersome and extremely lengthy.'' The Exchange has further noted that proceedings under current NYSE Rule 103C occur under the oversight of the QOMC before a subcommittee consisting of, among others, certain Exchange officials. In the NYSE's view, this process no longer makes sense given the recent changes to the Exchange's governance structure.[6] For these reasons, the Exchange is proposing a new mediation process under proposed Section 806.01 of its Listed Company Manual.

Under proposed Section 806.01, if a listed company wishes to request a change of specialist unit, it would file a notice (the ''Issuer Notice'') with the Corporate Secretary of the Exchange to that effect, stating the specific issues that prompted the request and what steps, if any, it has taken to address the issues.[7] The Exchange's Corporate Secretary would provide copies of the Issuer Notice to the Exchange's Regulatory Group and the New Listings & Client Service Division. The Corporate Secretary also would notify the specialist unit that a Listed Company Change of Specialist Mediation (''Mediation'') is being commenced, and would provide a copy of the Issuer Notice to the specialist unit. The specialist unit would be granted two weeks to respond to the Issuer Notice, with the last date of that period referred to as the ''Specialist Response Date.'' The Exchange would appoint a committee (the ''Mediation Committee'') to facilitate the Mediation between the listed company and the specialist unit, which would consist of at least one floor broker representative of the NYSE's Board of Executives (''BOE''), at least one BOE investor representative, and at least one listed company representative of the BOE. As soon as practicable after the expiration of the Specialist Response Date, the Mediation Committee would commence a meeting with the representatives of the listed company and the specialist unit to attempt to mediate the matters indicated in the Issuer Notice.

At any time after the filing of the Issuer Notice, the listed company may file a written notice with the Corporate Secretary stating that it is concluding

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated March 26, 2004 (''Amendment No. 1''). Amendment No. 1 replaced the proposed rule text in the original proposal to reflect changes in NYSE Rule 103C that the Commission had recently approved. *See* Securities Exchange Act Release No. 49345 (March 1, 2004), 69 FR 10791 (March 8, 2004).

[4] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated August 2, 2004 (''Amendment No. 2''). Amendment No. 2 deleted NYSE rule 103C and replaced it with proposed Section 806.01 in the Exchange's Listed Company Manual and a proposed Policy Note in NYSE Rule 103B.

[5] *See* Securities Exchange Act Release No. 50196 (August 13, 2004), 69 FR 51740.

[6] *See* Securities Exchange Act Release No. 48946 (December 17, 2003), 68 FR 74678 (December 24, 2003) (SR–NYSE–2003–34). *See also,* Securities Exchange Act Release No. 49345 (March 1, 2004), 69 FR 10791 (March 8, 2004) (SR–NYSE–2004–02).

[7] The Exchange represents that the proposed rule would be added to Section 8.06 of its Listed Company Manual (which includes the provision under which listed companies may voluntarily delist from the Exchange), because ''under these circumstances, the change of specialist represents an issuer choice: in this case, a choice to change its specialist rather than a choice to change the market on which the company is listed.''

the Mediation because it wishes to continue with the same specialist unit.

Simultaneous with the mediation process, the Regulatory Group would review the Issuer Notice and any specialist response, and would have the authority to request a review of the matter by the Exchange's Regulatory Oversight Committee, a standing committee of the Exchange's Board of Directors composed wholly of independent NYSE directors. Where a review by the Regulatory Oversight Committee has been requested, no change of the specialist unit can occur until the Regulatory Oversight Committee makes a final determination that it is appropriate to permit such a change. The Regulatory Oversight Committee, in making its determination, would consider all relevant regulatory issues, including without limitation whether the requested change appears to be in aid or furtherance of conduct that is illegal or violates Exchange rules, or in retaliation for a refusal by a specialist to engage in conduct that is illegal or violates Exchange rules. Furthermore, notwithstanding the Regulatory Group's review of any matter raised during this process, the Regulatory Group would be able, at any time, to take any regulatory action that it may determine to be warranted.

After the expiration of three months from the Specialist Response Date, the listed company would be able to file a written notice with the Exchange's Corporate Secretary stating that it wishes to proceed with the change of specialist unit. Subject to any ongoing review of the Regulatory Oversight Committee, as soon as practicable thereafter, the listed company's security would be submitted for allocation under Exchange Rule 103B. Under the proposed Policy Note to Exchange Rule 103B, the currently-assigned specialist unit would not be prohibited from applying for allocation of the security. Furthermore, the proposed Policy Note would state that no negative inference for allocation or regulatory purposes would be made against the specialist unit in the event that the specialist unit is changed pursuant to the process outlined above, nor would the specialist unit be afforded preferential treatment in subsequent allocations as a result of a change pursuant to a Mediation.

III. Discussion and Commission Findings

The Commission has reviewed the proposed rule change, as amended, and finds that it is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange,[8] particularly Section 6(b)(5) of the Act.[9] Section 6(b)(5) requires, among other things, that a national securities exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change appropriately balances the need to revise the current mediation process for resolution of disputes between listed companies and their assigned specialist units, which the Exchange represents is ''cumbersome and extremely lengthy,'' with the need to incorporate appropriate procedures that are designed to provide that any such mediation is subject to review by the Exchange's Regulatory Group and, in turn, by its Regulatory Oversight Committee. While the proposal shortens the current timeframe for resolving a dispute between the listed company and the specialist unit to three months, it also introduces the involvement of the Exchange's Regulatory Group in the mediation process to assure that the requested change of specialist unit is for non-regulatory purposes. The Regulatory Group would be provided copies of any Issuer Notice and response to such Notice by the specialist unit. The Regulatory Group is accorded the right to take any regulatory action that it may determine to be warranted at any time during the Mediation. In addition, the Regulatory Group is permitted to request a review of the matter by the Regulatory Oversight Committee, a committee composed entirely of independent directors. When a review by the Regulatory Oversight Committee has been requested, no change of specialist unit may occur until after the Regulatory Oversight Committee makes a final determination that it is appropriate to permit such a change. The Regulatory Oversight Committee, in making its determination of whether to permit a change in specialist unit, may consider all relevant regulatory issues, including whether the requested change appears to be in aid or furtherance of conduct that is illegal or violates Exchange rules, or is in retaliation for a refusal by a specialist to engage in conduct that is illegal or violates Exchange rules. Therefore, the Commission believes that the proposed Mediation process, while more simplified and expedited than the current process, would provide an appropriate mechanism for the Exchange's Regulatory Group to maintain independent oversight over a listed company's request to change specialist units, to ascertain that such requests are confined to non-regulatory reasons, and to obtain a review by the Regulatory Oversight Committee when appropriate.

The Commission believes that the proposal to simplify the procedures and shorten the timeframe for the mediation of disputes between a listed company and its specialist unit should not impair the ability of the listed company and the specialist unit to fully discuss and attempt to resolve any non-regulatory issues, under the auspices of the Mediation Committee. The Commission notes that the proposed rule change requires the Mediation Committee to commence meeting with the representatives of the listed company and the specialist unit ''as soon as practicable'' after the specialist unit has submitted its written response to the Issuer's Notice, and does not limit the Mediation Committee and the parties from meeting as many times as necessary to discuss and address concerns that the listed company has with its specialist unit. The proposal further provides that at any time the listed company may file a written notice concluding the Mediation because the listed company wishes to continue with the same specialist unit. Therefore, the Commission believes that the proposed Mediation process should provide the listed company and the specialist unit ample opportunity to discuss and attempt to resolve any non-regulatory issues.

The Commission also believes that the proposal provides appropriate procedures for reallocating a security after a change of special unit and for subsequent allocation decisions affecting a specialist unit that is subject to such a change. The Commission notes that the proposed addition to the Policy Notes to NYSE Rule 103B, which governs specialist stock allocation, would lift the current prohibition on a specialist reapplying for an allocation of the security after the listed company has requested to change its specialist unit for a particular security. The proposal also would retain the provision that no preferential treatment for subsequent allocation would be demonstrated to a specialist unit that was a party to a Mediation. Furthermore, the proposal would state that no negative inference for allocation or regulatory purposes

[8] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

would be made against a specialist unit in the event that a listed company requests a Mediation. The Commission believes that it is appropriate to permit a specialist unit to apply for the allocation of the security—should the specialist choose to apply for the allocation—despite the fact that the listed company and the specialist unit have been parties to a Mediation. There is the possibility, although it may be remote, that the specialist unit may be assigned to the listed company, so the specialist unit should not be barred from applying for the allocation, particularly if a non-regulatory matter between the parties has been vented through a mediation process. The Commission also believes that it is appropriate for the Exchange to have policies in place that would prevent any negative inference to be drawn for allocation or regulatory purposes and that would prohibit the specialist unit from being afforded preferential treatment in subsequent allocations, because addressing and resolving a non-regulatory dispute between a listed company and its specialist unit should have no bearing on future allocations of securities to the specialist unit.

Accordingly, the Commission finds that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore Ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NYSE–2004–04), as amended by Amendment Nos. 1 and 2, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E4–3608 Filed 12–10–04; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50799; File No. SR–PCX–2004–99]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Listing and Trading iShares® FTSE/Xinhua China 25 Index Fund

December 6, 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 15, 2004, the Pacific Exchange, Inc. (''PCX'' or ''Exchange''), through its wholly owned subsidiary PCX Equities, Inc. (''PCXE''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II 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 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 PCX proposes to amend its rules governing the Archipelago Exchange (''ArcaEx''), the equities trading facility of PCXE, to list and trade, or trade pursuant to unlisted trading privileges, the iShares® FTSE/Xinhua China 25 Index Fund.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has adopted listing standards applicable to Investment Company Units (''ICUs''), which are consistent with the listing criteria currently used by the American Stock Exchange LLC and other national securities exchanges, and trading standards pursuant to which the Exchange may either list and trade ICUs, or trade such ICUs on the Exchange on an unlisted trading privileges (''UTP'') basis.[3] The Exchange now proposes to list and trade, or trade on a UTP basis, under PCXE Rule 5.2(j)(3), shares of the iShares® FTSE/Xinhua China 25 Index Fund (''Fund''),[4] a series of the iShares Trust (''Trust'').[5] Fund shares will be deemed equity securities subject to PCXE rules governing the trading of equity securities.[6] Because the Fund invests in non-U.S. securities not listed on a national securities exchange or the Nasdaq Stock Market, the Fund does not meet the ''generic'' listing requirements of PCXE Rule 5.2(j)(3), Commentary .01, applicable to the listing of ICUs pursuant to Rule 19b–4(e) under the Act, and therefore cannot be listed on a national securities exchange without a filing pursuant to Rule 19b–4 under the Act.

As set forth in detail below, the Fund will hold certain securities and other instruments selected to correspond generally to the performance of the FTSE/Xinhua China 25 Index (''Underlying Index''). The Fund was created to qualify as a ''regulated investment company'' (''RIC'') under the Internal Revenue Code (''Code'').[7] Barclays Global Fund Advisors (''Advisor'' or ''BGFA'') is the

[1] 15 U.S.C. 78s(b)(1).

[2] 217 CFR 240.19b–4.

[3] *See* PCXE Rule 5.2(j)(3).

[4] iShares is a registered trademark of Barclays Global Investors, N.A.

[5] The Trust is registered under the Investment Company Act of 1940, as amended (the ''Investment Company Act''). On January 22, 2003, the Trust filed with the Commission a Registration Statement for the Fund on Form N–1A under the Securities Act of 1933, as amended, and under the Investment Company Act (File Nos. 333–92935 and 811–09729) (as amended, the ''Registration Statement''). On July 28, 2004, the Trust filed a Form N–1A to update certain Fund information.

On September 8, 2004, the Trust filed with the Commission a Second Amended and Restated Application to Amend Orders under Sections 6(c) and 17(b) of the Investment Company Act for the purpose of exempting the Fund from various provisions of the Investment Company Act and the rules thereunder (the ''Application''). *See Barclays Global Fund Advisors, et al.*; *Notice of Application*, Investment Company Act Release No. 26597 (September 14, 2004), 69 FR 56105 (September 17, 2004) (File No. 812–12936). The Application requested that the Commission amend a prior order received by the Advisor, the Trust and the Distributor on August 15, 2001, as amended (the ''Prior Order'') to permit the Trust to offer three new International ETFs, including the Fund, and to permit the Fund, along with certain other International ETFs, to invest in certain depositary receipts, as described below. *See also In the Matter of iShares Trust, et al.*, Investment Company Act Release No. 25111 (August 15, 2001) (File No. 812–12254); *Barclays Global Fund Advisors, et al.*, Investment Company Act Release No. 25078 (July 24, 2001), 66 FR 39377 (July 30, 2001) (File No. 812–12254). *In the Matter of iShares, Inc., et al.*, Investment Company Act Release No. 25623 (June 25, 2002); *In the Matter of iShares Trust, et al.*, Investment Company Act Release No. 26006 (April 15, 2003) (relating to Prior Order). On October 5, 2004, the Commission approved the Application. *See Barclays Global Fund Advisors, et al.*, Investment Company Act Release No. 26626 (October 5, 2004) (''Amended Order'').

[6] Telephone conversation between Tania J.C. Blanford, Staff Attorney, PCX, and Natasha Cowen, Attorney, Division of Market Regulation (''Division''), Commission, on December 6, 2004.

[7] *See also infra* note 12.

investment advisor to the Fund. The Advisor is registered under the Investment Advisers Act of 1940. The Advisor is the wholly owned subsidiary of Barclays Global Investors, N.A. (''BGI''), a national banking association. BGI is an indirect subsidiary of Barclays Bank PLC of the United Kingdom. SEI Investments Distribution Co. (''Distributor''), a Pennsylvania corporation and broker-dealer registered under the Act, is the principal underwriter and distributor of Creation Unit Aggregations of iShares.[8] The Distributor is not affiliated with the Exchange or the Advisor. The Trust has appointed Investors Bank & Trust Co. to act as administrator (''Administrator''), custodian, fund accountant, transfer agent, and dividend disbursing agent for the Fund. The performance of the Administrator's duties and obligations will be conducted within the provisions of the Investment Company Act and the rules thereunder. There is no affiliation between the Administrator and the Trust, the Advisor, or the Distributor.

FTSE/Xinhua Index Ltd. (''FXI''),[9] the sponsor and compiler of the FTSE/Xinhua China 25 Index, is not affiliated with the Trust, the Administrator, the Distributor, or with the Advisor or its affiliates.[10] The Fund is not sponsored, offered, or sold by FXI. FXI is not affiliated with a broker or dealer.

(a) Operation of the Fund [11]

The investment objective of the Fund is to provide investment results that correspond generally to the price and yield performance of the Underlying Index. In seeking to achieve its investment objective, the Fund utilizes ''passive'' indexing investment strategies. The Fund may fully replicate the Underlying Index, but currently intends to use a ''representative sampling'' strategy to track its Underlying Index. A Fund utilizing a representative sampling strategy generally will hold a basket of the component securities of its Underlying Index (''Component Securities''), but it may not hold all of the Component Securities. The Application states that the representative sampling techniques to be used by the Advisor to manage the Fund do not differ from the representative sampling techniques it uses to manage the funds that were the subject of the Prior Order.

From time to time, adjustments may be made in the portfolio of the Fund in accordance with changes in the composition of the Underlying Index or to maintain compliance with requirements applicable to a RIC under the Code.[12] For example, if at the end of a calendar quarter a Fund would not comply with the RIC diversification tests, the Advisor would make adjustments to the portfolio to ensure continued RIC status.

The Underlying Index is a theoretical financial calculation while the Fund is an actual investment portfolio. The performance of the Fund and the Underlying Index will vary somewhat due to transaction costs, market impact, corporate actions (such as mergers and spin-offs) and timing variances. It is expected that, over time, the correlation between the Fund's performance and that of the Underlying Index, before fees and expenses, will be 95% or better. A figure of 100% would indicate perfect correlation. Any correlation of less than 100% is called ''tracking error.'' The Fund's investment objectives, policies, and investment strategies will be fully disclosed in its prospectus (''Prospectus'') and statement of additional information (''SAI'').

The Fund will not concentrate its investments (*i.e.,* hold 25% or more of its assets) in a particular industry or group of industries, except that the Fund will concentrate its investments to approximately the same extent that the Underlying Index is so concentrated. For purposes of this limitation,

[8] *See infra* note 24 and accompanying text.

[9] FXI is a Hong Kong incorporated, joint venture company between FTSE, the global index company, and Xinhua Financial Network.

[10] Although FXI is not an affiliated person, or an affiliated person of an affiliated person of the Advisor, an employee of Barclays Global Investors, North Asia Limited (''BGIL''), an affiliate of the Advisor currently serves as one of the 19 members of the FTSE/Xinhua Index Committee. Telephone conversation between Tania J.C. Blanford, Staff Attorney, PCX, and Natasha Cowen, Attorney, Division, Commission, on November 17, 2004. The FTSE/Xinhua Index Committee provides practitioner input into the construction of the FTSE/Xinhua indices and independent oversight to ensure that relevant index construction rules are being followed. The role of the Index Committee is to review the appropriateness of existing Underlying Index rules, to provide oversight to ensure that Underlying Index rules are properly followed and to recommend changes to the rules in response to changes in the underlying market that the Underlying Index seeks to represent. Input from persons or experts (*i.e.*, practitioners) who have applicable industry knowledge of the underlying market the Underlying Index seeks to represent helps ensure that the published Underlying Index rules and the implementation of such rules adequately reflect current developments in the underlying market. Any such input would be provided in accordance with the published Underlying Index rules and methodology. The index compilation functions of FXI and the FTSE/Xinhua Index Committee are, and will remain, completely separate and independent of the portfolio management functions of BGFA. FXI and the FTSE/Xinhua Index Committee have adopted policies that prohibit the dissemination and use of confidential and proprietary information about the Underlying Index and have instituted procedures designed to prevent the improper dissemination and use of such information. The BGIL employee on the FTSE/Xinhua Index Committee is not and will not be involved in the operations of the Advisor or the Fund, and is and will not be involved in any capacity with the Fund's Board of Trustees. BGI and BGIL have adopted policies that limit the use of confidential and proprietary information about portfolio management decisions to those persons whose duties require and permit them to have access to such information and have instituted procedures designed to prevent the improper dissemination and use of such information. BGIL and BGFA are separate legal entities and do not share employees, office space, trading floors or portfolio management systems.

[11] The information provided herein is based on information included in the Application and the Prior Order. While the Advisor manages the Fund, the Fund's Board of Directors has overall responsibility for the Fund's operations. The composition of the Board is, and would be, in compliance with the requirements of Section 10 of the Investment Company Act. The Fund is subject to and must comply with PCXE Rule 5.3(k)(5), which requires that the Fund have an audit committee that complies with Rule 10A–3 under the Act.

[12] In order for the Fund to qualify for tax treatment as a RIC, it must meet several requirements under the Code. Among these is a requirement that, at the close of each quarter of the Fund's taxable year, (1) at least 50% of the market value of the Fund's total assets must be represented by cash items, U.S. government securities, securities of other RICs and other securities, with such other securities limited for the purpose of this calculation with respect to any one issuer to an amount not greater than 5% of the value of the Fund's assets and not greater than 10% of the outstanding voting securities of such issuer; and (2) not more than 25% of the value of its total assets may be invested in securities of any one issuer, or two or more issuers that are controlled by the Fund (within the meaning of Section 851(b)(4)(B) of the Code) and that are engaged in the same or similar trades or business (other than U.S. government securities of other RICs).

''Other securities'' of an issuer are considered qualifying assets only if they meet the following conditions:

The entire amount of the securities of the issuer owned by the company is not greater in value than 5% of the value of the total assets of the company; and the entire amount of the securities of such issuer owned by the company does not represent more than 10% of the outstanding voting securities of such issuer.

Under the second diversification requirement, the ''25% diversification limitation,'' a company may not invest more than 25% of the value of its assets in any one issuer or two issuers or more that the taxpayer controls.

Compliance with the above referenced RIC asset diversification requirements are monitored by the Adviser and any necessary adjustments to portfolio issuer weights will be made on a quarterly basis or as necessary to ensure compliance with RIC requirements. When an iShares fund's underlying index itself is not RIC compliant, the Adviser generally employs a representative sampling indexing strategy (as described in the Fund's prospectus) in order to achieve the fund's investment objective.

The Fund's prospectus also gives the Fund additional flexibility to comply with the requirements of the Code and other regulatory requirements and to manage future corporate actions and index changes in smaller markets by investing a percentage of Fund assets in securities that are not included in the Underlying Index or in American Depositary Receipts (''ADRs'') and Global Depositary Receipts (''GDRs''), representing such securities.

securities of the U.S. Government (including its agencies and instrumentalities), repurchase agreements collateralized by U.S. Government securities, and securities of state or municipal governments and their political subdivisions are not considered to be issued by members of any industry.

The Fund will at all times invest at least 80% of its assets in Component Securities and in depositary receipts representing Component Securities (''Depositary Receipts'') [13] and at least half of the remaining 20% of its assets in Component Securities, Depositary Receipts, or stocks included in the Chinese market, but not included in the Underlying Index. To the extent the Fund invests in ADRs, they will be listed on a national securities exchange or Nasdaq. Other Depositary Receipts will be listed on a foreign exchange. The Fund will not invest in any unlisted Depositary Receipts or any listed Depositary Receipts that the Advisor deems to be illiquid or for which pricing information is not readily available.[14] The Fund may also invest up to 10% of its assets in certain futures, options, and swap contracts and cash and cash equivalents, including money market funds advised by the Advisor [15] and other exchange traded funds (including other iShares funds).[16] For example, the Fund may invest in securities not included in the Underlying Index to reflect prospective changes in the Underlying Index (such as future corporate actions and index reconstitutions, additions, and deletions).

The Fund intends to hold all of the securities in the Underlying Index that are listed on the Hong Kong Stock Exchange. The Fund does not intend to hold any B-shares which are listed on Chinese markets and included in the Underlying Index.[17] The Exchange understands that the Fund does not currently intend to invest in Depositary Receipts but reserves the flexibility to do so.[18] As with the existing iShares funds, BGFA represents that the expected tracking error of the Fund relative to the performance of its Underlying Index will be no more than 5%.

The Exchange believes that these requirements and policies prevent the Fund from being excessively weighted in any single security or small group of securities and significantly reduce concerns that trading in the Fund could become a surrogate for trading in unregistered securities.

(b) Description of the Fund and the Underlying Index (FTSE/Xinhua China 25 Index)

FXI is a Hong Kong incorporated, joint venture company between FTSE, the global index company, and Xinhua Financial Network (''XFN''). The company was created to facilitate the development of real-time indices for the Chinese market that can be used as performance benchmarks and as a basis for derivative trading and index tracking funds. FTSE is an independent company whose sole business is the creation and management of indices and associated data services. FTSE originated as a joint venture between the Financial Times and the London Stock Exchange. FTSE calculates over 60,000 indices daily, including more than 600 real-time indices. XFN is an independent financial information provider that focuses on China's markets. XFN is based in Hong Kong and Beijing.

Index Description

The Underlying Index is designed to represent the performance of the largest companies in the mainland China equity market that are available to international investors. The Underlying Index includes 25 of the largest and most heavily traded Chinese companies. Component Securities are weighted based on the free-float adjusted total market value of their shares, so that securities with higher total market values generally have a higher representation in the Underlying Index. Component Securities are screened for liquidity and weightings are capped to avoid over-concentration in any one stock. The inception date of the Underlying Index was March 2001.

As of December 31, 2003, the Underlying Index's top three holdings were BOC Hong Kong (Holdings), PetroChina and China Mobile and the Underlying Index's top three industries were oil and gas, telecommunications services, and banks.[19]

As of October 12, 2004, the FTSE/Xinhua China 25 Index components had a total market capitalization of approximately $155 billion and a float-adjusted market capitalization of approximately $42 billion.[20] The average total market capitalization was approximately $6.4 billion and the average float-adjusted market capitalization was approximately $1.7 billion. The ten largest constituents represented approximately 60.1% of the Underlying Index weight. The five highest weighted stocks, which represented 39.9% of the Underlying Index weight, had an average daily trading volume in excess of 56.9 million shares during the past three months. All of the Component Securities traded at least 250,000 shares in each of the previous three months.

Index Methodology

Component Selection Criteria. The FTSE/Xinhua China 25 Index is rule based and is monitored by a governing committee. The FTSE/Xinhua China 25 Index Committee (''Index Committee'') is responsible for conducting the quarterly review of constituents of the Underlying Index and for making changes to the Underlying Index in accordance with the Underlying Index procedures.[21]

Eligibility. Each Component Security will be a current constituent of the FTSE All-World Index. All classes of equity securities in issue are eligible for inclusion in the Underlying Index subject to conforming with free-float and liquidity restrictions. H shares, Red Chip shares and B shares are eligible for inclusion in the Underlying Index.[22] As

[13] For the purposes of this order, ''Depositary Receipts'' are ADRs and GDRs.

[14] In addition, the Exchange understands that all Depositary Receipts must be sponsored (with the exception of certain pre-1984 ADRs that are listed but unsponsored because they were grandfathered). Telephone conversation between Tania J.C. Blanford, Staff Attorney, Regulatory Policy, Ryan Johnson, Listings Qualifications Specialist, PCX, Tim Elliott, Regulatory Counsel, Archipelago Holdings, LLC, and Ira Brandriss, Assistant Director, Lisa Jones, Special Counsel, and Natasha Cowen, Attorney, Division, Commission, on November 9, 2004.

[15] *See In the Matter of Master Investment Portfolio, et al.,* Investment Company Act Release No. 25158 (September 18, 2001).

[16] The Fund, as well as any existing iShares fund, is permitted to invest in shares of another iShares fund to the extent that such investment is consistent with the Fund's investment objective, registration statement, and any applicable investment restrictions.

[17] *See infra* note 22.

[18] Telephone conversation between Tania J.C. Blanford, Staff Attorney, Regulatory Policy, Ryan Johnson, Listings Qualifications Specialist, PCX, Tim Elliott, Regulatory Counsel, Archipelago Holdings, LLC, and Ira Brandriss, Assistant Director, Lisa Jones, Special Counsel, and Natasha Cowen, Attorney, Division, Commission, on November 9, 2004.

[19] Information on Underlying Index constituents was attached to the proposed rule change as Exhibit A, available at the places specified in Item III below.

[20] Float-adjusted market capitalization includes shares available in the market for public investment, and reflects free-float adjustments to the Underlying Index in accordance with FTSE's free float rules. Additional information regarding FTSE's free float adjustment methodology is available on *http://www.ftse.com.*

[21] *See also supra* note 10.

[22] ''H'' Shares—H shares are shares of companies incorporated in China and listed and traded on the Hong Kong Stock Exchange. They are quoted and traded in Hong Kong and U.S. dollars. Like other securities trading on the Hong Kong Stock

of September 24, 2004, only one Component Security was B shares (approximately 1% of the Underlying Index). FXI expects to eventually eliminate B shares from the Underlying Index.

Float-Adjusted Market Capitalization. When calculating a company's index weights, individual constituents' shares held by governments, corporations, strategic partners, or other control groups are excluded from the company's shares outstanding. Shares owned by other companies are also excluded regardless of whether such companies are Underlying Index constituents.

Where a foreign investment limit exists at the sector or company level, the constituent's weight will reflect either the foreign investment limit or the percentage float, whichever is the more restrictive.[23]

Stocks are screened to ensure there is sufficient liquidity to be traded. Factors in determining liquidity include the availability of current and reliable price information and the level of trading volume relative to shares outstanding. Value traded and float turnover are also analyzed on a monthly basis to ensure ample liquidity. Fundamental analysis is not part of the selection criteria for inclusion or exclusion of stocks from the Underlying Index. The financial and operating conditions of a company are not analyzed.

Index Maintenance and Issue Changes. The Index Committee is responsible for undertaking the review of the Underlying Index and for approving changes of constituents in accordance with the Underlying Index rules and procedures. The FTSE Global Classification Committee is responsible for the industry classification of constituents of the Underlying Index within the FTSE Global Classification System. The FTSE Global Classification Committee may approve changes to the FTSE Global Classification System and Management Rules. FXI appoints the Chairman and Deputy Chairman of the Index Committee. The Chairman chairs meetings of the Committee and represents the Committee in outside meetings. Adjustments to reflect a major change in the amount or structure of a constituent company's issued capital will be made before the start of the Underlying Index calculation on the day on which the change takes effect. Adjustments to reflect less significant changes will be implemented before the start of the Underlying Index calculation on the day following the announcement of the change. All adjustments are made before the start of the Underlying Index calculations on the day concerned, unless market conditions prevent this.

A company will be inserted into the Underlying Index at the periodic review if it rises to 15th position or above when the eligible companies are ranked by full market value before the application of any investibility weightings. A company in the Underlying Index will be deleted at the periodic review if it falls to 36th position or below when the eligible companies are ranked by full market value before the application of any investibility weightings. Any deletion to the Underlying Index will simultaneously entail an addition to the Underlying Index in order to maintain 25 Underlying Index constituents at all times.

Revisions to the Float Adjustments. The Underlying Index is reviewed quarterly for changes in free float. These reviews will coincide with the quarterly reviews undertaken of the Underlying Index as a whole. Implementation of any changes will be after the close of the Underlying Index calculation on the third Friday in January, April, July, and October.

Quarterly Index Rebalancing. The quarterly review of the Underlying Index constituents takes place in January, April, July, and October. Any constituent changes will be implemented on the next trading day following the third Friday of the same month of the review meeting. Details of the outcome of the review and the dates on which any changes are to be implemented will be published as soon as possible after the Index Committee meeting has concluded.

Index Availability. The Underlying Index is calculated in real-time and published every minute during the Underlying Index period (09:15–16:00 Local Hong Kong Time) or (17:15–24:00 U.S. Pacific Daylight Time). It is available real-time directly from FTSE and from the following vendors: Reuters, Bloomberg, Telekurs, FTID and LSE/Proquote. The end of day Underlying Index value is distributed at 16:15 (Local Hong Kong Time). Daily values will also be made available to the Financial Times Asia edition and other major newspapers and will be available at the FTSE Index Services Web site: *http://www.ftse.com.* The Underlying Index uses Hong Kong Stock Exchange trade prices and Reuters real-time spot currency rates. A total return index value that takes into account reinvested dividends is published daily at the end of day. The Underlying Index is not calculated on days that are holidays in Hong Kong.

The daily closing Underlying Index value, historical values, constituents' weighting, constituents' market capitalization and daily percentage changes are publicly available from *http://www.ftsexinhua.com.* All corporate actions and rules relating to the management of the Underlying Index are also available from the Web site.

Exchange Rates and Pricing. The Underlying Index uses Reuters real-time foreign exchange spot rates and local stock exchange real-time security prices. The Underlying Index is calculated in Hong Kong Dollars. Non-Hong Kong Dollar denominated constituent prices are converted to Hong Kong Dollars to calculate the Underlying Index. The Reuters foreign exchange rates and Hong Kong Stock Exchange prices received at the closing time of the Underlying Index are used to calculate the final Underlying Index levels.

(c) Issuance of iShares in Creation Unit Aggregations

The issuance and redemption of Creation Unit Aggregations will operate in a manner identical to that of the funds that are the subject of the Prior Order.

(i) *In General.* Shares of the Fund (the ''iShares'') will be issued on a continuous offering basis in groups of 50,000 or more. These ''groups'' of shares are called ''Creation Unit Aggregations.'' The Fund will issue and redeem iShares only in Creation Unit Aggregations.[24]

As with other open-end investment companies, iShares will be issued at the net asset value (''NAV'') per share next

Exchange, there are no restrictions on who can trade H shares.

''Red Chip'' Shares—Red Chip shares are shares of companies incorporated in Hong Kong and trade on the Hong Kong Stock Exchange. They are quoted in Hong Kong dollars. Red Chip companies may be substantially owned directly or indirectly by the Chinese Government and have the majority of their business interests in mainland China.

H shares and Red Chip shares trade on the Hong Kong Stock Exchange, typically on a T + 2 basis, through a central book-entry system that effectively guarantees settlement of exchange trades by broker-dealers.

''B'' Shares—B shares are shares of companies incorporated in China and trade on either the Shanghai or Shenzhen stock exchanges. They are quoted in U.S. dollars on the Shanghai Stock Exchange and Hong Kong dollars on the Shenzhen Stock Exchange. They can be traded by non-residents of the People's Republic of China and also residents of the People's Republic of China with appropriate foreign currency dealing accounts. There is no true ''delivery versus payment'' settlement for B shares. B shares settle in the local markets and cash settles subsequently in foreign depositaries or local banks.

[23] The Exchange understands that there are no foreign ownership limits with the current constituents to the FTSE/Xinhua China 25 Index and that, as such, the percentage float will be used.

[24] Each Creation Unit Aggregation consists of 50,000 or more iShares.

determined after an order in proper form is received.

The NAV per share of the Fund is determined as of the close of the regular trading session on the NYSE on each day that the NYSE is open. The Trust sells Creation Unit Aggregations of the Fund only on business days at the next determined NAV of the Fund. Creation Unit Aggregations generally will be issued by the Fund in exchange for the in-kind deposit of equity securities designated by the Advisor to correspond generally to the price and yield performance of the Fund's Underlying Index (''Deposit Securities'') and a specified cash payment. Creation Unit Aggregations generally will be redeemed by the Fund in exchange for portfolio securities of the Fund (''Fund Securities'') and a specified cash payment. Fund Securities received on redemption may not be identical to Deposit Securities deposited in connection with creations of Creation Unit Aggregations for the same day.

All orders to purchase iShares in Creation Unit Aggregations must be placed through an Authorized Participant. An Authorized Participant must be either a ''Participating Party,'' *i.e.*, a broker-dealer or other participant in the clearing process through the National Securities Clearing Corporation (''NSCC'') Continuous Net Settlement System, a clearing agency that is registered with the SEC, or a Depository Trust Company (''DTC'') participant (''DTC Participant''), and in each case, must enter into a Participant Agreement. The Exchange understands that the Fund is currently imposing transaction fees in connection with creation and redemption transactions.[25]

(ii) In-Kind Deposit of Portfolio Securities. Payment for Creation Unit Aggregations will be made by the purchasers generally by an in-kind deposit with the Fund of the Deposit Securities together with an amount of cash (''Balancing Amount'') specified by the Advisor in the manner described below. The Balancing Amount is an amount equal to the difference between (1) the NAV (per Creation Unit Aggregation) of the Fund and (2) the total aggregate market value (per Creation Unit Aggregation) of the Deposit Securities (such value referred to herein as the ''Deposit Amount''). The Balancing Amount serves the function of compensating for differences, if any, between the NAV per Creation Unit Aggregation and that of the Deposit Amount.[26] The deposit of the requisite Deposit Securities and the Balancing Amount are collectively referred to herein as a ''Fund Deposit.'' The Advisor will make available to NSCC participants[27] through the NSCC on each business day, prior to the opening of trading on the NYSE (currently 9:30 a.m. Eastern Standard Time), the list of the names and the required number of shares of each Deposit Security included in the current Fund Deposit (based on information at the end of the previous business day) for the Fund. The Fund Deposit will be applicable to the Fund (subject to any adjustments to the Balancing Amount, as described below) in order to effect purchases of Creation Unit Aggregations of the Fund until such time as the next-announced Fund Deposit composition is made available.

The identity and number of shares of the Deposit Securities required for the Fund Deposit for the Fund will change from time to time. The composition of the Deposit Securities may change in response to adjustments to the weighting or composition of the Component Securities. In addition, the Trust reserves the right to permit or require the substitution of an amount of cash—*i.e.*, a ''cash in lieu'' amount—to be added to the Balancing Amount to replace any Deposit Security that may not be available in sufficient quantity for delivery or that may not otherwise be eligible for transfer. The Trust also reserves the right to permit or require a ''cash in lieu'' amount where the delivery of the Deposit Security by the Authorized Participant would be restricted under the securities laws or where the delivery of the Deposit Security to the Authorized Participant would result in the disposition of the Deposit Security by the Authorized Participant becoming restricted under the securities laws, or in certain other situations. The adjustments described above will reflect changes known to the Advisor on the date of announcement to be in effect by the time of delivery of the Fund Deposit, in the composition of the Underlying Index or resulting from certain corporate actions.

(d) Availability of Information Regarding iShares and the Underlying Index

On each business day the list of names and amount of each security constituting the current Deposit Securities of the Fund Deposit and the Balancing Amount effective as of the previous business day, per outstanding share of the Fund, will be made available. An amount per iShare representing the sum of the estimated Balancing Amount effective through and including the previous business day, plus the current value of the Deposit Securities in U.S. dollars, on a per iShare basis (''Intraday Optimized Portfolio Value'' or ''IOPV'') is currently calculated by an independent third party (''Value Calculator''), such as Bloomberg L.P., every 15 seconds during the Exchange's Core Trading Session[28] and disseminated every 15 seconds on the Consolidated Tape.

The IOPV reflects the current value of the Deposit Securities and the Balancing Amount. The IOPV also reflects changes in currency exchange rates between the U.S. dollar and the applicable home foreign currency.

Since the Fund will utilize a representative sampling strategy, the IOPV may not reflect the value of all securities included in the Underlying Index. In addition, the IOPV does not necessarily reflect the precise composition of the current portfolio of securities held by the Fund at a particular point in time. Therefore, the IOPV on a per Fund share basis disseminated during the NYSE's trading hours should not be viewed as a real time update of the NAV of the Fund, which is calculated only once a day. While the IOPV disseminated by the NYSE at 9:30 a.m. Eastern Standard Time is expected to be generally very close to the most recently calculated Fund NAV on a per Fund share basis, it is possible that the value of the portfolio of securities held by the Fund may diverge from the Deposit Securities values during any trading day. In such case, the IOPV will not precisely reflect the value of the Fund portfolio.

However, during the trading day, the IOPV can be expected to closely approximate the value per Fund share of the portfolio of securities for the Fund except under unusual circumstances (*e.g.*, in the case of extensive

[25] Telephone conversation between Tania J.C. Blanford, Staff Attorney, Regulatory Policy, PCX, and Natasha Cowen, Attorney, Division, Commission, on November 17, 2004.

[26] Where the NAV (per Creation Unit Aggregation) of the Fund exceeds the Deposit Amount, the purchaser pays the corresponding Balancing Amount to the Fund. Where, by contrast, the Deposit Amount exceeds the NAV (per Creation Unit Aggregation) of the Fund, the Balancing Amount is paid by the Fund to the purchaser. Telephone conversation between Tania J.C. Blanford, Staff Attorney, Regulatory Policy, PCX, and Natasha Cowen, Attorney, Division, Commission, on December 1, 2004.

[27] Telephone conversation between Tania J.C. Blanford, Staff Attorney, Regulatory Policy, PCX, and Natasha Cowen, Attorney, Division, Commission, on November 17, 2004.

[28] The Core Trading Session is defined in PCXE Rule 7.34(a). Telephone conversation between Tania J.C. Blanford, Staff Attorney, Regulatory Policy, PCX, and Natasha Cowen, Attorney, Division, Commission, on October 28, 2004.

rebalancing of multiple securities in a Fund at the same time by the Advisor).

The Exchange believes that dissemination of the IOPV based on the Deposit Securities provides additional information regarding the Fund that is not otherwise available to the public and is useful to professionals and investors in connection with Fund shares trading on the Exchange or the creation or redemption of Fund shares. Since the trading hours of the Hong Kong Stock Exchange do not overlap with regular trading hours in the U.S., it is expected that the Value Calculator, when calculating IOPV, will utilize closing prices (in applicable foreign currency prices) in the principal foreign market for the securities in the Fund portfolio (*i.e.*, the Hong Kong Stock Exchange), and convert the prices to U.S. dollars.

In addition, FTSE will be disseminating a value for the Underlying Index once each trading day, based on closing prices on the Hong Kong Stock Exchange. The NAV for the Fund will be calculated and disseminated daily. Investors Bank and Trust (''IBT'') will calculate the Fund NAV. IBT will also disseminate the information to BGI, SEI, and others. The Fund NAV will be published in a number of places, including *http://www.iShares.com* and on the Consolidated Tape.

The Underlying Index currently uses the Reuters foreign exchange rate at the close of the index (4 p.m. Hong Kong Time) to compute final Underlying Index values. The Fund uses Reuters/WM foreign exchange rates at 4 p.m. London Time. There will also be disseminated a variety of data with respect to the Fund on a daily basis by means of CTA and CQ High Speed Lines, which will be made available prior to the opening of trading on the NYSE. Information with respect to recent NAV, shares outstanding, estimated cash amount and total cash amount per Creation Unit Aggregation will be made available prior to the opening of the NYSE. In addition, the Web site for the Trust, *http://www.iShares.com*, which is publicly accessible at no charge, will contain the following information, on a per iShare basis, for the Fund: (a) the prior business day's NAV and the mid-point of the bid-ask price at the time of calculation of such NAV (''Bid/Ask Price''), [29] and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

The closing prices of the Fund's Deposit Securities are readily available from, as applicable, the relevant exchanges, automated quotation systems, published or other public sources in the relevant country, or on-line information services such as Bloomberg or Reuters. The exchange rate information required to convert such information into U.S. dollars is also readily available in newspapers and other publications and from a variety of on-line services.

(e) Redemption of iShares

Creation Unit Aggregations of the Fund will be redeemable at the NAV next determined after receipt of a request for redemption. Creation Unit Aggregations of the Fund generally will be redeemed in-kind, together with a balancing cash payment (although, as described below, Creation Unit Aggregations may sometimes be redeemed for cash). The value of the Fund's redemption payments on a Creation Unit Aggregation basis will equal the NAV per the appropriate number of iShares of the Fund. Owners of iShares may sell their iShares in the secondary market, but must accumulate enough iShares to constitute a Creation Unit Aggregation in order to redeem through the Fund. Redemption orders must be placed by or through an Authorized Participant.

Creation Unit Aggregations of the Fund generally will be redeemable on any business day in exchange for Fund Securities and the Cash Redemption Payment (defined below) in effect on the date a request for redemption is made. The Advisor will publish daily through NSCC the list of securities which a creator of Creation Unit Aggregations must deliver to the Fund (''Creation List'') and which a redeemer will receive from the Fund (''Redemption List''). The Creation List is identical to the list of the names and the required numbers of shares of each Deposit Security included in the current Fund Deposit.

In addition, just as the Balancing Amount is delivered by the purchaser of Creation Unit Aggregations to the Fund, the Trust will also deliver to the redeeming beneficial owner in cash the ''Cash Redemption Payment.'' The Cash Redemption Payment on any given business day will be an amount calculated in the same manner as that for the Balancing Amount, although the actual amounts may differ if the Fund Securities received upon redemption are not identical to the Deposit Securities applicable for creations on the same day. To the extent that the Fund Securities have a value greater than the NAV of iShares being redeemed, a cash payment equal to the differential is required to be paid by the redeeming beneficial owner to the Fund. The Trust may also make redemptions in cash in lieu of transferring one or more Fund Securities to a redeemer if the Trust determines, in its discretion, that such method is warranted due to unusual circumstances. An unusual circumstance could arise, for example, when a redeeming entity is restrained by regulation or policy from transacting in certain Fund Securities, such as the presence of such Fund Securities on a redeeming investment banking firm's restricted list.

(f) Dividends and Distributions

Dividends from net investment income will be declared and paid to beneficial owners of record at least annually by the Fund. Distributions of realized securities gains, if any, generally will be declared and paid once a year, but the Fund may make distributions on a more frequent basis to comply with the distribution requirements of the Code and consistent with the Investment Company Act.

Dividends and other distributions on iShares of the Fund will be distributed on a pro rata basis to beneficial owners of such iShares. Dividend payments will be made through the DTC and the DTC Participants to beneficial owners then of record with amounts received from the Fund.

The Trust currently does not intend to make the DTC book-entry Dividend Reinvestment Service (''Service'') available for use by beneficial owners for reinvestment of their cash proceeds, but certain individual brokers may make the Service available to their clients. The SAI will inform investors of this fact and direct interested investors to contact such investor's broker to ascertain the availability and a description of the Service through such broker. The SAI will also caution interested beneficial owners that they should note that each broker may require investors to adhere to specific procedures and timetables in order to participate in the Service and such investors should ascertain from their broker such necessary details. The beneficial owners will hold iShares acquired pursuant to the Service in the same manner, and subject to the same terms and conditions, as for original ownership of iShares.

[29] The Bid-Ask Price of the Fund is determined using the highest bid and lowest offer on the NYSE as of the time of calculation of the Fund's NAV.

Beneficial owners of iShares will receive all of the statements, notices, and reports required under the Investment Company Act and other applicable laws. They will receive, for example, annual and semi-annual reports, written statements accompanying dividend payments, proxy statements, annual notifications detailing the tax status of distributions, IRS Form 1099–DIVs, etc. Because the Trust's records reflect ownership of iShares by DTC only, the Trust will make available applicable statements, notices, and reports to the DTC Participants who, in turn, will be responsible for distributing them to the beneficial owners.

(g) Other Issues

(1) *Criteria for Initial and Continued Listing.* iShares are subject to the criteria for initial and continued listing of ICUs in PCXE Rules 5.2(j)(3) and 5.5(g)(2). The minimum number of iShares required to be outstanding at the start of trading will be comparable to requirements that have been applied to previously traded series of ICUs.

The Exchange believes that the proposed minimum number of iShares outstanding at the start of trading is sufficient to provide market liquidity and to further the Trust's objective to seek to provide investment results that correspond generally to the price and yield performance of the Underlying Index.

(2) *Original and Annual Listing Fees.* On October 26, 2004 the Commission approved modifications to the listing fees for exchange-traded funds and closed-end funds on the Exchange. Original listing fees are: $20,000 for the first fund listed by a fund issuer or ''family;'' and no fee for subsequent additional funds listed by the same fund issuer or ''family.''[30]

(3) *Prospectus Delivery.* The Commission has granted the Trust an exemption from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act.[31] Any product description used in reliance on a Section 24(d) exemptive order will comply with all representations made therein and all conditions thereto. The Exchange, in an Information Circular, will inform ETP Holders prior to commencement of trading, of the prospectus or product description delivery requirements applicable to the Fund.

(4) *Information Circular.* The Exchange will distribute an information circular to ETP Holders in connection with the trading of the Fund (''Information Circular''). The Information Circular will discuss the special characteristics and risks of trading this type of security. Specifically, the Information Circular, among other things, will discuss what the Fund is, how Fund shares are created and redeemed, the requirement that ETP Holders deliver a prospectus or product description to investors purchasing shares of the Fund before, or concurrently with, the confirmation of a transaction, applicable Exchange rules, dissemination information, trading information and the applicability of suitability rules (PCXE Rule 9.2(a)). The Information Circular will also discuss exemptive, no-action and interpretive relief granted by the Commission from Section 11(d)(1) and certain rules under the Act, including Rule 10a–1, Rule 10b–10, Rule 14e–5, Rule 10b–17, Rule 11d1–2, Rules 15c1–5 and 15c1–6, and Rules 101 and 102 of Regulation M under the Act.

(5) *Trading Halts.* In order to halt the trading of the Fund, the Exchange may consider, among other things, factors such as the extent to which trading is not occurring in underlying security(s) and whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Fund shares is subject to trading halts caused by extraordinary market volatility pursuant to PCXE Rule 7.12.

(6) *Due Diligence.* The Exchange represents that the information circular to ETP Holders will note, for example, Exchange responsibilities including that before an ETP Holder, or employee thereof recommends a transaction in the Fund, a determination must be made that the recommendation is in compliance with all applicable Exchange and Federal rules and regulations, including due diligence obligations under PCXE Rule 9.2(a)–(b).

(7) *Purchases and Redemptions in Creation Unit Aggregations.*[32] In the Information Circular ETP Holders will be informed that procedures for purchases and redemptions of iShares in Creation Unit Aggregations are described in the Prospectus and SAI, and that iShares are not individually redeemable but are redeemable only in Creation Unit Aggregations or multiples thereof.

(8) *Surveillance.* Exchange surveillance procedures applicable to trading in the proposed iShares are comparable to those applicable to other ICUs currently trading on the Exchange. The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Fund. The Exchange's current trading surveillances focus on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. The Exchange is able to obtain information regarding trading in both the Fund shares and the Component Securities by the ETP Holders on any relevant market; in addition, the Exchange may obtain trading information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG, including, by way of example, the Hong Kong Stock Exchange.

(9) *Hours of Trading/Minimum Price Variation.* The Fund will trade during the hours specified in PCXE Rule 7.34. The minimum price variation for quoting will be consistent with PCXE Rule 7.6.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[33] in general, and furthers the objectives of Section 6(b)(5)[34] 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 mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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 on the proposed rule change were solicited or received.

[30] Telephone conversation between Tania J.C. Blanford, Staff Attorney, Regulatory Policy, PCX, and Natasha Cowen, Attorney, Division, Commission, on December 6, 2004. *See also* Securities Exchange Act Release No. 50593 (October 26, 2004), 69 FR 63427 (November 1, 2004) (SR–PCX–2004–63).

[31] *See In the Matter of iShares, Inc., et al.*, Investment Company Act Release No. 25623 (June 25, 2002).

[32] Some of the terminology in this Section has been revised pursuant to a telephone conversation between Tania J.C. Blanford, Staff Attorney, Regulatory Policy, PCX, and Natasha Cowen, Attorney, Division, Commission, on November 2, 2004.

[33] 15 U.S.C. 78f(b).

[34] 15 U.S.C. 78f(b)(5).

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 email to *rule-comments@sec.gov*. Please include File No. SR–PCX–2004–99 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File No. SR–PCX–2004–99. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–PCX–2004–99 and should be submitted on or before January 3, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[35] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[36] which requires, among other things, that the Exchange's rules promote just and equitable principles of trade, and facilitate transactions in securities, and, in general, protect investors and the public interest.[37]

The Commission believes that the PCX's proposal should advance the public interest by providing investors with increased flexibility in satisfying their investment needs and by allowing them to purchase and sell Fund shares at negotiated prices throughout the business day that generally track the price and yield performance of the targeted Underlying Index.[38]

Furthermore, the Commission believes that the proposed rule change raises no issues that have not been previously considered by the Commission. The Fund is similar in structure and operation to exchange-traded index funds that the Commission has previously approved for listing and trading on national securities exchanges under Section 19(b)(2) of the Act.[39] In addition, as noted above, the Commission has previously approved a substantially similar proposed rule change submitted by the NYSE to list and trade the iShares.[40]

The stocks included in the Underlying Index are among the stocks with the highest liquidity and market capitalization in the Chinese markets. Further, with respect to each of the following key issues, the Commission believes that the Fund satisfies established standards.

A. Fund Characteristics

The Commission believes that the proposed Fund is reasonably designed to provide investors with an investment vehicle that substantially reflects in value the performance of the Underlying Index.[41] Moreover, the Commission finds that, although the value of the Fund's shares will be derived from and based on the value of the securities and cash held in the Fund, the Fund is not leveraged. Accordingly, the level of risk involved in the purchase or sale of Fund shares is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for shares in the Fund is based on a portfolio of securities. The Commission notes that the Fund will at all times invest at least 80% of its assets in Component Securities and in Depositary Receipts and at least half of the remaining 20% of its assets in Component Securities, Depositary Receipts, or in stocks included in the Chinese market, but not included in the Underlying Index.[42] As noted above, the Fund will use a representative portfolio sampling strategy to attempt to track its Underlying Index. Although a representative sampling strategy entails some risk of tracking error, the Advisor will seek to minimize tracking error. It is expected that the Fund will have a tracking error relative to the performance of its Underlying Index of no more than 5%.

The Commission notes that although one employee of an affiliate of the Advisor serves on the FTSE/Xinhua Index Committee and provides input to help ensure that the published index rules and the implementation of such rules adequately reflect current developments in the underlying market, such employee is not and will not be involved in the operations of the Advisor or the Fund or be involved in any capacity with the Fund's Board of Trustees. Moreover, the index compilation functions of FXI and the FTSE/Xinhua Index Committee are, and

[35] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[36] 15 U.S.C. 78f(b)(5).

[37] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging or other economic function, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[38] The Commission notes that, as is the case with similar previously approved exchange traded funds, investors in the Fund can redeem shares in Creation Unit Aggregations only. *See, e.g.*, Securities Exchange Act Release No. 43679 (December 5, 2000), 65 FR 77949 (December 13, 2000) (File No. SR–NYSE–00–46); Securities Exchange Act Release No. 50189 (August 12, 2004); 69 FR 51723 (August 20, 2004) (File No. SR–Amex–2004–05).

[39] 15 U.S.C. 78s(b)(2).

[40] *See* Securities Exchange Act Release No. 50505 (October 8, 2004), 69 FR 61280 (October 15, 2004) (SR–NYSE–2004–55).

[41] The FTSE/Xinhua China 25 Index is a free float-adjusted market capitalization weighted index that is designed to represent the performance of the largest companies in the mainland China equity market that are available to international investors. As of October 12, 2004, its constituents had a total market capitalization of approximately $155 billion and a float-adjusted market capitalization of approximately $42 billion.

[42] The Exchange states that, to the extent the Fund invests in Depositary Receipts, any ADRs will be listed on a national securities exchange or Nasdaq. Other Depositary Receipts will be listed on a foreign exchange. The Fund will not invest in any unlisted Depositary Receipts or any listed Depositary Receipts that the Advisor deems to be illiquid or for which pricing information is not readily available. The Fund currently intends to

will remain, completely separate and independent of the portfolio management functions of BGFA. FXI and the FTSE/Xinhua Index Committee have adopted policies that prohibit the dissemination and use of confidential and proprietary information about the Underlying Index and have instituted procedures designed to prevent the improper dissemination and use of such information. BGI and BGIL have adopted policies that limit the use of confidential and proprietary information about portfolio management decisions to those persons whose duties require and permit them to have access to such information and have instituted procedures designed to prevent the improper dissemination and use of such information.

The Advisers to the Fund may attempt to reduce tracking error by using a variety of investment instruments, including futures contracts, repurchase agreements, options, swaps and currency exchange contracts; however, these instruments will not constitute more than 10% of the Fund's assets.[43]

The Commission believes that the market capitalization and liquidity of the Component Securities is such that an adequate level of liquidity exists so that the Fund shares should not be susceptible to manipulation.[44] Also, the Commission does not believe that the Fund will be so highly concentrated such that it becomes a surrogate for trading unregistered foreign securities on the Exchange.

While the Commission believes that these requirements should help to reduce concerns that the Fund could become a surrogate for trading in a single or a few unregistered stocks, if the Fund's characteristics changed materially from the characteristics described herein, the Fund would not be in compliance with the standards approved herein, and the Commission would expect the PCX to file a proposed rule change pursuant to Rule 19b-4 of the Act. In addition, the Exchange has represented that it will immediately notify the Commission of any changes made in the Fund and not represented herein.[45]

B. Disclosure

The Exchange represents that it will circulate an Information Circular detailing applicable prospectus and product description delivery requirements. The Information Circular also will address ETP Holders' responsibility to deliver a prospectus or product description to all investors and highlight the characteristics of the Funds. The Information Circular will also remind ETP Holders of their suitability obligations, including PCXE Rule 9.2(a)). For example, the Information Circular will also inform ETP Holders that Fund shares are not individually redeemable, but are redeemable only in Creation Unit Aggregations or multiples thereof as set forth in the Prospectus and SAI.[46]

C. Dissemination of Fund Information

With respect to pricing, each day, the NAV for the Fund will be calculated and disseminated by IBT to various sources and made available on http://www.iShares.com and on the Consolidated Tape.[47]

During each day the PCX is open for business, the Exchange states that the IOPV of the Underlying Index will be disseminated at regular intervals (every 15 seconds) on the Consolidated Tape. The IOPV will be updated throughout the PCX trading day to reflect fluctuations in exchange rates between the U.S. dollar and the applicable home foreign currency. The Underlying Index value is available real time directly from FTSE and from the following vendors: Reuters, Bloomberg, Telekurs, FTID and LSE/Proquote. An end of day closing value for the Underlying Index is available on *http://www.ftsexinhua.com,* along with other Underlying Index information such as historical values, composition and component weighting. The Commission believes that this information will help an investor to determine whether, and to what extent, iShares may be selling at a premium or a discount to NAV.

There will also be disseminated a variety of data with respect to the Fund on a daily basis by means of CTA and CQ High Speed Lines, which will be made available prior to the opening of trading on the NYSE. Information with respect to recent NAV, shares outstanding, estimated cash amount and total cash amount per Creation Unit Aggregation will be made available prior to the opening of the NYSE. In addition, the Web site for the Trust, which will be publicly accessible at no charge, will contain the following information, on a per iShare basis, for the Fund: (a) The prior business day's NAV and the mid-point of the Bid-Ask Price[48] at the time of calculation of such NAV, and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

The closing prices of the Fund's Deposit Securities are available from, as applicable, the relevant exchanges, automated quotation systems, published or other public sources in the relevant country, or on-line information services such as Bloomberg or Reuters. The exchange rate information required to convert such information into U.S. dollars is also readily available in newspapers and other publications and from a variety of on-line services. In addition, the Commission notes that the iShares Web site is and will be publicly accessible at no charge, and will contain the Fund's NAV as of the prior business day, the Bid-Asked Price, and a calculation of the premium or discount of the Bid-Asked Price in relation to the closing NAV.[49]

The Exchange also represents that it will halt trading and/or delist the shares if the dissemination of the Fund's value ceases and there is no readily available source for obtaining such information.[50]

[43] *See* discussion under Section II.A.1(a) ''Operation of the Fund'' above.

[44] The Exchange states that as of October 12, 2004, the ten largest constituents represented approximately 60.1% of the index weight. The five highest weighted stocks, which represented 39.9% of the index weight, had an average daily trading volume in excess of 56.9 million shares during the past three months. All of the Component Securities traded at least 250,000 shares in each of the previous three months.

[45] Telephone conversation between Tania J.C. Blanford, Staff Attorney, Regulatory Policy, Ryan Johnson, Listings Qualifications Specialist, PCX, Tim Elliott, Regulatory Counsel, Archipelago Holdings, LLC, and Ira Brandriss, Assistant Director, Lisa Jones, Special Counsel, and Natasha Cowen, Attorney, Division, Commission, on November 9, 2004.

[46] See discussion under Section II.A.1(a) ''Operation of the Fund,'' above. The Exchange has represented that the Information Circular will also discuss exemptive, no-action, and interpretive relief granted by the Commission from certain rules under the Act.

[47] The Underlying Index currently uses the Reuters foreign exchange rate at the close of the index (4 p.m. Hong Kong Time) to compute final index values. The Fund intends to use Reuters/WM foreign exchange rates at 4 p.m. London Time.

[48] The Bid-Ask Price of the Fund is determined using the highest bid and lowest offer on the NYSE as of the time of calculation of the Fund's NAV.

[49] Additional information available to investors will include data for a period covering at least the four previous calendar quarters (or the life of a Fund, if shorter) indicating how frequently the Fund's shares traded at a premium or discount to NAV based on the Bid-Asked Price and closing NAV, and the magnitude of such premiums and discounts; the Fund Prospectus and two most recent reports to shareholders; and other quantitative information such as daily trading volume.

[50] Telephone conversation between Tania J.C. Blanford, Staff Attorney, Regulatory Policy, Ryan Johnson, Listings Qualifications Specialist, PCX, Tim Elliott, Regulatory Counsel, Archipelago Holdings, LLC, and Ira Brandriss, Assistant Director, Lisa Jones, Special Counsel, and Natasha Cowen, Attorney, Division, Commission, on November 9, 2004.

Based on the representations made in the proposal, the Commission believes that pricing and other important information about the Fund is adequate and consistent with the Act.

D. Listing and Trading

The Commission further finds that adequate rules and procedures exist to govern the listing and trading, or trading pursuant to UTP, of the Fund's shares. The Exchange has represented that Fund shares will be deemed equity securities subject to PCXE rules governing the trading of equity securities, including, among others, rules governing trading halts.[51]

In addition, the Exchange states that iShares are subject to the criteria for initial and continued listing of ICUs in PCXE Rules 5.2(j)(3) and 5.5 (g)(2). The Commission believes that the listing and delisting criteria for Fund shares should help to ensure that a minimum level of liquidity will exist in the Fund to allow for the maintenance of fair and orderly markets.

E. Surveillance

The Exchange represents that it will rely on its existing surveillance procedures governing ICUs currently trading on the Exchange. The Exchange also represents that it is able to obtain information from the NYSE or any third party regarding trading in both the Fund shares and the Component Securities by the ETP Holders on any relevant market; in addition, the Exchange represents that it may obtain trading information via the ISG from other exchanges who are members or affiliates of the ISG, including, by way of example, the Hong Kong Stock Exchange.

F. Accelerated Approval

The Exchange has requested that the Commission approve the proposed rule change on an accelerated basis. The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[52] for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission has previously approved a substantially similar proposed rule change submitted by the NYSE to list and trade the iShares[53] and does not believe that the proposed rule change raises novel regulatory issues. Consequently, the Commission believes that it is appropriate to permit investors to benefit from the ability to trade these products on the PCX as soon as possible. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,[54] to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-PCX–2004–99) is hereby approved on an accelerated basis.[55]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[56]

Jill M. Peterson,

Assistant Secretary.

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[51] In order to halt the trading of the Fund, the Exchange may consider, among others, factors including: (1) The extent to which trading is not occurring in underlying securities; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Fund shares is subject to trading halts caused by extraordinary market volatility pursuant to PCXE Rule 7.12.

[52] 15 U.S.C. 78s(b)(2).

[53] *See* Securities Exchange Act Release No. 50505 (October 8, 2004), 69 FR 61280 (October 15, 2004) (SR-NYSE–2004–55).

[54] 15 U.S.C. 78s(b)(5).

[55] 15 U.S.C. 78s(b)(2).

[56] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) During the Week Ending November 26, 2004

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1999–5846.

Date Filed: November 23, 2004.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 14, 2004.

Description: Application of United Air Lines, Inc., requesting renewal and amendment of its experimental certificate of public convenience and necessity for route 566 (U.S.-Mexico).

Docket Number: OST–1999–6663.

Date Filed: November 23, 2004.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 14, 2004.

Description: Application of United Parcel Service Co. requesting renewal of its certificate authorizing UPS to engage in scheduled foreign air transportation of property and mail between Austin, Houston, Louisville and San Antonio and Monterrey, Guadalajara and Mexico City, Mexico.

Docket Number: OST–1999–6172.

Date Filed: November 24, 2004.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 15, 2004.

Description: Application of American Airlines, Inc., requesting a renewal and amendment of its certificate for Route 560 so as to include the following additional U.S.-Mexico route segments for which American currently holds separate certificate authority on Route 794.

Docket Number: OST–2001–9027.

Date Filed: November 24, 2004.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 15, 2004.

Description: Application of American Airlines, Inc., requesting renewal of its certificate for Route 794 authorizing scheduled foreign air transportation of persons, property, and mail between New York (JFK)–Cancun and St. Louis–Cancun.

Maria Gulczewski,

Supervisory Dockets Officer, Alternate Federal Register Liaison.

[FR Doc. 04–27230 Filed 12–10–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Supplemental Environmental Assessment (EA) for the East Kern Airport District (EKAD) Launch Site Operator License for the Mojave Airport, California

AGENCY: Federal Aviation Administration (FAA), Department of Transportation.

ACTION: Cancellation notice.

SUMMARY: On October 22, 2004, the FAA published a Notice of Availability and Request for Comment on a Draft Supplemental EA for the EKAD Launch Site Operator License for the Mojave

Airport, California in the **Federal Register** (69 FR 62113). The FAA has decided to cancel the preparation of the Final Supplemental EA. The Notice of Availability and Request for Comment is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Questions may be directed to Doug Graham, FAA Environmental Specialist, c/o ICF Consulting, 9300 Lee Highway, Fairfax, VA 22031 or (202) 267–8568.

Date Issued: December 6, 2004.

Place Issued: Washington, DC.

Herbert Bachner,

Manager, Space Systems Development Division.

[FR Doc. 04–27219 Filed 12–10–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (05–08–C–00–COS) To Impose and To Use a Passenger Facility Charge (PFC) at the Colorado Springs Airport, Submitted by the City of Colorado Springs, CO.

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 a PFC at the Colorado Springs Airport under the provisions of 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 January 12, 2005.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Craig Sparks, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, Colorado 80249–6361. In addition, one copy of any comments submitted to the FA must be mailed or delivered to Mr. Mark Earle, Director of Aviation at the following address: Colorado Springs Airport, 7770 Drennan Road, Colorado Springs, Colorado 80916.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to the Colorado Springs Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Schaffer. (303) 342–1258; Denver Airport District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, Colorado 80249–6361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposed to rule and invites public comments on the application (05–08–C–00–COS) to impose and use a PFC at the Colorado Springs Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 7, 2004, 2004, the FAA determined that the application to impose and use a PFC submitted by the City of Colorado Springs, Colorado, was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 8, 2005.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge-effective date: May 1, 2005.

Proposed charge expiration date: July 1, 2010.

Total requested for use approval: $12,723,148.

Brief description of proposed projects: Rehabilitation of Runway 17L/35R, security infrastructure projects, construction of Taxiway ''C'' north from Taxiway ''C2'' to Taxiway ''B2'', construct portion of Taxiway ''H'', airport operations area (AOA) vehicle service roads, resurfacing of entry/exit roads, security checkpoint expansion, terminal building modifications, pavement condition survey (Taxiways ''E'', ''E1–8'', ''G'', and ''H''), terminal circulation road.

Class or classes of air carriers that the public agency has requested not be required to collect PFC's: None.

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: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice, and other documents germane to the application in person at the Colorado Springs Airport.

Issued in Renton, Washington, on December 7, 2004.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 04–27227 Filed 12–10–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Application for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before January 12, 2005.

Addresses Comments to: Record Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW., Washington DC, or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exemption is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on December 6, 2004.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Safety Exemptions & Approvals.

NEW EXEMPTION

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
14036–N		Roche Diagnostics Corporation Indianapolis, IN.	49 CFR 173.56(b); (e)(3); (e)(4) and (i).	To authorize the transportation in commerce of unapproved Class 1 explosive materials in PG I performance level UN Standard packing. (mode 1).
14037–N		Air Products and Chemicals, Inc. Allentown, PA.	49 CFR 173.301(f)(3); 180.205(c)(4).	To authorize the transportation in commerce of hydrogen chloride, anhydrous in DOT specification seamless steel cylinders equipped with CG–4 pressure relief devices set at 3,360 psig. (modes 1, 2, 3).
14038–N		Dow Chemical Company Midland, MI.	49 CFR 172.203(a), 173.26 and 179.13.	To authorize the transportation in commerce of Class 8 hazardous materials in DOT specification 111A100W6 tank car tanks that exceed the maximum allowable gross weight on rail (263,000 lbs.). (mode 2).
14039–N		Chlorine Service Company Kingwood, TX.	49 CFR 178.245–1(a)	To authorize the manufacture, marking, sale and use of certain DOT Specification 51 steel portable tanks or UN steel portable tanks conforming with Section VIII, Division 2 of the ASME Code instead of Section VIII, Division 1, for the transportation in commerce of Division 2.1 and 2.2 materials. (modes 1, 2, 3).
14040–N		Clean Harbors Environmental Services, Inc. San Diego, CA.	49 CFR 173.304(d)	To authorize the one-time transportation in commerce of foreign cylinders for disposal. (mode 1).

[FR Doc. 04–27228 Filed 12–10–04; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Request of modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. Their applications have been separated from the new application for exemption to facilitate processing.

DATES: Comments must be received on or before December 28, 2004.

ADDRESS COMMENTS TO: Record Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW., Washington DC, or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exemption is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on December 6, 2004.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Exemptions & Approvals.

MODIFICATION EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Modification of exemption	Nature of exemption thereof
7774–M		Pipe Recovery Systems, Inc. Houston, TX.	49 CFR 172.301(c); 173.228(a); 175.3.	7774	To modify the exemption to extend the length of the non-DOT specification nonrefillable seamless cylinder to 84 inches.
8826–M		Phoenix Air Group, Inc. Cartersville, GA.	49 CFR 172.101; 172.204(c)(3); 173.27; 175.30(a)(1); 175.320(b).	8826	To modify the exemption to provide relief from certain reporting requirements during operation of cargo only aircraft when transporting explosives.

MODIFICATION EXEMPTIONS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Modification of exemption	Nature of exemption thereof
9969–M		Kin-Tek Laboratories, Inc. La Marque, TX.	49 CFR Subparts C, E and F of Part 172.	9969	To modify the exemption to authorize an alternative diffusing end to the non-DOT specification inner receptacle.
11388–M		Nalco Company (formerly ONDEO Nalco Company) Naperville, IL..	49 CFR 173.243	11388	To modify the exemption to authorize the transportation of additional Class 3 materials in DOT Specification 57 portable tanks.
11537–M		ChemStation International, Inc. Dayton, OH.	49 CFR 177.834(h)	11537	To modify the exemption to authorize the transportation of a Class 3 and additional Class 8 material and use of an alternative monitoring method for the DOT Specification UN31H2 or UN31HA1 IBCs without removing the IBC from the vehicle on which it is transported.
11654–M		Celanese Ltd. (formerly Celanese Chemicals) Dallas, TX.	49 CFR 172.203(a); 173.31(c)(1); 179.13.	11654	To modify the exemption to authorize the transportation of an additional Class 3 material in DOT Class 105S tank cars.
11769–M		Los Angeles Chemical Company South Gate, CA.	49 CFR 177.834(h)	11769	To modify the exemption to authorize the transportation of an additional Division 5.1 material in UN Intermediate Bulk Containers (IBCs) without removing the IBC from the vehicle.
13192–M	RSPA–03–14315	Pollution Control Industries, Inc. East Chicago, IN.	49 CFR 173.12(b)	13192	To modify the exemption to provide additional relief from the stowage and segregation requirements for all hazardous materials shipped in a lab pack.
13488–M	RSPA–04–17301	FABER INDUSTRIES SPA (U.S. Agent: Kaplan Industries, Maple Shade, NJ).	49 CFR 173.301(a)(1); 173.301(a)(2); 173.302a(a)(1) and 178.37.	13488	To modify the exemption to authorize the use of an alternative size Charpy V-notch specimen and relief from the flawed burst test requirements for non-DOT specification cylinders.
13577–M	RSPA–04–18710	Scott Medical Products, a division of Scott Specialty Gases, Inc. Plumstreadville, PA.	49 CFR 173.306(a)(3)(ii); 173.306(a)(3)(v).	13577	To modify the exemption to authorize the use of an alternative valve neck closure for the non-DOT specification inside metal containers.
13976–M	RSPA–04–19464	Osmose Utilities Services, Inc. Buffalo, NY.	49 CFR 172.504(a)	13976	To reissue the exemption originally issued on an emergency basis for the transportation of certain UN Standard combination packages which contain a Division 6.1 material in utility vehicles that are not placarded.

[FR Doc. 04–27229 Filed 12–10–04; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Chiropractic Care Implementation; Notice of Establishment

As required by Section 9(a)(2) of the Federal Advisory Committee Act, the Department of Veterans Affairs (VA) hereby gives notice of the establishment of the Advisory Commiteee on Chiropractic Care Implementation. The Secretary of Veterans Affairs has determined that establishing the Committee is both necessary and in the public interest.

The Committee will monitor and oversee actvities to establish a chiropractic health program within VA, and it will advise the Secretary on the implementation and evaluation of that program. Much of the Committee's work will focus on carrying out the VA-endorsed recommendations of the Chiropractic Advisory Committee, an advisory committee whose statutory authority will expire on December 31, 2004. The Chiropractic Advisory Committee has been operational since 2002, has held its final meeting and has submitted its final report to the Secretary.

The Advisory Committee on Chiropractic Care Implementation will review critical issues that affect program implementation, recommend program enhancements and provide guidance on long range planning. The Committee will include members of the chiropractic care profession and such other members as the Secretary considers appropriate.

The Advisory Committee on Chiropractic Care Implementation will meet periodically through 2005 and will be terminated no later than December 31, 2005.

Dated: December 6, 2004.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 04–27285 Filed 12–10–04]

BILLING CODE 8320–01–M

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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]

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Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]

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Applications for grants and other financial assistance; electronic submission; comments due by 12-23-04; published 11-23-04 [FR 04-25893]

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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:
Boulder darter and spotfin chub; reintroduction to Shoal Creek, AL and TN; comments due by 12-20-04; published 10-21-04 [FR 04-23587]

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Environmental statements; availability, etc.:
Fort Wayne State Developmental Center; Open for comments until further notice; published 5-10-04 [FR 04-10516]

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Disaster loan areas:
Maine; Open for comments until further notice; published 2-17-04 [FR 04-03374]

SOCIAL SECURITY ADMINISTRATION
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Federal old age, survivors, and disability insurance—-
Administrative review process; incorporation by reference of oral findings of fact and rationale in wholly favorable written decisions; comments due by 12-20-04; published 10-20-04 [FR 04-23357]

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]

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B-series combustion heaters, models B1500, B2030, B3040, B3500, B4050, and B4500; comments due by 12-20-04; published 10-22-04 [FR 04-23620]
Boeing; comments due by 12-20-04; published 11-3-04 [FR 04-24540]
Hartzell Propeller Inc.; comments due by 12-20-04; published 10-20-04 [FR 04-23366]
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Cessna Model 172 series airplanes; comments due by 12-22-04; published 11-22-04 [FR 04-25697]
Thielert Aircraft Engines modified Cessna Model 172 series airplanes; comments due by 12-20-04; published 11-19-04 [FR 04-25698]
Class E airspace; comments due by 12-20-04; published 11-3-04 [FR 04-24461]

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National Highway Traffic Safety Administration
Motor vehicle safety standards:
Rear impact guards; comments due by 12-20-04; published 11-5-04 [FR 04-24737]

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Timely mailing of documents and payments treated as timely filing and paying; comments due by 12-20-04; published 9-21-04 [FR 04-21218]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html.*

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html.* Some laws may not yet be available.

H.R. 4818/P.L. 108–447

Consolidated Appropriations Act, 2005 (Dec. 8, 2004; 118 Stat. 2809)

S. 2618/P.L. 108–448

To amend title XIX of the Social Security Act to extend medicare cost-sharing for the medicare part B premium for qualifying individuals through September 2005. (Dec. 8, 2004; 118 Stat. 3467)

Last List December 10, 2004

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–052–00001–9)	9.00	[4] Jan. 1, 2004
3 (2003 Compilation and Parts 100 and 101)	(869–052–00002–7)	35.00	[1] Jan. 1, 2004
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700–1199	(869–052–00005–1)	50.00	Jan. 1, 2004
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6	(869–052–00007–8)	10.50	Jan. 1, 2004
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1000–1199	(869–052–00016–7)	22.00	Jan. 1, 2004
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17.99(i)–end	(869–050–00211–6)	50.00	Oct. 1, 2003
18–199	(869–050–00212–4)	42.00	Oct. 1, 2003
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2003, through January 1, 2004. The CFR volume issued as of January 1, 2002 should be retained.

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