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Presidential Documents

Title 3—

The President

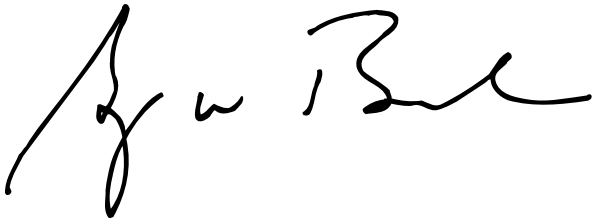
Presidential Determination No. 2004–04 of October 14, 2003

Waiver and Certification of Statutory Provisions Regarding the Palestine Liberation Organization

Memorandum for the Secretary of State

Consistent with the authority vested in me under section 534(d) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2003, Public Law 108–7, I hereby determine and certify that it is important to the national security interests of the United States to waive the provisions of section 1003 of the Anti-Terrorism Act of 1987, Public Law 100–204.

This waiver shall be effective for a period of 6 months from the date hereof. You are hereby authorized and directed to transmit this determination to the Congress and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, October 14, 2003.

[FR Doc. 03–27038
Filed 10–23–03; 8:45 am]
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Rules and Regulations

Federal Register
Vol. 68, No. 206
Friday, October 24, 2003

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–36–AD; Amendment 39–13346; AD 2003–21–11]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211–524 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Rolls-Royce plc (RR) RB211–524 series turbofan engines. This AD requires replacing the dedicated generator rotor assembly, the adaptor casing on the high speed gearbox (HSGB), and bearings with new design parts on certain engines. This AD is prompted by several reports of dedicated generator rotor assembly bearing failures. We are issuing this AD to prevent possible uncommanded engine acceleration with no reaction to throttle movement, which could result in uncontrollable asymmetric engine thrust levels during takeoff or climb.

DATES: Effective November 10, 2003. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of November 10, 2003.

We must receive any comments on this AD by December 23, 2003.

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

- By mail: The Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–36–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov.*

You can get the service information referenced in this AD from Rolls-Royce plc, P.O. Box 31, Derby, England, DE248BJ; telephone: 011–44–1332–242424; fax: 011–44–1332–245418.

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service information, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine And Propeller Directorate, 12 New England Executive Park; Burlington, MA 01803–5299; telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (U.K.), recently notified the FAA that an unsafe condition may exist on certain RR RB211–524 series turbofan engines. The CAA advises that a number of dedicated generator rotor assembly bearing failures have occurred due to low fatigue life of the bearing material and inadequate bearing lubrication. Bearing failure can lead to an erratic high pressure (HP) shaft speed signal sent to the Full Authority Fuel Controller (FAFC). This erratic signal can cause possible uncommanded engine acceleration with no reaction to throttle movement, which could result in uncontrollable asymmetric engine thrust levels during takeoff or climb.

Relevant Service Information

We have reviewed and approved the technical contents of RR Mandatory Service Bulletin (MSB) No. RB.211–72–E037, dated March 26, 2003, that describes procedures for replacing the dedicated generator adaptor casing, and the rotor assembly bearings with new design parts. The CAA classified RR MSB No. RB.211–72–E037 as mandatory and issued AD 004–03–2003, dated March 26, 2003, in order to ensure the airworthiness of these RR engines in the U.K.

FAA's Determination and Requirements of this AD

Although no airplanes that are registered in the United States use these engines, the possibility exists that the engines could be used on airplanes that are registered in the United States in the future. The unsafe condition described previously is likely to exist or develop on other RB211–524 series turbofan engines. We are issuing this AD to prevent possible uncommanded engine acceleration with no reaction to throttle movement, which could result in uncontrollable asymmetric engine thrust levels during takeoff or climb.

This AD requires replacing the dedicated generator rotor assembly, part number (P/N) UL39102, the adaptor casing P/N UL26756 or UL26729, on the high speed gearbox (HSGB), and bearings P/N UL21029 with new design parts on the following:

- RB211–524G2–19, RB211–524G3–19, and RB211–H2–19 turbofan engines with SNs before SN 13793.
- RB211–524H–36 turbofan engines with SNs before SN 13472.
- All SN RB211–524G2–T–19 turbofan engines.
- All SN RB211–524G3–T–19 turbofan engines.
- All SN RB211–524H2–T–19 turbofan engines.
- All SN RB211–524H–T–36 turbofan engines.

The actions must be done within 62 months after the effective date of the AD for RB211–524G2–19, RB211–524G2–T–19, RB211–524G3–19, RB211–524G3–T–19, RB211–524H2–19, RB211–524H2–T–19 engines, and within 16 months after the effective date of the AD for SN RB211–524H–36, RB211–524H–T–36 engines. You must use the service information described previously to perform the actions required by this AD.

Bilateral Airworthiness Agreement

This engine model is manufactured in the U.K. and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Under this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. We have examined the findings of the CAA,

reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this engine model, notice and opportunity for public comment before issuing this AD are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation.

Changes to 14 CFR Part 39—Effect on the AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47998, July 22, 2002), which governs our AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. 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.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–36–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us verbally, and that contact relates to a substantive part of this 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 the AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications with you. You may get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Regulatory Findings

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

For the reasons discussed above, I certify that the regulation:

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

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

3. 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 AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–36–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2003–21–11 Rolls-Royce plc: Amendment 39–13346. Docket No. 2003–NE–36–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 10, 2003.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the Rolls-Royce plc (RR) engines in the following Table 1, with the dedicated generator rotor assembly, part number (P/N) UL39102, adaptor casing P/N UL26756 or UL26729, on the high speed gearbox (HSGB), and bearings P/N UL21029 installed.

TABLE 1.—AFFECTED ENGINES AND COMPLIANCE TIMES

Engine model	Engine serial numbers	Comply after the effective date of this AD
RB211–524G2–19	Before SN 13793	Within 62 months.
RB211–524G2–T–19	All SNs	Within 62 months.
RB211–524G3–19	Before SN 13793	Within 62 months.
RB211–524G3–T–19	All SNs	Within 62 months.
RB211–524H2–19	Before SN 13793	Within 62 months.
RB211–524H2–T–19	All SNs	Within 62 months.
RB211–524H–36	Before SN 13472	Within 16 months.
RB211–524H–T–36	All SNs	Within 16 months.

These engines are installed on, but not limited to, Boeing 747 and 767 series airplanes.

Unsafe Condition

(d) This AD is prompted by several reports of dedicated generator rotor assembly bearing failures. We are issuing this AD to prevent possible uncommanded engine acceleration with no reaction to throttle movement, which could result in uncontrollable asymmetric engine thrust levels during takeoff or climb.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified in Table 1 of this AD, unless the actions have already been done.

Removal and Installation of Adaptor Gearbox and Dedicated Generator On Engines In-Service

(f) For engines in-service, do the following:

(1) Remove the adaptor gearbox and the dedicated generator. Follow paragraph 3.C. of the Accomplishment Instructions of RR Mandatory Service Bulletin (MSB) No. RB.211–72–E037, dated March 26, 2003.

(2) Install the adaptor gearbox and the dedicated generator onto the engine. Follow paragraph 3.I. of the Accomplishment Instructions of RR MSB No. RB.211–72–E037, dated March 26, 2003.

Removal, Disassembly, Rework, Assembly, and Installation of Adaptor Gearbox and Dedicated Generator On Engines At Overhaul

(g) For engines at overhaul, do the following:

(1) Remove the adaptor gearbox and the dedicated generator. Follow paragraph 3.D. of the Accomplishment Instructions of RR MSB No. RB.211–72–E037, dated March 26, 2003.

(2) Disassemble the adaptor gearbox. Follow paragraph 3.E. of the Accomplishment Instructions of RR MSB No. RB.211–72–E037, dated March 26, 2003.

(3) Rework the existing gearbox adaptor casing assemblies (P/N UL26756 or P/N UL26729). Follow paragraph 3.F. of the Accomplishment Instructions of RR MSB No. RB.211–72–E037, dated March 26, 2003.

(4) Assemble the adaptor gearbox. Follow paragraph 3.H. of the Accomplishment Instructions of RR MSB No. RB.211–72–E037, dated March 26, 2003.

(5) Install the adaptor gearbox and the dedicated generator onto the engine. Follow paragraph 3.J. of the Accomplishment Instructions of RR MSB No. RB.211–72–E037, dated March 26, 2003.

Alternative Methods of Compliance

(h) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(i) You must use Rolls-Royce plc Mandatory Service Bulletin No. RB.211–72–E037, dated March 26, 2003, to perform the inspections required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from Rolls-Royce plc, PO Box 31, Derby, England, DE248BJ; telephone: 011–44–1332–242424; fax: 011–44–1332–245–418. You may review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Related Information

(j) CAA airworthiness directive 004–03–2003, dated March 26, 2003, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on October 15, 2003.

Robert G. Mann,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–26470 Filed 10–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–58–AD; Amendment 39–13343; AD 2003–21–08]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS332C, AS332L, AS332L1, and AS332L2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Eurocopter France (Eurocopter) model helicopters that requires inspecting certain main rotor blades for disbonds, which may be indicated by cracking, and repairing or replacing each main rotor blade (MRB) as necessary. This amendment is prompted by the discovery of disbonded leading edge protective strips. The actions specified by this AD are intended to detect disbonding between the stainless steel protective strip and the MRB skin, which could cause loss of the protective strip, an out-of-balance condition, and subsequent loss of control of the helicopter.

DATES: Effective November 28, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 28, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gary Roach, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5130, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for the specified model helicopters was published in the **Federal Register** on July 16, 2003 (68 FR 41970). That action proposed to require inspecting each MRB for disbonding within 100 hours time-in-service (TIS) and repairing or replacing each MRB as necessary. That action also proposed repetitive inspections at different intervals, based on the MRB serial number.

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter Model AS332 C, L, and L1 helicopters. The DGAC advises that checking each MRB to ensure the adhesion of the glass cloth blade cap, which is located between the MRB skin and the leading edge stainless steel protective strips, is necessary.

Eurocopter has issued AS 332 Service Bulletin 05.00.22, Revision 4, dated April 6, 2000, for the Model AS332C, L, L1, and L2 helicopters, which specifies checking for cracking developing spanwise along the stainless steel leading edge over a chordwise width of 0 to 6mm aft of the stainless steel strip on the MRB upper and lower surfaces. If spanwise cracking is found that is greater than 30mm or if the distance between two cracks is less than 40mm, a sound check using a tapping method to check the bonding is specified. If disbonding is present, measuring the depth of each disbond with a feeler gauge is specified. If the depth of the disbond exceeds 10mm, returning the MRB to the works for repair is specified. If no disbonding is present, or if the disbond is less than 10mm, reconditioning the MRB by removing the cracked caulking material and recaulking the blade is specified. The DGAC classified this service bulletin as mandatory and issued AD 1988–099–035(A) R5, dated June 14, 2000, to ensure the continued airworthiness of certain of these helicopters in France.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. With the exception of a change in the point of contact under the caption **FOR FURTHER INFORMATION CONTACT**, the FAA has

determined that air safety and the public interest require the adoption of the rule as proposed; the change will neither increase the economic burden on any operator nor increase the scope of the AD.

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

The FAA estimates that this AD will affect 3 helicopters of U.S. registry, that it will take approximately 2 work hours per helicopter to inspect each MRB (8 hours per helicopter), and 6 work hours to remove and replace 2 MRB's per helicopter. The average labor rate is $65 per work hour. The estimated cost of parts is $50,000 for each blade. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $302,730.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–21–08 Eurocopter France: Amendment 39–13343. Docket No. 2002–SW–58–AD.

Applicability:

Group 1: Model AS332C, L, and L1 helicopters with main rotor blade (MRB), part number (P/N) 332A11–0022–00 through –03; P/N 332A11–0022–04, except those incorporating MOD 0740596; P/N 332A11–0024–00 through –05; and P/N 332A11–0025–00 through –05, installed certificated in any category.

Group 2: Model AS332C, L, and L1 helicopters with MRB, P/N 332A11–0022–04, that incorporates MOD 0740596; P/N 332A11–0024–06 and all higher dash numbers; and P/N 332A11–0025–06 and all higher dash numbers; and Model AS332L2 helicopters with MRB, P/N 332A11–0040 all dash numbers, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Helicopters listed in ''Group 1'' of the ''Applicability'' section of this AD, comply within 100 hours time-in-service (TIS) and thereafter at intervals not to exceed 100 hours TIS for MRB's having a serial number listed in the following table:

126	127	131	132	134	137	139	154	156	160
162	168	171	176	196	208	209	211	219	223
224	225	226	242	253	261	272	310	327	342
377	378	379	381	383	386	391	392	394	395
398	399	404	419	422	423	424	425	426	443
455	456	458	462	482	668	744	885	909	1019
1031	1032	1033	1036	1051	1055	1061	1070	1099	1101
1106	1117	1151	1155	1157	1158	1162	1167	1168	1169
1186	1198	1201	1205	1210	1213	1242	1246	1248	1268
1332	1410	1524							

For helicopters listed in ''Group 1'' of the ''Applicability'' section of this AD, with MRB's having a serial number not listed in the previous table, comply within 100 hours TIS, and thereafter at intervals not to exceed 250 hours TIS.

For helicopters listed in ''Group 2'' of the ''Applicability'' section of this AD, with MRB's having 400 or more hours TIS, comply within 100 hours TIS, and thereafter at intervals not to exceed 500 hours TIS; and

For helicopters listed in ''Group 2'' of the ''Applicability'' section of this AD, with MRB's having less than 400 hours TIS, comply prior to the MRB's accumulating 500 hours TIS, and thereafter at intervals not to exceed 500 hours TIS.

To detect disbonding between the stainless steel protective strip and the MRB skin, which could cause loss of the protective strip, an out-of-balance condition, and subsequent loss of control of the helicopter, accomplish the following:

(a) Inspect each MRB for disbonding in accordance with paragraph 2.B.1. of the Accomplishment Instructions in Eurocopter AS 332 Service Bulletin No. 05.00.22, Revision 4, dated April 6, 2000 (SB).

(b) If there is spanwise cracking which exceeds 30mm (1.18 inches) or there are 2 or more cracks with less than 40mm (1.57 inches) spacing, remove or support the MRB, remove any protective shield, and perform a tapping test on the leading edge of the MRB.

(c) If the tapping test does not indicate a disbond, repair the crack in accordance with paragraph 2.B.2.a) of the Accomplishment Instructions in the SB and recaulk and apply touch-up paint in accordance with paragraph 2.B.3. of the Accomplishment Instructions in the SB.

(d) If the tapping test indicates a disbond, measure the depth of the disbond in accordance with paragraph 2.B.2.b) and 2.B.2.c) of the Accomplishment Instructions in the SB.

(1) If disbonding is less than 10mm in depth, repair the crack in accordance with paragraph 2.B.2.a) of the Accomplishment Instructions in the SB, and recaulk and apply touch-up paint in accordance with paragraph

2.B.3. of the Accomplishment Instructions in the SB.

(2) If disbonding is 10mm or greater in depth, the MRB is unairworthy and must be replaced before further flight.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Safety Management Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Safety Management Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Safety Management Group.

(f) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(g) The inspections and repairs of the MRB shall be done in accordance with the Accomplishment Instructions in Eurocopter France AS 332 Service Bulletin No. 05.00.22, Revision 4, dated April 6, 2000. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on November 28, 2003.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 1988–099–035(A) R5, dated June 14, 2000.

Issued in Fort Worth, Texas, on October 9, 2003.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–26466 Filed 10–23–03; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1204

[Notice (03–134)]

RIN 2700–AC57

Temporary Duty Travel—Issuance of Motor Vehicle for Home-To-Work Transportation

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule announcement to facilitate the efficient use of Government resources during temporary duty travel. Specifically, this rule will permit a NASA employee who is authorized to use a Government motor vehicle for temporary duty travel to be issued such a vehicle at the close of business of the preceding day so that the vehicle can be taken to the employee's residence for use on the following day. Likewise, if the NASA employee returns from official travel after the close of working hours, the vehicle can be returned on the next regular working day. This authority may be exercised only if there will be significant savings in time. The proposed rule was published in the **Federal Register** on June 23, 2003. No comments were received as a result of the proposed rule.

EFFECTIVE DATE: This rule is effective immediately upon publication in the **Federal Register**.

ADDRESSES: William Gookin, Code JG, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: William Gookin, 202–358–2306, FAX: 202–358–3235; E-mail: *william.e.gookin@nasa.gov.*

SUPPLEMENTARY INFORMATION: This rule is designed to remedy a situation that often arises at certain NASA Installations. Employees who are authorized to use motor vehicles for temporary duty travel must pick up their vehicles at the Installation at the start of the travel period, even in cases where the employees' residences are closer to the temporary duty destination than to the Installation. Such unnecessary travel can sometimes result in a significant waste of official time and resources. This rule will allow such employees to be issued vehicles at the close of the preceding working day, so that they can commence travel from their residences immediately on the next day. Such authority may only be exercised, however, if the authorizing official determines that there will be a significant savings in time. Likewise, if such employees are scheduled to return after working hours, they can take the vehicles to their residences and return them on the next regular working day. Although the use of such vehicles for travel during the day preceding and subsequent to temporary duty travel is not official travel, NASA considers it to be ''in conjunction with official travel,'' 70 Comptroller General 196, and, therefore, not prohibited by 31 U.S.C. 1344. This rule is pursuant to Section 503 of the Ethics Reform Act of 1989 (Pub. L. 101–194) 31 U.S.C. 1344 note which authorizes agency heads to ''prescribe by rule appropriate conditions for the incidental use, for other than official business,'' of Government vehicles. This rule also implements 40 U.S.C. 486(c), that authorizes agency heads to issue directives carrying out the regulations of the General Services Administration (GSA), in this case the GSA rules for the use of Government vehicles at 41 CFR Part 301–10, Subpart C, ''Government Vehicles.'' See similar Department of Energy regulations at 41 CFR Part 109–6.400.

Regulatory Evaluation: This rule in not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order.

Small Entities: As required by the Regulatory Flexibility Act (5 U.S.C. 601–612), NASA has 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. NASA certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on small business entities.

Collection of Information: This rule does not contain any information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

List of Subjects in 14 CFR Part 1204, Subpart 16

Government employees, Government property, and Government property management.

■ For the reasons discussed above, NASA proposes to amend 14 CFR Part 1204:

PART 1204—ADMINISTRATIVE AUTHORITY AND POLICY

■ Add subpart 16 to read as follows:

Subpart 16—Temporary Duty Travel—Issuance of Motor Vehicle for Home-to-Work Transportation

Sec.

1204.1600 Issuance of motor vehicle for home-to-work.

Authority: 31 U.S.C. 1344 note, 40 U.S.C. 486(c).

§ 1204.1600 Issuance of motor vehicle for home-to-work.

When a NASA employee on temporary duty travel is authorized to travel by Government motor vehicle and the official authorizing the travel determines that there will be a significant savings in time, a Government motor vehicle may be issued at the close of the preceding working day and taken to the employee's residence prior to the commencement of official travel. Similarly, when a NASA employee is scheduled to return from temporary duty travel after the close of working hours and the official authorizing the travel determines that there will be a significant savings in time, the motor vehicle may be taken to the employee's residence and returned the next regular working day.

Dated: October 10, 2003.

Sean O'Keefe,

Administrator.

[FR Doc. 03–26945 Filed 10–23–03; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

Drawbridge Operation Regulations

CFR Correction

In Title 33 of the Code of Federal Regulations, parts 1 to 124, revised as of July 1, 2003, on page 603, § 117.869 is corrected by removing paragraphs (a)(1) and (2).

[FR Doc. 03–55526 Filed 10–23–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–03–101]

Drawbridge Operation Regulations: Mianus River, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Metro-North Bridge, mile 1.0, across the Mianus River at Greenwich, Connecticut. Under this temporary deviation, the bridge may remain in the closed position, Monday through Friday, from 7 a.m. on October 20, 2003 through 7 p.m. on November 26, 2003. On Saturdays during this period, the draw shall open after at a least three-hour advance notice is given. In addition, the draw shall open on signal on Sundays during this period, and from 5 p.m. through midnight, on Friday, October 31, 2003. This temporary deviation is necessary to facilitate structural repairs at the bridge and the bridge.

DATES: This deviation is effective from October 20, 2003 through November 26, 2003.

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

SUPPLEMENTARY INFORMATION: The Metro-North Bridge has a vertical clearance in the closed position of 20 feet at mean high water and 27 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.209.

The bridge owner, Metro-North Railroad, requested a temporary deviation from the drawbridge operation regulations to facilitate vital structural maintenance at the bridge. The bridge must remain in the closed position to perform these necessary repairs.

Under this temporary deviation, the Metro-North Bridge may remain in the closed position, Monday through Friday, from 7 a.m. on October 20, 2003 through 7 p.m. on November 26, 2003. On Saturdays during this period, the draw shall open on signal after at least a three-hour advance notice is given. Also, the draw shall open on signal on Sundays during this period and from 5 p.m. through midnight, on Friday, October 31, 2003.

The Coast Guard and the bridge owner coordinated this bridge closure with the mariners who normally use this waterway to help facilitate this necessary bridge repair and to minimize any disruption to the marine transportation system.

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

Dated: October 15, 2003.

Vivien S. Crea,

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

[FR Doc. 03–26867 Filed 10–23–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–03–035]

RIN 1625–AA09

Drawbridge Operation Regulation; Mississippi River, Iowa and Illinois

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Commander, Eighth Coast Guard District, is temporarily changing the regulation governing the Clinton Railroad Drawbridge, Mile 518.0, Upper Mississippi River. From December 15, 2003, until March 15, 2004, the drawbridge shall open on signal if at least 24 hours advance notice is given. This temporary rule is issued to facilitate annual maintenance and repair on the bridge.

DATES: This temporary rule is effective from 12:01 a.m. December 15, 2003 until 9 a.m. on March 15, 2004.

ADDRESSES: Documents referred to in this rule are available for inspection or copying at room 2.107f in the Robert A. Young Federal Building at Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832, between 8 a.m. and 4 p.m. Monday through Friday, except Federal holidays. The telephone number is (314) 539–3900, extension 2378. The Bridge Branch maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. Roger K. Wiebusch, Bridge Administrator, (314) 539–3900, extension 2378.

SUPPLEMENTARY INFORMATION:

Good Cause for Not Publishing an NPRM

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This rule is being promulgated without an NPRM because the limited effect on vessel traffic makes notice and comment unnecessary. Maintenance on the bridge will not begin until after the closure of Lock 22 on the Mississippi River. After that time, only commercial vessels left in the pool above Lock 22 will be able to transit through the bridge. Both the bridge and lock closure recur at the same time each year, and local vessel operators plan for the closures in advance. Prompt publication of this rule is also necessary to protect the public

from safety hazards associated with conducting maintenance on the bridge.

Background and Purpose

On August 19, 2003, the Union Pacific Railroad Company requested a temporary change to the operation of the Clinton Railroad Drawbridge across the Upper Mississippi River, Mile 518.0 at Clinton, Iowa. Union Pacific Railroad Company requested that 24 hours advance notice be required to open the bridge during the maintenance period. The maintenance is necessary to ensure the continued safe operation of the drawbridge. Advance notice may be given by calling the Clinton Yardmaster's office at (319) 244–3204 at anytime; or (319) 244–3269 weekdays between 7 a.m. and 3:30 p.m.; or Mr. Tomaz Gawronski, office (515) 263–4536 or cell phone (515) 710–6829.

The Clinton Railroad Drawbridge navigation span has a vertical clearance of 18.7 feet above normal pool in the closed to navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. Presently, the draw opens on signal for passage of river traffic. The Union Pacific Railroad Company requested the drawbridge be permitted to remain closed to navigation from 12:01 a.m., December 15, 2003, until 9 a.m., March 15, 2004 unless 24 hours advance notice is given to open the drawbridge to allow time to make repairs. Winter freezing of the Upper Mississippi River coupled with the closure of Army Corps of Engineer's Lock No. 22 (Mile 301.2 UMR) until 7:30 a.m. March 15, 2004 will reduce any significant navigation demands for the drawspan opening. The Clinton Railroad Drawbridge, Mile 518.0, Upper Mississippi River, is located upstream from Lock 22. Performing maintenance on the bridge during the winter when the number of vessels likely to be impacted is minimal is preferred to restricting vessel traffic during the commercial navigation season.

Regulatory Evaluation

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

Because vessel traffic in the area of Clinton, Iowa will be greatly reduced by winter icing of the Upper Mississippi River and the closure of Lock 22, it is expected that this rule will have minimal economic or budgetary effects on the local community.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This temporary rule will have a negligible impact on vessel traffic. The primary users of the Upper Mississippi River in Clinton, Iowa are commercial towboat operators. With the onset of winter conditions on the Upper Mississippi River coupled with the closure of Army Corps of Engineers' Lock No. 22 (Mile 301.2 UMR) until March 15, 2004, there will be few, if any, significant navigation demands for the drawspan opening. Vessels may still transit through the bridge with 24-hour advanced notification.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Any individual that qualifies or, believes he or she qualifies as a small entity and requires assistance with the provisions of this rule, may contact Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch, at (314) 539–3900, extension 2378.

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Environment

We have analyzed this 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 documentation.

A final ''Categorial Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard is amending Part 117 of Title 33, Code of Federal Regulations, 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; 49; 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. From 12:01 a.m. on December 15, 2003, through 9 a.m. on March 15, 2004, § 117.T409 is added to read as follows:

§ 117.T409 Upper Mississippi River.

Clinton Railroad Drawbridge, Mile 518.0, Upper Mississippi River. From 12:01 a.m., December 15, 2003 through 9 a.m., March 15, 2004, the drawspan requires 24 hours advance notice for bridge operation. Bridge opening requests must be made 24 hours in advance by calling Clinton Yardmaster's office at (319) 244–3204 at anytime; or (319) 244–3269 weekdays between 7 a.m. and 3:30 p.m.; or Mr. Tomaz Gawronski, office (515) 263–4536 or cell phone (515) 710–6829.

Dated: September 22, 2003.

R.F. Duncan,

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

[FR Doc. 03–26866 Filed 10–23–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 2 and 7

[Docket No. 2003–T–010]

RIN 0651–AB45

Temporary Postponement of Electronic Filing and Payment Rules for Certain Madrid Protocol-Related Rules

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule; suspension of applicability dates.

SUMMARY: The United States Patent and Trademark Office (USPTO) is temporarily postponing those provisions of the Trademark Rules of Practice that require electronic transmission to the USPTO of applications for international registration, responses to irregularity notices, and subsequent designations submitted pursuant to the Madrid Protocol.

In conjunction with the postponement of the requirement for electronic submission of international applications, subsequent designations and responses to irregularity notices, the USPTO is also temporarily suspending those provisions of the Rules of Practice that allow payment of fees charged by the International Bureau of the World Intellectual Property Organization (IB) to be submitted through the USPTO, and those provisions of the Trademark Rules of Practice that require that all fees for international trademark applications and subsequent designations be paid at the time of filing.

Finally, as explained below, the USPTO is temporarily waiving the requirement that all trademark-related documents submitted on paper must be mailed to 2900 Crystal Drive, Arlington, Virginia 22202–3514. Pursuant to that waiver, international applications, subsequent designations and responses to irregularity notices should be mailed to an alternative address, provided below. This waiver applies solely to Madrid-related submissions. Any other trademark-related correspondence that is sent to the alternative address will not be accepted, and will be returned to the sender.

The applicability dates for certain rules in 37 CFR parts 2 and 7, published September 26, 2003, are suspended from November 2, 2003, to January 2, 2004. If this postponement is required to be extended, the USPTO will issue a notice announcing these extensions at least 10 business days before the extensions commence.

The postponement and waivers are procedural in nature and do not affect any substantive rights.

DATES: The applicability date for regulations at 37 CFR 2.190(a), 2.198(a)(1), 7.7(a) and (b), 7.11(a) introductory text and (a)(9), 7.14(e), 7.21(b) introductory text and (b)(7) is suspended from November 2, 2003, to January 2, 2004.

FOR FURTHER INFORMATION CONTACT: Ari Leifman, Office of the Commissioner for Trademarks, by telephone at (703) 308–8910, ext. 155, or by e-mail to *ari.leifman@uspto.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Madrid Protocol provides a system for obtaining an international trademark registration. The Madrid Protocol Implementation Act of 2002, Pub. L. 107–273, 116 Stat. 1758, 1913–1921 (MPIA) amends the Trademark Act of 1946 to implement the provisions of the Madrid Protocol in the United States.

On September 26, 2003, the USPTO published new regulations to implement the MPIA. 68 FR 55748, posted on the USPTO Web site at *http://www.uspto.gov/web/offices/com/sol/notices/68fr55748.pdf.* These regulations take effect on November 2, 2003. The regulations require that certain submissions that are made to the USPTO in connection with the Madrid Protocol be transmitted using the Trademark Electronic Application System (TEAS). Specifically, 37 CFR 7.11(a) requires that an international application be submitted through TEAS; 37 CFR 7.21(b) requires that a subsequent designation (a request that protection be extended to countries not identified in the original international application) be submitted through TEAS; and 37 CFR 7.14(e) requires that

where the International Bureau of the World Intellectual Property Organization (IB) has issued a notice of irregularity to an international applicant, and the international applicant submits a response to that notice through the USPTO, the response must be transmitted through TEAS.

The USPTO is fully confident in its electronic systems. Nevertheless, to be prudent and to ensure that applicants do not lose important priority rights if newly developed USPTO systems undergo significant ''downtime'' after they are first deployed, the USPTO will permit international applications, responses to irregularity notices and subsequent designations to be submitted on paper rather than through TEAS for a temporary period of time. Additionally, the USPTO believes that offering a paper-filing alternative will allow the public to build confidence in the electronic system, knowing that a paper backup system exists. This postponement of the effective date of portions of the regulation does not affect any substantive rights. The postponement of the effective date of portions of the regulation merely adds the alternative for paper filing during this initial transition period.

Postponement of Applicability Date of Specific Rules

■ Accordingly, the USPTO hereby suspends the requirement to comply with 37 CFR 7.11(a), 7.21(b), and 7.14(e), to the extent that they require transmission through TEAS. If there is a USPTO fee associated with a Madrid document that an applicant submits on paper, the applicant must include that fee together with the submission. However, if there is an international fee associated with that submission, the applicant may not pay that fee through the USPTO. Instead, the applicant should send that fee directly to the IB. Accordingly, the USPTO hereby temporarily suspends 37 CFR 7.7(a) and (b), to the extent that they allow an applicant to submit a fee charged by the IB through the USPTO.

The USPTO also temporarily suspends the applicability of 37 CFR 7.11(a)(9), to the extent that it requires that international application fees for all classes and the fees for all designated Contracting Parties identified in an international application be paid at the time of submission, and 37 CFR 7.21(b)(7), to the extent that it requires that all international fees for a subsequent designation be paid at the time of submission. A party submitting an international application on paper must pay the USPTO certification fee at the time of submission, but must pay the international fees directly to the IB. A party submitting a subsequent designation on paper must pay the USPTO transmittal fee at the time of submission, but must pay the international fees directly to the IB. That party may pay the international fees to the IB either before or after submission of the international application or subsequent designation.

Applicants wishing to make Madrid submissions on paper should use forms provided by the IB for that purpose. These forms may be downloaded from the IB Web site, *http://www.wipo.int/madrid/en/.*

Finally, with respect solely to international applications, subsequent designations, and responses to notices of irregularities, the USPTO hereby temporarily waives the requirement of 37 CFR 2.190(a) that all trademark-related documents submitted on paper must be mailed to the USPTO address at 2900 Crystal Drive, Arlington, Virginia 22202–3514. Instead, the USPTO hereby announces that until the termination of this waiver of the rules, Madrid submissions should be mailed to the following address: Commissioner for Trademarks, PO Box 16471, Arlington, Virginia 22215–1471, Attn: MPU.

Please note that any trademark-related correspondence other than international applications, subsequent designations, and responses to irregularity notices that is sent to this address will not be accepted, and will be returned to the sender.

If a submission mailed to the above address pursuant to this notice is delivered by the Express Mail service of the United States Postal Service, the USPTO will deem that the date of receipt of the submission in the USPTO is the date the submission was deposited as Express Mail, provided that the submitter complies with the requirements set forth in 37 CFR 2.198. As a result, the USPTO temporarily waives the exceptions set forth in 37 CFR 2.198(a)(1) to the extent that their application is inconsistent with this Notice.

Please note that all waivers and suspensions announced herein apply only to Madrid-related documents submitted on paper. The waivers and suspensions will be ended on January 2, 2004. A notice announcing any extension of the postponement to the effective date of these provisions will be issued at least ten days before the extension commences.

Dated: October 17, 2003.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 03–26772 Filed 10–23–03; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AJ52

Exclusions from Income and Net Worth Computations

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations to exclude from income and net worth computations in the pension and parents' dependency and indemnity compensation programs any money received under the Victims of Crime Act of 1984. This amendment is necessary to conform the regulations to statutory provisions.

DATES: Effective Date: October 24, 2003.

FOR FURTHER INFORMATION CONTACT: Don England, Chief, Regulations Staff, Compensation and Pension Service (211A), Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7210. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: All income is countable when VA determines entitlement to income-based benefits unless specifically excluded by law. Section 234(b) of the Antiterrorism and Effective Death Penalty Act of 1996, Public Law 104–132, amended section 1403 of the Victims of Crime Act of 1984, Public Law 98–473, (42 U.S.C. 10602) to exclude amounts received as compensation under the provisions of Public Law No. 98–473 from income for purposes of determining eligibility for assistance under any federally funded program that provides medical or financial assistance that becomes necessary in full or in part because of the commission of a crime against the claimant for such assistance (42 U.S.C. 10602(c)).

Sections 1522 and 1543 of title 38, United States Code, and 38 CFR 3.250(a)(2) provide that the corpus of the estate of a veteran, a veteran's spouse, or other claimant, as the case may be, will be taken into consideration to determine whether part of the corpus of the estate can be used for the

individual's maintenance for purposes of establishing eligibility for certain veterans' benefits. Section 622(c) of the ''USA Patriot Act,'' Public Law No. 107–56, amended the Victims of Crime Act of 1984 to also exclude amounts received as crime victim compensation from consideration when determining an individual's resources or assets (*i.e.*, net worth) for purposes of assistance under any federally funded program. This document amends 38 CFR 3.261, 3.262, 3.263, 3.272 and 3.275 to reflect these statutory changes.

This final rule merely restates statutory provisions. Accordingly, there is a basis for dispensing with prior notice and comment and the delayed effective date provisions of 5 U.S.C. 552 and 553.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies to assess anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This final rule would have no such effect on State, local, or tribal governments, or the private sector.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

Because no notice of proposed rulemaking was required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601–612). Even so, the Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance Program Numbers

The Catalog of Federal Domestic Assistance program numbers for this final rule are 64.104, 64.105, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: August 4, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. In § 3.261, paragraph (a) is amended by adding entry (41) at the end of the table to read as follows:

§ 3.261 Character of income; exclusions and estates.

* * * * *

(a) * * *

Income	Dependency (parents)	Dependency and indemnity compensation (parents)	Pension; old-law (veterans, surviving spouses and children)	Pension; section 306 (veterans, surviving spouses and children)	See
*	*	*	*	*	*
(41) Income received under the Victims of Crime Act of 1984 (42 U.S.C. 10601–10605)..	Excluded [1]	Excluded [1]	Excluded [1]	Excluded [1]	§ 3.262(z)

[1] The compensation received through a crime victim compensation program will be excluded from income computations unless the total amount of assistance received from all federally funded programs is sufficient to fully compensate the claimant for losses suffered as a result of the crime.

* * * * *

■ 3. Section 3.262 is amended by adding paragraph (z) immediately following the first authority citation at the end of paragraph (y) to read as follows:

§ 3.262 Evaluation of income.

* * * * *

(z) *Victims of Crime Act.* For purposes of old law pension, section 306 pension, and parents' dependency and indemnity compensation, amounts received as compensation under the Victims of Crime Act of 1984 will not be considered income unless the total amount of assistance received from all federally funded programs is sufficient to fully compensate the claimant for losses suffered as a result of the crime.

(Authority: 42 U.S.C. 10602(c))

* * * * *

■ 4. Section 3.263 is amended by adding paragraph (h) immediately following the first authority citation at the end of paragraph (g) to read as follows:

§ 3.263 Corpus of estate; net worth.

* * * * *

(h) *Victims of Crime Act.* There shall be excluded from the corpus of estate or net worth of a claimant any amounts received as compensation under the Victims of Crime Act of 1984 unless the total amount of assistance received from all federally funded programs is sufficient to fully compensate the claimant for losses suffered as a result of the crime.

(Authority: 42 U.S.C. 10602(c))

* * * * *

■ 5. Section 3.272 is amended by adding paragraph (v) immediately following the authority citation at the end of paragraph (u) to read as follows:

§ 3.272 Exclusions from income.

* * * * *

(v) *Victims of Crime Act.* Amounts received as compensation under the Victims of Crime Act of 1984 unless the total amount of assistance received from all federally funded programs is sufficient to fully compensate the claimant for losses suffered as a result of the crime.

(Authority: 42 U.S.C. 10602(c))

■ 6. Section 3.275 is amended by adding paragraph (j) immediately following the

authority citation at the end of paragraph (i) to read as follows:

§ 3.275 Criteria for evaluating net worth.

* * * * *

(j) *Victims of Crime Act.* There shall be excluded from the corpus of estate or net worth of a claimant any amounts received as compensation under the Victims of Crime Act of 1984 unless the total amount of assistance received from all federally funded programs is sufficient to fully compensate the claimant for losses suffered as a result of the crime.

(Authority: 42 U.S.C. 10602(c))

[FR Doc. 03–26880 Filed 10–23–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AL35

Co-payments for Inpatient Hospital Care Provided to Veterans Enrolled in Priority Category 7

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: VA's medical regulations include a mechanism for determining co-payments for inpatient hospital care provided to veterans by VA. This document revises that mechanism for veterans in the new priority category 7 as required by the Department of Veterans Affairs Programs Enhancement Act of 2001. That Act reduced the co-payment for inpatient hospital care for veterans in the new priority category 7.

DATES: *Effective Date:* October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Nancy Howard, Director, Business Policy Development, Chief Business Office (161), at (202) 254–0320 (not a toll free number). This individual is in the Veterans Health Administration of the Department of Veterans Affairs, and is located at 810 Vermont Avenue, NW., Washington, DC 20420.

SUPPLEMENTARY INFORMATION: By law, certain veterans must agree to pay a co-payment for their inpatient hospital care and outpatient medical services provided by VA. Prior to October 1, 2002, the co-payment for inpatient hospital care was $10 for every day the veteran received inpatient hospital care, and the lesser of: (A) The sum of the inpatient Medicare deductible for the first 90 days of care and one-half of the inpatient Medicare deductible for each subsequent 90 days of care (or fraction thereof) after the first 90 days of such care during such 365-day period, or (B) VA's cost of providing the care. See 38 CFR 17.108(b).

Section 202(b) of the Department of Veterans Affairs Programs Enhancement Act of 2001, Public Law 107–135, created a new priority category 7 for enrollment of veterans in the VA health care system. Veterans generally must be enrolled in the VA health care system to receive VA inpatient hospital care or outpatient medical services. Veterans in the new category 7 are those who agree to pay the United States the applicable co-payment determined under 38 U.S.C. 1710(f) and 1710(g), and who are eligible for treatment as a low-income family under section 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)) for the area in which such veterans reside, regardless of whether such veterans are treated as single person families under paragraph (3)(A) of section 3(b) or as families under paragraph (3)(B) of section 3(b).

Section 202 of Public Law 107–135 also provided that veterans enrolled in the new priority category 7 are liable to the United States for a co-payment for inpatient hospital care of 20 percent of what they would otherwise be liable for. In this document, we revise the mechanism for determining co-payments for inpatient hospital care provided to veterans by VA as required by that law. We do this by adding an exception to the mechanism that provides: ''The co-payment for inpatient hospital care for veterans enrolled in priority category 7 shall be 20 percent of the amount computed under paragraph (b)(2).''

As a result, the inpatient hospital care co-payment for veterans enrolled in the new priority category 7 is the sum of $2 for every day the veteran receives inpatient hospital care (20 percent of $10) plus the lesser of: (A) 20 percent of the sum of the inpatient Medicare deductible ($168 for the 2003 calendar year, which is 20 percent of $840) for the first 90 days of care and one-half of the inpatient Medicare deductible for each subsequent 90 days of care (or fraction thereof) after the first 90 days of such care during such 365-day period, or (B) 20 percent of VA's cost of providing the care.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate or by the private sector, of $100 million or more in any given year. This rule would have no such effect on State, local, or tribal governments, or the private sector.

Administrative Procedure Act

This final rule is published without regard to the notice and comment and delayed effective date provisions of 5 U.S.C. 553, since it merely reflects statutory changes, making those procedural requirements impracticable, unnecessary, and contrary to the public interest.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, U.S.C. 601–612. This amendment would not directly affect any small entities; only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance numbers for the programs affected by this document are 64.009 and 64.010.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: August 7, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, 38 CFR part 17 is amended as follows:

PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

■ 2. Section 17.108 is amended by:

■ A. In paragraph (b)(1), removing ''in paragraph (b)(2)'' and adding, in its place, ''in paragraph (b)(2) or (b)(3)''.

■ B. Adding a new paragraph (b)(3).

The addition reads as follows:

§ 17.108 Copayments for inpatient hospital care and outpatient medical care.

* * * * *

(a) * * *

(3) The copayment for inpatient hospital care for veterans enrolled in priority category 7 shall be 20 percent of the amount computed under paragraph (b)(2) of this section.

* * * * *

[FR Doc. 03–26879 Filed 10–23–03; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0329; FRL–7330–2]

Tebufenozide; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation re-establishes time-limited tolerances for residues of the insecticide tebufenozide in or on garden beet roots 0.3 parts per million (ppm) and garden beet tops at 9.0 ppm for an additional 3–year period. These tolerances will expire and are revoked on December 31, 2005. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on garden beets. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18.

DATES: This regulation is effective October 24, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0329, must be received on or before December 23, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Stacey Groce, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–2505; e-mail address: *Groce.Stacey@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a federal or state government agency involved in administration of environmental quality programs (e.g., Departments of Agriculture, Environment). Potentially affected entities may include, but are not limited to:

• Federal or State government entity (NAICS 9241)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0329. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of January 10, 2001 (66 FR 1875) (FRL–6760–3), which announced that on its own initiative under section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170), it established time-limited tolerances for the residues of tebufenozide in or on garden beet roots at 0.3 ppm and garden beet tops at 9.0 ppm, with an expiration date of December 31, 2002. EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to re-establish the use of tebufenozide on garden beets for this year's growing season to control beet armyworms and western yellow armyworms in California. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of tebufenozide on garden beet roots and garden beet tops for control of armyworms in California.

EPA assessed the potential risks presented by residues of tebufenozide in or on garden beet roots and garden beet tops. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and decided that the necessary tolerances under section 408(l)(6) of the FFDCA would be

consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule published in the **Federal Register** of January 10, 2001 (66 FR 1875) (FRL–6760–3). Based on that data and information considered, the Agency reaffirms that the re-establishment of the time-limited tolerances will continue to meet the requirements of section 408(l)(6) of the FFDCA. Therefore, the time-limited tolerances are re-established for an additional 3–year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances will expire and are revoked on December 31, 2005, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on garden beet roots and garden beet tops after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerances. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicates that the residues are not safe.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need To Do To File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0329 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before December 23, 2003.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm. 104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0329, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Statutory and Executive Order Reviews

This final rule establishes time-limited tolerances under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this

rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under section 408 of the FFDCA, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

V. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 14, 2003.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.482 [Amended]

■ 2. In § 180.482, amend paragraph (b) by revising the date ''12/31/02'' in association with the time-limited tolerances for beet, garden, roots and beet, garden, tops to read ''12/31/05.''

[FR Doc. 03–26756 Filed 10–23–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 257

Criteria for Classification of Solid Waste Disposal Facilities and Practices

CFR Correction

In Title 40 of the Code of Federal Regulations, parts 190 to 259, revised as of July 1, 2003, on page 376, § 257.5 is corrected by reinstating the definition of *Uppermost aquifer* to read as follows:

§ 257.5 Disposal standards for owners/operators of non–municipal non–hazardous waste disposal units that receive Conditionally Exempt Small Quantity Generator (CESQG) waste.

* * * * *

(b) * * *

* * * * *

Uppermost aquifer means the geologic formation nearest the natural ground surface that is an aquifer, as well as, lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

* * * * *

[FR Doc. 03–55527 Filed 10–23–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

Changes in Flood Elevation Determinations

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

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified 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 following table.

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 of modified base flood elevations 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.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 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 base flood elevations 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 elevations, 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 modified 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.

The changes in base flood elevations 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 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 65

Flood insurance, floodplains, Reporting and recordkeeping 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 number
Alabama: Houston (FEMA Docket No. D–7539).	City of Dothan	Mar. 14, 2003, Mar. 21, 2003, *The Dothan Eagle*.	The Honorable Chester L. Sowell, III, Mayor of the City of Dothan, P.O. Box 2128, Dothan, Alabama 36302.	June 20, 2003	010104 E
Florida: Duval (FEMA Docket No. D–7539).	City of Jacksonville.	Mar. 3, 2003, Mar. 10, 2003, *The Florida Times-Union*.	The Honorable John A. Delaney, Mayor of the City of Jacksonville, City Hall, 117 West Duval Street, Suite 400, Jacksonvile, Florida 32202.	June 9, 2003	120077 E
Florida: Duval (FEMA Docket No. D–7539).	City of Jacksonville.	Mar. 5, 2003, Mar. 12, 2003, *The Florida Times-Union*.	The Honorable John A. Delaney, Mayor of the City of Jacksonville, City Hall, 117 West Duval Street, Suite 400, Jacksonville, Florida 32202.	Feb. 25, 2003	120077 E

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Florida: Manatee (FEMA Docket No. D–7539).	Unincorporated Areas.	Feb. 28, 2003, Mar. 7, 2003, *Bradenton Herald*.	Mr. Ernie Padgett, Manatee County Administrator, 1112 Manatee Avenue West, P.O. Box 1000, Brandentown, Florida 34206.	Feb. 20, 2003	120153 C
Florida: Orange (FEMA Docket No. D–7539).	Unincorporated Areas.	Mar. 5, 2003, Mar. 12, 2003, *Orlando Sentinel*.	M. Krishnamurthy, P.E., Ph.D., Orange County Stormwater, Management Manager, 4200 South John Young Parkway, Orlando, Florida 32839.	Feb. 25, 2003	120179 E
Florida: Pinellas (FEMA Docket No. D–7539).	Unincorporated Areas.	Feb. 27, 2003, Mar. 6, 2003, *St. Petersburg Times*.	Mr. Stephen Spratt, Pinellas County Administrator, 318 Court Street, Clearwater, Florida 33756.	Feb. 19, 2003	125139 E
Georgia: Gwinnett (FEMA Docket No. D–7539).	Unincorporated Areas.	Mar. 6, 2003, Mar. 13, 2003, *Gwinnett Daily Post*.	Mr. F. Wayne Hill, Chairman of the Gwinnett County, Board of Commissioners, Justice and Administration Center, 75 Langley Drive, Lawrenceville, Georgia 30045.	Feb. 21, 2003	130322 E
New Jersey: Union (FEMA Docket No. D–7537).	Township of Berkeley Heights.	Feb. 2, 2003, Feb. 10, 2003, *The Courier—News*.	The Honorable David A. Cohen, Mayor of the Township of Berkeley Heights, 29 Park Avenue, Berkeley Heights, New Jersey 07922,.	May 12, 2003	340459 E
North Carolina: Durham (FEMA Docket No. D–7539).	Unincorporated Areas.	Apr. 4, 2003, Apr. 11, 2003, *The Herald-Sun*.	Mr. Michael M. Ruffin, Durham County Manager, 200 East Main Street, 2nd Floor, Durham, North Carolina 27701.	July 11, 2003	370085 G

Dated: October 15, 2003.

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

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–26827 Filed 10–23–03; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–D–7545]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), 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 is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

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 Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified 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 following table.

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 base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon 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 base flood elevations 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 elevations, 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 base flood elevations 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 National Flood Insurance Program. 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 recordkeeping 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 commuity	Effective date of modification	Community number
Alabama: Baldwin	Unincorporated Areas.	July 17, 2003; July 24, 2003; *The Baldwin Times*.	Mr. John Armstrong, Chairman of the Baldwin, County Commission, 312 Courthouse Square, Suite 12, Bay Minette, Alabama 36507.	July 9, 2003	015000 K
Delaware: New Castle	Unincorporated Areas.	July 24, 2003; July 31, 2003; *The News Journal*.	Mr. Thomas P. Gordon, New Castle County Executive, New Castle County Government Center, 87 Reads Way, New Castle, Delaware 19720.	October 30, 2003	105085 G
Florida: Volusia	City of Daytona Beach.	July 16, 2003; July 23, 2003; *Daytona Beach News-Journal*.	The Honorable Baron Asher, Mayor of the City of Daytona Beach, P.O. Box 2451, Daytona Beach, Florida 32115.	July 8, 2003	125099 G
Florida: Volusia	City of Holly Hill	July 16, 2003; July 23, 2003; *Daytona Beach News-Journal*.	The Honorable William Arthur, Mayor of the City of Holly Hill, 1065 Ridgewood Avenue, Holly Hill, Florida 32117.	July 8, 2003	125112 G, H
Florida: Volusia	Unincorporated Areas.	July 16, 2003; July 23, 2003; *Daytona Beach News-Journal*.	Ms. Cynthia A. Coto, Volusia County Manager, 123 West Indiana Avenue, DeLand, Florida 32720–4612.	July 8, 2003	125155 H
Vermont: Grand Isle	Town of Grand Isle.	July 22, 2003; *The Islander*.	Mr. Art Goodrich, Chairman of the Town of Grand Isle Board of Selectmen, Grand Isle Town Hall, P.O. Box 49, Grand Isle, Vermont 05458.	August 22, 2003	500223 B
Virginia: Prince William	Unincorporated Areas.	August 11, 2003; August 18, 2003; *Potomac News*.	Mr. Craig Gerhart, Prince William County Executive, 1 County Complex Court, Prince William, Virginia 22192.	November 17, 2003	510119 D

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

Dated: October 15, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–26826 Filed 10–23–03; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

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

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations 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 DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on 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 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. 4104, and 44 CFR part 67.

The 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 Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations 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 final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, 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 recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is 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.

§ 67.11 [Amended]

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

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)
WEST VIRGINIA	
Jackson County (Unincorporated Areas), City of Ravenswood, City of Ripley (FEMA Docket No. D–7562)	
Ohio River:	
At the downstream county boundary	*586
At the upstream county boundary	*598
Jackson County (Unincorporated Areas), City of Ravenswood	
Mill Creek:	
At confluence with Ohio River	*587
Approximately 1.84 miles upstream of entrance to Cedar Lakes	*602
Jackson County (Unincorporated Areas), City of Ripley	
Sandy Creek:	
At confluence with Ohio River	*592
Approximately 2,530 feet upstream of S.R. 13	*598
Jackson County (Unincorporated Areas), City of Ravenswood	
Grasslick Creek:	
Approximately 2,200 feet downstream of Interstate 77	*692
Approximately 0.85 mile upstream of the most upstream crossing of County Route 21	*830
Jackson County (Unincorporated Areas)	
Pocatalico Creek:	
Approximately 1,210 feet downstream of Interstate 77	*642
Approximately 640 feet upstream of County Route 21	*746
Jackson County (Unincorporated Areas)	
Jackson County (Unincorporated Areas)	
Maps available for inspection at the Jackson County Courthouse, Ripley, West Virginia.	
City of Ripley	
Maps available for inspection at the Ripley City Hall, 113 South Church Street, Ripley, West Virginia.	
City of Ravenswood	
Maps available for inspection at the City of Ravenswood City Hall, 212 Walnut Street, Ravenswood, West Virginia.	

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

Dated: October 15, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–26829 Filed 10–23–03; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

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

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations 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 DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on 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 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. 4104, and 44 CFR part 67.

The 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 Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations 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 final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, 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 recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is 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.

§ 67.11 [Amended]

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

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)
TENNESSEE	
Bristol (City), Sullivan County (FEMA Docket No. D–7564)	
Beaver Creek:	
Approximately 70 feet downstream of State Route 37 ..	• 1,436
Approximately 25 feet downstream of Moore Street	• 1,674
Back Creek:	
At the confluence with Beaver Creek	• 1,450
Approximately 0.28 mile upstream of Sperry Road	• 1,450
Cedar Creek:	
At the confluence with Beaver Creek	• 1,458
Approximately 0.24 mile downstream of Cedar Creek Road	• 1,458
Whitetop Creek:	
At the confluence with Beaver Creek	• 1,448
Approximately 1.15 miles upstream of the confluence with Beaver Creek	• 1,448
Maps available for inspection at the City of Bristol Department of Development Services, Easley Annex Building, 104 8th Street, Bristol, Tennessee.	
VIRGINIA	
Bristol (City), Independent City (FEMA Docket No. D–7564)	
Beaver Creek:	
Approximately 0.05 mile upstream of the State boundary	• 1,672
Approximately 0.4 mile upstream of Forsythe Road ..	• 1,813
Susong Branch:	
Just upstream of the first crossing of Bob Morrison Boulevard	• 1,672
Approximately 170 feet upstream of Euclid Avenue ...	• 1,683
Little Creek:	
Just downstream of State Street	• 1,672
Approximately 0.76 mile upstream of the 2nd crossing of Commonwealth Avenue	• 1,722
Mumpower Creek:	
Approximately 0.107 mile upstream of the confluence with Beaver Creek	• 1,688
Approximately 0.035 mile upstream of East Valley Drive	• 1,733
Maps available for inspection at the Bristol City Engineer's Office, 41 Piedmont, Bristol, Virginia.	
WEST VIRGINIA	
Reedy (Town), Roane County (FEMA Docket No. D–7564)	
Reedy Creek:	
Approximately 650 feet downstream of State Route 14	*679
Approximately 170 feet downstream of the confluence of Left Fork Reedy Creek	*680
Left Fork Reedy Creek:	
At the confluence with Reedy Creek	*681
Approximately 1,600 feet upstream of confluence with Reedy Creek	*681
Right Fork Reedy Creek:	
At confluence with Reedy Creek	*680
At upstream corporate limits	*680
Maps available for inspection at the Reedy Town Water Office, 118 Main Street, Reedy, West Virginia.	

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

Dated: October 15, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–26828 Filed 10–23–03; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF DEFENSE

48 CFR Parts 202, 204, 211, 212, 243, and 252

[DFARS Case 2003–D081]

Defense Federal Acquisition Regulation Supplement; Unique Item Identification and Valuation

AGENCY: Department of Defense (DoD).

ACTION: Notice of public meeting.

SUMMARY: DoD is sponsoring a public meeting to discuss the interim rule published at 68 FR 58631 on October 10, 2003. The rule amended the Defense Federal Acquisition Regulation Supplement (DFARS) to add policy on item identification and valuation that will apply to solicitations issued on or after January 1, 2004. The drafters of the rule will be at the meeting to discuss the rule and to hear the views of interested parties.

DATES: The meeting will be held on November 6, 2003, from 9 a.m. to 4 p.m., local time.

ADDRESSES: The meeting will be held at the University of Phoenix, Northern Virginia Campus, 11730 Plaza America Drive, Suite 2000, Reston, VA 20190.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Cohen, Defense Acquisition Regulations Directorate, at (703) 602–0293, or *steven.cohen@osd.mil.*

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 03–26909 Filed 10–23–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[I.D. 101603B]

Fraser River Sockeye and Pink Salmon Fisheries; Inseason Orders

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

ACTION: Inseason orders.

SUMMARY: NMFS publishes the Fraser River salmon inseason orders regulating salmon fisheries in U.S. waters. The orders were issued by the Fraser River Panel (Panel) of the Pacific Salmon Commission (Commission) and subsequently approved and issued by NMFS during the 2003 sockeye and pink salmon fisheries within the U.S. Fraser River Panel Area. These orders established fishing times, areas, and types of gear for U.S. treaty Indian and all-citizen fisheries during the period the Commission exercised jurisdiction over these fisheries. Due to the frequency with which inseason orders are issued, publication of individual orders is impracticable. The 2003 orders are therefore being published in this document to avoid fragmentation.

DATES: Each of the following inseason actions was effective upon announcement on telephone hotline numbers as specified at 50 CFR 300.97(b)(1); those dates and times are listed herein. Comments will be accepted through November 10, 2003.

ADDRESSES: Comments may be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way N.E., BIN C15700–Bldg. 1, Seattle, WA 98115–0070. Information relevant to this document is available for public review during business hours at the office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: David Cantillon, (206) 526–4140.

SUPPLEMENTARY INFORMATION: The treaty between the Government of the United States of America and the Government of Canada concerning Pacific Salmon was signed at Ottawa, Canada, on January 28, 1985, and subsequently was given effect in the United States by the Pacific Salmon Treaty Act (Act) at 16 U.S.C. 3631–3644.

Under authority of the Act, Federal regulations at 50 CFR Part 300 Subpart F provide a framework for implementation of certain regulations of the Commission and inseason orders of the Commission's Panel for U.S. sockeye and pink salmon fisheries in the Fraser River Panel Area.

The regulations close the U.S. portion of the Fraser River Panel Area to U.S. sockeye and pink salmon fishing unless opened by Panel regulation or by inseason regulations published by NMFS that give effect to Panel orders. During the fishing season, NMFS may issue regulations that establish fishing times and areas consistent with the Commission agreements and inseason orders of the Panel. Such orders must be consistent with domestic legal obligations. The Regional Administrator, Northwest Region, NMFS, issues the inseason orders. Official notification of these inseason actions of NMFS is provided by two telephone hotline numbers described at 50 CFR 300.97(b)(1). Inseason orders must be published in the **Federal Register** as soon as practicable after they are issued. Due to the frequency with which inseason orders are issued, publication of individual orders is impractical. Therefore, the 2003 orders are being published in this document to avoid fragmentation.

The following inseason orders were adopted by the Panel and issued for U.S. fisheries by NMFS during the 2003 fishing season. The times listed are local times, and the areas designated are Puget Sound Management and Catch Reporting Areas as defined in the Washington State Administrative Code at Chapter 220–22.

Order No. 2003–02: Issued 1 p.m., July 25, 2003.

Treaty Indian Fisheries

Areas 4B, 5, and 6C: Open to drift gill nets from 4 p.m., Friday, July 25, 2003, to 12 p.m. (noon), Wednesday, July 30, 2003.

Order No. 2003–02: Issued 2 p.m., July 29, 2003.

Treaty Indian Fisheries

Areas 4B, 5, and 6C: Extended to drift gill nets from 12 p.m. (noon)Wednesday, July 30 to 12 p.m. (noon), Saturday, August 2, 2003.

Areas 6, 7, and 7A: Open to net fishing from 11:00 a.m., Wednesday, July 30, 2003, until 11 a.m., Thursday, July 31, 2003.

All-Citizen Fisheries

Areas 7 and 7A Gillnet: Open to fishing from 12 p.m. (noon) until 11:59 p.m Thursday, July 31, 2003.

Areas 7 and 7A Purse Seine: Open to fishing from 7 a.m. until 7 p.m., Friday, August 1, 2003.

Areas 7 and 7A Reef Net: Open to fishing from 9:00 a.m. until 9 p.m., Thursday, July 31, 2003.

Order No. 2003–03: Issued 2 p.m., August 1, 2003.

Treaty Indian Fisheries

Areas 4B, 5, and 6C: Extended for drift gill nets from 12 p.m. (noon), Saturday, August 2, 2003, to 12 p.m. (noon), Wednesday, August 6, 2003.

Areas 6, 7, and 7A: Open to net fishing from 4 a.m., Monday, August 4, 2003 until 7:30 a.m., Wednesday, August 6, 2003.

All-Citizen Fisheries

Areas 7 and 7A Gill Net: Open from 8 a.m. until 11:59 p.m. on Wednesday, August 6 and from 8 a.m. until 11:59 p.m. on Friday, August 8, 2003.

Areas 7 and 7A Purse Seine: Open from 5 a.m. until 9 p.m. on Thursday, August 7, and from 5 a.m. until 9 p.m. on Friday, August 8, 2003.

Areas 7 and 7A Reef Net: Open from 5:00 a.m. until 9:00 p.m. on Saturday, August 2, and from 5 a.m. until 9 p.m. on Sunday, August 3, 2003.

Order No. 2003–04: Issued 4 p.m., August 4, 2003.

Treaty Indian Fisheries

Areas 4B, 5, and 6C: Extended for drift gill nets from 12 p.m. (noon), Wednesday, August 6, 2003, to 12 p.m. (noon), Saturday, August 9, 2003.

Order No. 2003–05; Issued 3:30 p.m., August 5, 2003.

All-Citizen Fisheries

Areas 7 and 7A Reef Net: Open from 5 a.m. until 9 p.m. on Thursday, August 7, 2003.

Order No. 2003–06: Issued 1 p.m., August 8, 2003.

Treaty Indian Fisheries

Areas 4B, 5, and 6C: Extended for drift gill nets from 12 p.m. (noon), Saturday, August 9, 2003 until 12 p.m. (noon), Wednesday, August 13, 2003.

Areas 6, 7, and 7A: Open to net fishing from 5 a.m., Saturday, August 9, 2003 until 7:30 a.m., Wednesday, August 13, 2003.

All-Citizen Fisheries

Areas 7 and 7A Reef Net: Open from 5 a.m. until 9 p.m. on Tuesday, August 12, 2003.

Order No. 2003–07: Issued 1 p.m., August 12, 2003.

Treaty Indian Fisheries

Areas 4B, 5, and 6C: Extended for drift gill nets from 12 p.m. (noon), Wednesday, August 13, 2003, until 12 p.m. (noon), Saturday, August 16, 2003.

Areas 6, 7, and 7A: Extended for net fishing from 7:30 a.m., Wednesday, August 13, 2003, until 5 a.m., Thursday, August 14, 2003. Open to net fishing from 5 a.m., Friday, August 15, 2003, until 5 a.m., Saturday, August 16, 2003.

All-Citizen Fisheries

Areas 7 and 7A Gill Net: Open from 8 a.m. until 11:59 p.m. on Thursday, August 14, 2003.

Areas 7 and 7A Purse Seine: Open from 5 a.m. until 9 p.m. on Thursday, August 14, 2003.

Areas 7 and 7A Reef Net: Open from 5 a.m. until 9 p.m. on Wednesday, August 13, 2003, and from 5 a.m. until 9 p.m. on Thursday, August 14, 2003.

Order No. 2003–08: Issued 3 p.m., August 15, 2003.

Treaty Indian Fisheries

Areas 4B, 5, and 6C: Extended for drift gill nets from 12 p.m. (noon), Saturday, August 16, 2003, until 12 p.m. (noon), Wednesday, August 20, 2003.

Areas 6, 7, and 7A: Open to net fishing from 5 a.m., Sunday, August 17, 2003, until 7:30 a.m., Tuesday, August 19, 2003.

All-Citizen Fisheries

Gill Net: Area 7A will be open from 8 a.m. until 11:59 p.m. on Saturday, August 16, 2003. Area 7 will be open from 6 p.m. until 11:59 p.m. on Saturday, August 16, 2003. Areas 7 and 7A will be open from 8 a.m. until 11:59 p.m. on Tuesday, August 19, 2003.

Purse Seine: Area 7A will be open from 5 a.m. until 9 p.m. on Saturday, August 16, 2003. Area 7 will be open from 10 a.m. until 6 p.m. on Saturday, August 16, 2003. Areas 7 and 7A will be open from 8 a.m. until 9 p.m. on Tuesday, August 19, 2003.

Reef Net: Areas 7 and 7A will be open from 5 a.m. until 9 p.m. on Tuesday, August 19, 2003

Order No. 2003–09: Issued 2 p.m., August 22, 2003.

All-Citizen Fisheries

Reef Net: Areas 7 and 7A will be open from 5 a.m. until 9 p.m. on Saturday, August 23, from 5 a.m. until 9 p.m. on Sunday, August 24, from 5 a.m. until 9 p.m. on Monday, August 25, from 5 a.m. until 9 p.m. on Tuesday, August 26, and from 5 a.m. until 9 p.m. on Wednesday, August 27, 2003. All sockeye salmon must be released.

Order No. 2003–10: Issued 1 p.m., August 26, 2003.

All-Citizen Fisheries

Reef Net: Areas 7 and 7A will be open from 5 a.m. until 9 p.m. on Thursday, August 28, from 5 a.m. until 9 p.m. on Friday, August 29, and from 5 a.m. until 9 p.m. on Saturday, August 30, 2003. All sockeye salmon must be released.

Order No. 2003–11: Issued 12:30 p.m., August 29, 2003.

Treaty Indian Fisheries

Areas 4B, 5, and 6C: Open for drift gill nets from 12 p.m. (noon), Tuesday, September 2, 2003, until 12 p.m. (noon), Friday, September 5, 2003.

Areas 6, 7, and 7A: Open for net fishing in that portion of Areas 6, 7, and 7A south and east of the East Point Line from 5 a.m., Thursday, September 4, 2003, until 9 p.m., Friday, September 5, 2003. The East Point Line is a line projected from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point Light on Saturna Island in the Province of British Columbia, Canada. All sockeye salmon caught in purse seines must be released.

All-Citizen Fisheries

Areas 7 and 7A Purse Seine: Open in Areas 7 and 7A south and east of the East Point Line from 5 a.m. until 9 p.m. on Tuesday, September 2, and from 5 a.m. until 9 p.m. on Wednesday, September 3, 2003. The East Point Line is a line projected from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point Light on Saturna Island in the Province of British Columbia, Canada. All sockeye salmon must be released.

Areas 7 and 7A Reef Net: Open in Areas 7 and 7A south and east of the East Point Line from 5 a.m. until 9 p.m. on Sunday, August 31, from 5 a.m. until 9 p.m. on Monday, September 1, from 5 a.m. until 9 p.m. on Tuesday, September 2, from 5 a.m. until 9 p.m. on Wednesday, September 3, from 5 a.m. until 9 p.m. on Thursday, September 4, from 5 a.m. until 9 p.m. on Friday, September 5, and from 5 a.m. until 9 p.m. on Saturday, September 6, 2003. The East Point Line is a line projected from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point Light on Saturna Island in the Province of British Columbia, Canada. All sockeye salmon must be released.

Order No. 2003–12: Issued 12:01 p.m., September 5, 2003.

Areas 4B, 5, and 6C: Relinquish regulatory control effective Saturday, September 6, 2003.

Treaty Indian Fisheries

Areas 6, 7, and 7A: Open for net fishing in that portion of Areas 6, 7, and 7A south and east of the East Point Line from 5 a.m., Tuesday, September 9, 2003, until 9 p.m., Wednesday, September 10, 2003. The East Point Line is a line projected from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point Light on Saturna Island in the Province of British Columbia, Canada. All sockeye salmon caught in purse seines must be released.

All-Citizen Fisheries

Areas 7 and 7A Purse Seine: Open in Areas 7 and 7A south and east of the East Point Line from 5 a.m. until 9 p.m. on Sunday, September 7, from 5 a.m. until 9 p.m. on Monday, September 8, and from 5:00 a.m. until 9 p.m. on Thursday, September 11, 2003. The East Point Line is a line projected from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point Light on Saturna Island in the Province of British Columbia, Canada. All sockeye salmon must be released.

Areas 7 and 7A Reef Net: Open in Areas 7 and 7A south and east of the East Point Line from 5 a.m. until 9 p.m. on Sunday, September 7, from 5 a.m. until 9 p.m. on Monday, September 8, from 5 a.m. until 9 p.m. on Tuesday, September 9, from 5 a.m. until 9 p.m. on Wednesday, September 10, from 5 a.m. until 9 p.m. on Thursday,

September 11, from 5 a.m. until 9 p.m. on Friday, September 12, and from 5 a.m. until 9 p.m. on Saturday, September 13, 2003. The East Point Line is a line projected from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point Light on Saturna Island in the Province of British Columbia, Canada. All sockeye salmon must be released.

Order No. 2003–13: Issued 12:30 p.m., September 9, 2003.

Treaty Indian Fisheries

Areas 6, 7, and 7A: Open for net fishing in that portion of Areas 6, 7, and 7A south and east of the East Point Line from 5 a.m., Friday, September 12, 2003, until 9 p.m., Saturday, September 13, 2003. The East Point Line is a line projected from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point Light on Saturna Island in the Province of British Columbia, Canada. All sockeye salmon caught in purse seines must be released.

Order No. 2003–14: Issued 12:30 p.m., September 12, 2003.

Treaty Indian Fisheries

Areas 6, 7, and 7A: Open for net fishing in that portion of Areas 6, 7, and 7A south and east of the East Point Line from 5 a.m., Friday, September 12 until 11:59 p.m., Friday, September 12, 2003. The East Point Line is a line projected from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point Light on Saturna Island in the Province of British Columbia, Canada. All sockeye salmon caught in purse seines must be released.

Areas 6, 7, and 7A: Open for net fishing in that portion of Areas 6, 7, and 7A south and east of the Iwersen Dock Line from 12:01 a.m., Saturday, September 13 until 8:00 p.m. Friday, September 19, 2003. The Iwersen Dock Line is a line projected from the point where the Iwersen Dock was once located on Point Roberts in the State of Washington to the Georgina Point Light at the entrance to Active Pass in the Province of British Columbia, Canada. All sockeye salmon caught in purse seines must be released.

All-Citizen Fisheries

Areas 7 and 7A Purse Seine: Open in Areas 7 and 7A south and east of the Iwersen Dock Line from 6 a.m. until 8 p.m. on Sunday, September 14, from 6 a.m. until 8 p.m. on Monday, September 15, from 6 a.m. until 8 p.m. on Tuesday, September 16, from 6 a.m. until 8 p.m. on Wednesday, September 17, from 6 a.m. until 8 p.m. on Thursday, September 18, and from 6 a.m. until 8 p.m. on Friday, September 19, 2003. The Iwersen Dock Line is a line projected from the point where the Iwersen Dock was once located on Point Roberts in the State of Washington to the Georgina Point Light at the entrance to Active Pass in the Province of British Columbia, Canada. All sockeye salmon must be released.

Areas 7 and 7A Reef Net: Open in Areas 7 and 7A south and east of the East Point Line from 5 a.m. until 9 p.m. on Friday, September 12, 2003. The East Point Line is a line projected from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point Light on Saturna Island in the Province of British Columbia, Canada. All sockeye salmon must be released.

Areas 7 and 7A Reef Net: Open in Areas 7 and 7A south and east of the Iwersen Dock Line from 5 a.m. until 9 p.m. on Saturday, September 13, 2003 and from 6 a.m. until 8 p.m. on Sunday, September 14, from 6 a.m. until 8 p.m. on Monday, September 15, from 6 a.m. until 8 p.m. on Tuesday, September 16, from 6 a.m. until 8 p.m. on Wednesday, September 17, from 6 a.m. until 8 p.m. on Thursday, September 18, and from 6 a.m. until 8 p.m. on Friday, September 19, 2003. The Iwersen Dock Line is a line projected from the point where the Iwersen Dock was once located on Point Roberts in the State of Washington to the Georgina Point Light at the entrance to Active Pass in the Province of British Columbia, Canada. All sockeye salmon must be released.

Inseason Order 2003–14 supersedes all previous inseason orders implementing 2003 orders of the Fraser River Panel.

Order No. 2003–15: Issued 11 a.m., September 19, 2003.

Areas 6, 6A, and 7: Relinquish regulatory control effective 12:01 a.m., Saturday, September 20, 2003.

Area 7A: Relinquish regulatory control in that portion of Area 7A south and east of the Iwersen Dock Line effective 12:01 a.m., Saturday, September 20, 2003. The Iwersen Dock Line is a line projected from the point where the Iwersen Dock was once located on Point Roberts in the State of Washington to the Georgina Point Light at the entrance to Active Pass in the Province of British Columbia, Canada.

The Assistant Administrator for Fisheries NOAA (AA), finds that good cause exists for the inseason orders to be issued without affording the public prior notice and opportunity for comment under 5 U.S.C. 553(b)(B) as such prior notice and opportunity for comments is impracticable and contrary to the public interest. Prior notice and opportunity for public comment is impracticable because NMFS has insufficient time to allow for prior notice and opportunity for public comment between the time the stock abundance information is available to determine how much fishing can be allowed and the time the fishery must open and close in order to harvest the appropriate amount of fish while they are available.

Moreover, such prior notice and opportunity for public comment is contrary to the public interest because not closing the fishery upon attainment of the quota would allow the quota to be exceeded and thus compromise the conservation objectives established preseason, and it does not allow fishers appropriately controlled access to the available fish at the time they are available.

The AA also finds good cause to waive the 30–day delay in the effective date, required under 5 U.S.C. 553(d)(3), of the inseason orders. A delay in the effective date of the inseason orders would not allow fishers appropriately controlled access to the available fish at that time they are available. This action is authorized by 50 CFR 300.97, and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 3636(b).

Dated: October 21, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–26928 Filed 10–23–03; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 021209300–3048–02; I.D. 100303B]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures; Trip Limit Adjustments; Corrections

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

ACTION: Inseason adjustments to trip limits and rockfish conservation areas; corrections; request for comments.

SUMMARY: NMFS announces changes to trip limits and trawl rockfish conservation areas (RCAs) for the Pacific Coast groundfish fishery. Trip limit adjustments include changes to the limited entry trawl Dover sole, thornyhead, and sablefish (DTS) limits coastwide; limits for limited entry midwater trawl widow rockfish coastwide and yellowtail rockfish north of 40°10 N. lat.; and the limited entry fixed gear and open access sablefish limits north of 36° N. lat. This inseason action also implements coordinates for the previously scheduled western, seaward boundary line for the trawl RCA which approximates the 200–fm depth contour as modified to accommodate petrale sole fishing grounds during November and December. For the trawl ''A'' platoon, trip limit adjustments and RCAs will be effective November 1, 2003. Inseason adjustments to trip limits and RCAs for the trawl ''B'' platoon will be effective November 16, 2003. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), will allow fisheries access to more abundant groundfish stocks while protecting overfished and depleted stocks. This action also contains a correction to the trip limits for the limited entry midwater trawl fishery for widow rockfish and whiting.

DATES: Changes to management measures are effective 0001 hours (local time) October 24, 2003, until the 2004 annual specifications and management measures are effective, unless modified, superseded, or rescinded through a publication in the **Federal Register**. Comments on this rule will be accepted through November 24, 2003.

ADDRESSES: Submit comments to D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070; or Rod McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd, Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Jamie Goen or Carrie Nordeen (Northwest Region, NMFS), phone: 206–526–6140; fax: 206–526–6736; and e-mail: *jamie.goen@noaa.gov* or *carrie.nordeen@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is available on the Government Printing Office's website at: *http://www.access.gpo.gov/su_docs/ca/docs/aces/aces140.html*. Background information and documents are available at the NMFS Northwest Region website at: *http://www.nwr.noaa.gov/1sustfsh/gdfsh01.htm* and at the Pacific Fishery Management Council's website at: *http://www.pcouncil.org*.

Background

The Pacific Coast Groundfish FMP and its implementing regulations at 50 CFR part 660, subpart G, regulate fishing for over 80 species of groundfish off the coasts of Washington, Oregon, and California. Annual groundfish specifications and management measures are initially developed by the Pacific Fishery Management Council (Pacific Council), and are implemented by NMFS. The specifications and management measures for the 2003 fishing year (January 1 - December 31, 2003) were initially published in the **Federal Register** as an emergency rule for January 1 - February 28, 2003 (68 FR 908, January 7, 2003) and as a proposed rule for March 1 - December 31, 2003 (68 FR 936, January 7, 2003). The emergency rule was amended at 68 FR 4719, January 30, 2003, and the final rule for March 1 - December 31, 2003 was published in the **Federal Register** on March 7, 2003 (68 FR 11182). The final rule has been subsequently amended at 68 FR 18166 (April 15, 2003), at 68 FR 23901 (May 6, 2003), at 68 FR 23924 (May 6, 2003), at 68 FR 32680 (June 2, 2003), at 68 FR 35575 (June 16, 2003), at 68 FR 40187 (July 7, 2003), at 68 FR 42643 (July 18, 2003), at 68 FR 43473 (July 23, 2003), and at 68 FR 52703 (September 5, 2003).

The following changes to current groundfish management measures were recommended by the Pacific Council, in consultation with Pacific Coast Treaty Tribes and the States of Washington, Oregon, and California, at its September 8–12, 2003, meeting in Seattle, WA. Pacific Coast groundfish landings will be monitored throughout the year, and further adjustments will be made as necessary to allow achievement of or avoid exceeding the 2003 optimum yields (OYs) and allocations.

Limited Entry Trawl Limits for the DTS (Dover Sole, Thornyhead, Sablefish) Fishery Coastwide

In an effort to provide for fishing opportunity along the coast while keeping groundfish species within their respective 2003 OYs, the Pacific Council recommended trip limit adjustments for the DTS fishery for the November and December fishing period. Limited entry landed catch data through August 15, 2003, in the Pacific Fisheries Information Network (PacFIN) database, indicate that shortspine thornyhead catch was at 68 percent of the annual target (514 mt landed out of a 751 mt landed catch OY). Based on the reported landed catch through August 2003 and anticipated landed catch for the remainder of 2003 (Exhibit C.2.b, Supplemental NMFS Report, from the September 2003 Pacific Council meeting), approximately another 41 percent of the shortspine thornyhead catch (308 mt projected landings out of a 751–mt landed catch OY) is forecast to be taken over the remainder of the year. If landed catch continues as projected, shortspine thornyhead landings could be at 822 mt out of a 751–mt landed catch OY, exceeding the 2003 OY by 71 mt. For the other three species in the DTS complex, Dover sole, longspine thornyhead and sablefish, reported landed catch through August 2003 and anticipated landed catch for the remainder of 2003 (Exhibit C.2.b, Supplemental NMFS Report, from the September 2003 Pacific Council meeting) are under the OYs set for those species in 2003. Thus, shortspine thornyhead is the constraining species in the DTS complex at this time. Since the four species in the DTS complex are caught together, trip limits for all DTS complex species are being reduced during November and December to slow the catch of shortspine thornyhead in 2003. Trip limits north of 40°10′ N. lat. are larger for vessels using large footrope gear than for vessels using small footrope gear because large footrope gear is only permitted offshore of the RCAs, where DTS complex species are less likely to co-occur with overfished groundfish species.

Therefore, the limited entry trawl Dover sole limit north of 40°10′ N. lat. is decreased from the previously scheduled limit of 34,000 lb (15,422 kg)

per 2 months to 30,000 lb (13,608 kg) per 2 months, providing that only large footrope or midwater trawl gear is used to land any groundfish species during the entire limit period. The limited entry small footrope trawl Dover sole limit, (i.e., if small footrope gear is used at any time in any area (north or south, seaward or shoreward of the RCA) during the entire limit period) is decreased from the previously scheduled limit of 12,500 lb (5,670 kg) per 2 months to 11,000 lb (4,990 kg) per 2 months. South of 40°10′ N. lat., the limited entry trawl Dover sole limit is decreased from the previously scheduled limit of 34,000 lb (15,422 kg) per 2 months to 30,000 lb (13,608 kg) per 2 months. The limited entry trawl shortspine thornyhead limit north of 40°10′ N. lat. is decreased from the previously scheduled limit of 2,400 lb (1,089 kg) per 2 months to 900 lb (408 kg) per 2 months, providing that only large footrope or midwater trawl gear is used to land any groundfish species during the entire limit period. The limited entry small footrope trawl shortspine thornyhead limit, (i.e., if small footrope gear is used at any time in any area (north of south, seaward or shoreward of the RCA) during the entire limit period) is decreased from the previously scheduled limit of 1,000 lb (454 kg) per 2 months to 300 lb (136 kg) per 2 months. South of 40°10′ N. lat., the limited entry trawl shortspine thornyhead limit is decreased from the previously scheduled limit 2,400 lb (1,089 kg) per 2 months to 900 lb (408 kg) per 2 months.

In response to reduced trip limits for shortspine thornyhead and the need to maintain the catch ratio of 5 lb (2.27 kg) longspine thornyhead to 1 lb (0.45 kg) shortspine thornyhead, the Pacific Council also recommended an adjustment in longspine thornyhead trip limits. Therefore, the limited entry trawl longspine thornyhead limit north of 40°10′ N. lat. is decreased from the previously scheduled limit of 11,500 lb (5,216 kg) per 2 months to 4,500 lb (2,041 kg) per 2 months, providing that only large footrope or midwater trawl gear is used to land any groundfish species during the entire limit period. The limited entry small footrope trawl longspine thornyhead limit, (i.e., if small footrope gear is used at any time in any area (north of south, seaward or shoreward of the RCA) during the entire limit period) is decreased from the previously scheduled 5,000 lb (2,268 kg) per 2 months to 2,000 lb (907 kg) per 2 months. South of 40°10′ N. lat., the limited entry trawl longspine thornyhead limit is decreased from the previously scheduled limit of 11,500 lb (5,216 kg) per 2 months to 4,500 lb (2,041 kg) per 2 months. The limited entry trawl sablefish limit north of 40°10′ N. lat. is decreased from the previously scheduled limit of 9,000 lb (4,082 kg) per 2 months to 7,000 lb (3,175 kg) per 2 months, providing that only large footrope or midwater trawl gear is used to land any groundfish species during the entire limit period. The limited entry small footrope trawl sablefish limit, (i.e., if small footrope gear is used at any time in any area (north or south, seaward or shoreward of the RCA) during the entire limit period) is decreased from the previously scheduled limit of 3,000 lb (1,361 kg) per 2 months to 2,300 lb (1,043 kg) per 2 months. South of 40°10′ N. lat., the limited entry trawl sablefish limit is decreased from the previously scheduled limit of 9,000 lb (4,082 kg) per 2 months to 7,000 lb (3,175 kg) per 2 months.

Limited Entry Midwater Trawl Widow Rockfish Coastwide and Yellowtail Rockfish North of 40°10′ N. Lat.

Retention of widow rockfish coastwide and yellowtail rockfish north of 40°10′ N. lat. in the limited entry midwater trawl fisheries is being prohibited during November and December to reduce the potential for incidental catch of canary rockfish. Limited entry landed catch data through August 15, 2003, in PacFIN, indicate that the catch of canary rockfish was at 29 percent of the annual target (4 mt landed out of a 14 mt landed catch OY). However, total mortality of canary rockfish in all commercial, recreational, and experimental fisheries, including the trip limit adjustments in this inseason action, is estimated to be 43.5 mt out of a 44–mt total catch OY by the end of the year. Because canary rockfish co-occur with yellowtail and widow rockfish, opportunities for directed midwater widow and yellowtail rockfish fisheries are being eliminated to keep the total estimated mortality of canary rockfish within its total catch OY for 2003.

Therefore, limited entry midwater trawl fisheries for widow rockfish coastwide are being reduced during November and December from the previously scheduled 12,000 lb (5,443 kg) per 2 months to no retention (i.e., closed). Limited entry midwater trawl fisheries for yellowtail rockfish north of 40°10′ N. lat. are being reduced during November and December from the previously scheduled 18,000 lb (8,165 kg) per 2 months to no retention (i.e., closed).

Limited Entry Fixed Gear and Open Access Sablefish Limits North of 36° N. Lat.

Landed catch in the daily trip limit (DTL) fishery for sablefish north of 36° N. lat. is tracking behind schedule (i.e., the fishery will not attain the OY for 2003 if cumulative limits remain as previously scheduled). Total fleet landed catch data through September 12, 2003, in PacFIN, indicate that the non-trawl DTL sablefish fishery combined with the non-trawl primary sablefish fishery was at 66 percent of the annual target (1,667 mt landed out of a 2,518 mt landed catch OY). With an estimated 851 mt of the OY available for non-trawl sablefish fisheries and with the primary sablefish fishery ending on October 31, 2003, there is room for additional harvest opportunity in the DTL sablefish fishery. Thus, because sablefish catch in the DTL fishery is tracking behind schedule for the year and because the impact of this fishery on shortspine thornyhead is likely minimal, the DTL sablefish fishery north of 36° N. lat. will be increased during November and December from the previously scheduled 300 lb (136 kg) per day or one landing per week of up to 800 lb (363 kg), not to exceed 3,200 lb (1,452 kg) per 2 months to 300 lb (136 kg) per day or one landing per week of up to 900 lb (408 kg), not to exceed 3,600 lb (1,633 kg) per 2 months.

Limited Entry Fixed Gear and Open Access Minor Deeper Nearshore Rockfish Limits South of 40°10′ N. Lat.

At their September 8–12, 2003 meeting, the Pacific Council recommended increasing limited entry fixed gear and open access trip limits for minor deeper nearshore rockfish as soon as practicable after the Pacific Council meeting. The Pacific Council recommended the increase because commercial landings of minor deeper nearshore rockfish south of 40°10′ N. lat. were lower than expected in 2003. Minor deeper nearshore rockfish are managed within an overall harvest guideline for minor nearshore rockfish. The minor nearshore rockfish harvest guideline is shared between the commercial and recreational sectors. In addition, the minor nearshore rockfish harvest guideline is included as a subset of the minor rockfish OY. There are two minor rockfish OYs, one for the area north of 40°10′ N. lat. and one for the area south of 40°10′ N. lat.

Subsequent to the Pacific Council meeting, the Pacific Council's Groundfish Management Team (GMT) held a meeting in Seattle, WA, October 14–16, 2003. The GMT discussed

information from the Recreational Fisheries Information Network (RecFIN) at that meeting, which showed landings of minor nearshore rockfish in the recreational fishery south of 40°10′ N. lat. during July and August, the first two months open to recreational groundfish fishing, have exceeded the projected recreational landings of minor nearshore rockfish for the remainder of the year. The GMT raised concerns over the accuracy of RecFIN's catch estimates since the estimates for July and August were substantially higher than in recent years. The GMT has requested that the RecFIN program review its estimates reported for the 2003 California recreational fishery.

While landings in the commercial sector south of 40°10′ N. lat. continue to remain lower than expected in 2003 (landed catch data through October 10, 2003, indicate that minor deeper nearshore rockfish catch was at 44 percent of the annual target 21 mt landed out of a 48 mt commercial total catch OY), combined recreational and commercial landings are still estimated to have exceeded the minor nearshore harvest guideline, even if RecFIN estimates are adjusted downward. The state of California intends to close recreational fishing for nearshore rockfish at the beginning of November.

In light of this new information, NMFS is not approving the Pacific Council's September recommendation to increase minor deeper nearshore rockfish trip limits for the commercial sector (limited entry fixed gear and open access) south of 40°10′ N. lat. Because of the recent receipt of this information, NMFS does not have time to fully consider the information, determine what additional actions may be appropriate, and incorporate any additional actions into this **Federal Register** Notice. Attempting to incorporate additional actions into this notice would delay the other inseason adjustments contained in this action, which need to be implemented as soon as possible. However, NMFS will review the new information, and determine what additional action, if any, should be taken. Therefore, the limited entry fixed gear and open access minor deeper nearshore rockfish limit south of 40°10′ N. lat. remains as scheduled for the remainder of the September through October cumulative limit period at 300 lb (136 kg) per 2 months. During the months of November through December, the limited entry fixed gear and open access minor deeper nearshore rockfish limit south of 40°10′ N. lat. also remains as previously scheduled at 200 lb (91 kg) per 2 months, unless it is adjusted through a subsequent action.

Corrections

The limited entry midwater trawl fishery for widow rockfish during the primary season north of 40°10′ N. lat., Table 3 (North), is corrected in this inseason action to allow retention of widow rockfish during September through October up to the limits previously specified in the table for May though August. This allowance for widow rockfish retention during the primary whiting season was intended to be for May through October, the same time frame as the yellowtail rockfish allowance during the primary whiting season. This inseason action corrects Table 3 (North) for the limited entry midwater trawl fishery for widow rockfish north of 40°10′ N. lat. May through October to read, ''During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month.''

Similarly, the primary season for whiting is corrected coastwide (Table 3 (North) and Table 3 (South)) to reflect that it may extend from May through October, the same time frame as the yellowtail rockfish allowance during the primary whiting season. The primary whiting season begins on different dates for different sectors of the fishery, but generally extends from approximately April through quota attainment. Currently the mothership and catcher/ processor sectors remain open with quota available. Therefore, to more accurately reflect the open season for the primary whiting season, this inseason action corrects Table 3 (North) and Table 3 (South) for whiting during May through October to read, ''Primary Season (only mid-water trawl permitted within the RCA).''

NMFS Actions

For the reasons stated herein, NMFS concurs with all of the Pacific Council's recommendations, except the recommendation to increase minor deeper nearshore limits south of 40°10′ N. lat., implemented herein and hereby announces the following changes to the 2003 specifications and management measures (68 FR 11182, March 7, 2003, as amended at 68 FR 18166, April 15, 2003, at 68 FR 23901, May 6, 2003, at 68 FR 23925, May 6, 2003, at 68 FR 32680, June 2, 2003, at 68 FR 35575, June 16, 2003), at 68 FR 40187, July 7, 2003, at 68 FR 42643, July 18, 2003, at 68 FR 43473, July 23, 2003, and at 68 FR 52703, September 5, 2003, to read as follows:

1. In section IV., under A. General Definitions and Provisions, paragraph (19)(e), section (xviii) is added to read as follows:

* * * * *

(xviii) The 200–fm (366–m) depth contour used between the U.S. border with Canada and the U.S. border with Mexico as a western boundary for the trawl RCA, modified to allow fishing for petrale in the winter months of January, February, November, and December, is defined by straight lines connecting all of the following points in the order stated:

(1) 48°14.75′ N. lat., 125°41.73′ W. long.;
(2) 48°12.85′ N. lat., 125°38.06′ W. long.;
(3) 48°11.52′ N. lat., 125°39.45′ W. long.;
(4) 48°10.14′ N. lat., 125°42.81′ W. long.;
(5) 48°08.96′ N. lat., 125°42.08′ W. long.;
(6) 48°08.33′ N. lat., 125°44.91′ W. long.;
(7) 48°07.19′ N. lat., 125°45.87′ W. long.;
(8) 48°05.66′ N. lat., 125°44.79′ W. long.;
(9) 48°05.91′ N. lat., 125°42.16′ W. long.;
(10) 48°04.11′ N. lat., 125°40.17′ W. long.;
(11) 48°04.07′ N. lat., 125°36.96′ W. long.;
(12) 48°03.05′ N. lat., 125°36.38′ W. long.;
(13) 48°01.98′ N. lat., 125°37.41′ W. long.;
(14) 48°01.46′ N. lat., 125°39.61′ W. long.;
(15) 47°57.00′ N. lat., 125°37.00′ W. long.;
(16) 47°55.50′ N. lat., 125°28.50′ W. long.;
(17) 47°57.88′ N. lat., 125°25.61′ W. long.;
(18) 48°01.63′ N. lat., 125°23.75′ W. long.;
(19) 48°02.21′ N. lat., 125°22.43′ W. long.;
(20) 48°03.60′ N. lat., 125°21.84′ W. long.;
(21) 48°03.98′ N. lat., 125°20.65′ W. long.;
(22) 48°03.26′ N. lat., 125°19.76′ W. long.;
(23) 48°01.49′ N. lat., 125°18.80′ W. long.;
(24) 48°01.03′ N. lat., 125°20.12′ W. long.;
(25) 48°00.04′ N. lat., 125°20.26′ W. long.;
(26) 47°58.10′ N. lat., 125°18.91′ W. long.;
(27) 47°58.17′ N. lat., 125°17.50′ W. long.;
(28) 47°52.28′ N. lat., 125°16.06′ W. long.;

(29) 47°51.92′ N. lat., 125°13.89′ W. long.;
(30) 47°49.20′ N. lat., 125°10.67′ W. long.;
(31) 47°48.69′ N. lat., 125°06.50′ W. long.;
(32) 47°46.54′ N. lat., 125°07.68′ W. long.;
(33) 47°47.24′ N. lat., 125°05.38′ W. long.;
(34) 47°45.95′ N. lat., 125°04.61′ W. long.;
(35) 47°44.58′ N. lat., 125°07.12′ W. long.;
(36) 47°42.24′ N. lat., 125°05.15′ W. long.;
(37) 47°38.54′ N. lat., 125°06.76′ W. long.;
(38) 47°34.86′ N. lat., 125°04.67′ W. long.;
(39) 47°30.75′ N. lat., 124°57.52′ W. long.;
(40) 47°28.51′ N. lat., 124°56.69′ W. long.;
(41) 47°29.15′ N. lat., 124°54.10′ W. long.;
(42) 47°28.43′ N. lat., 124°51.58′ W. long.;
(43) 47°24.13′ N. lat., 124°47.51′ W. long.;
(44) 47°18.31′ N. lat., 124°46.17′ W. long.;
(45) 47°19.57′ N. lat., 124°51.01′ W. long.;
(46) 47°18.12′ N. lat., 124°53.66′ W. long.;
(47) 47°17.59′ N. lat., 124°52.94′ W. long.;
(48) 47°17.71′ N. lat., 124°51.63′ W. long.;
(49) 47°16.90′ N. lat., 124°51.23′ W. long.;
(50) 47°16.10′ N. lat., 124°53.67′ W. long.;
(51) 47°14.24′ N. lat., 124°53.02′ W. long.;
(52) 47°12.16′ N. lat., 124°56.77′ W. long.;
(53) 47°13.35′ N. lat., 124°58.70′ W. long.;
(54) 47°09.53′ N. lat., 124°58.32′ W. long.;
(55) 47°09.54′ N. lat., 124°59.50′ W. long.;
(56) 47°05.87′ N. lat., 124°59.29′ W. long.;
(57) 47°03.65′ N. lat., 124°56.26′ W. long.;
(58) 47°00.91′ N. lat., 124°59.73′ W. long.;
(59) 46°58.74′ N. lat., 124°59.40′ W. long.;
(60) 46°58.55′ N. lat., 125°00.70′ W. long.;
(61) 46°55.57′ N. lat., 125°01.61′ W. long.;
(62) 46°55.77′ N. lat., 124°55.04′ W. long.;
(63) 46°53.16′ N. lat., 124°53.69′ W. long.;
(64) 46°52.39′ N. lat., 124°55.24′ W. long.;
(65) 46°44.88′ N. lat., 124°51.97′ W. long.;
(66) 46°33.28′ N. lat., 124°36.96′ W. long.;
(67) 46°33.20′ N. lat., 124°30.64′ W. long.;
(68) 46°27.85′ N. lat., 124°31.95′ W. long.;
(69) 46°18.16′ N. lat., 124°39.39′ W. long.;
(70) 46°16.48′ N. lat., 124°27.41′ W. long.;
(71) 46°16.73′ N. lat., 124°23.20′ W. long.;
(72) 46°14.13′ N. lat., 124°26.26′ W. long.;
(73) 46°12.81′ N. lat., 124°33.73′ W. long.;
(74) 46°12.86′ N. lat., 124°38.65′ W. long.;
(75) 46°10.81′ N. lat., 124°39.54′ W. long.;
(76) 46°09.78′ N. lat., 124°41.27′ W. long.;
(77) 46°06.44′ N. lat., 124°41.08′ W. long.;
(78) 46°03.79′ N. lat., 124°47.94′ W. long.;
(79) 46°02.31′ N. lat., 124°48.59′ W. long.;
(80) 45°59.01′ N. lat., 124°44.40′ W. long.;
(81) 45°46.91′ N. lat., 124°43.57′ W. long.;
(82) 45°44.05′ N. lat., 124°45.85′ W. long.;
(83) 45°39.96′ N. lat., 124°40.10′ W. long.;
(84) 45°38.27′ N. lat., 124°40.47′ W. long.;
(85) 45°34.80′ N. lat., 124°32.25′ W. long.;
(86) 45°13.00′ N. lat., 124°21.98′ W. long.;
(87) 45°09.59′ N. lat., 124°23.33′ W. long.;
(88) 45°11.35′ N. lat., 124°38.37′ W. long.;
(89) 45°00.22′ N. lat., 124°29.24′ W. long.;
(90) 44°55.28′ N. lat., 124°31.70′ W. long.;
(91) 44°41.42′ N. lat., 124°49.13′ W. long.;
(92) 44°21.46′ N. lat., 124°49.29′ W. long.;
(93) 44°12.43′ N. lat., 124°56.56′ W. long.;
(94) 43°58.92′ N. lat., 124°54.42′ W. long.;
(95) 43°50.76′ N. lat., 124°52.75′ W. long.;
(96) 43°47.22′ N. lat., 124°45.70′ W. long.;
(97) 43°43.11′ N. lat., 124°39.85′ W. long.;
(98) 43°20.19′ N. lat., 124°43.28′ W. long.;
(99) 43°13.29′ N. lat., 124°47.09′ W. long.;
(100) 43°13.17′ N. lat., 124°52.77′ W. long.;
(101) 43°05.65′ N. lat., 124°52.96′ W. long.;
(102) 43°00.03′ N. lat., 124°53.71′ W. long.;
(103) 42°53.90′ N. lat., 124°54.49′ W. long.;
(104) 42°49.50′ N. lat., 124°53.15′ W. long.;
(105) 42°47.50′ N. lat., 124°50.28′ W. long.;
(106) 42°46.21′ N. lat., 124°44.55′ W. long.;
(107) 42°41.30′ N. lat., 124°44.38′ W. long.;
(108) 42°38.83′ N. lat., 124°43.02′ W. long.;
(109) 42°31.92′ N. lat., 124°46.17′ W. long.;
(110) 42°32.11′ N. lat., 124°43.49′ W. long.;
(111) 42°31.03′ N. lat., 124°43.75′ W. long.;
(112) 42°28.42′ N. lat., 124°49.08′ W. long.;
(113) 42°20.36′ N. lat., 124°42.43′ W. long.;
(114) 42°15.35′ N. lat., 124°38.86′ W. long.;
(115) 42°09.59′ N. lat., 124°38.13′ W. long.;
(116) 42°04.56′ N. lat., 124°38.86′ W. long.;
(117) 42°04.45′ N. lat., 124°36.72′ W. long.;
(118) 41°59.98′ N. lat., 124°36.70′ W. long.;
(119) 41°47.85′ N. lat., 124°30.41′ W. long.;
(120) 41°43.34′ N. lat., 124°29.89′ W. long.;
(121) 41°23.47′ N. lat., 124°30.29′ W. long.;
(122) 41°21.30′ N. lat., 124°29.36′ W. long.;
(123) 41°13.53′ N. lat., 124°24.41′ W. long.;
(124) 41°06.72′ N. lat., 124°23.3′ W. long.;
(125) 40°54.67′ N. lat., 124°28.13′ W. long.;
(126) 40°49.02′ N. lat., 124°28.52′ W. long.;
(127) 40°40.45′ N. lat., 124°32.74′ W. long.;
(128) 40°37.11′ N. lat., 124°38.03′ W. long.;
(129) 40°34.22′ N. lat., 124°41.13′ W. long.;
(130) 40°32.90′ N. lat., 124°41.83′ W. long.;
(131) 40°31.30′ N. lat., 124°40.97′ W. long.;
(132) 40°29.63′ N. lat., 124°38.04′ W. long.;
(133) 40°24.99′ N. lat., 124°36.37′ W. long.;

(134) 40°22.23′ N. lat., 124°31.78′ W. long.;
(135) 40°16.95′ N. lat., 124°31.93′ W. long.;
(136) 40°17.59′ N. lat., 124°45.23′ W. long.;
(137) 40°13.25′ N. lat., 124°32.36′ W. long.;
(138) 40°10.16′ N. lat., 124°24.57′ W. long.;
(139) 40°6.43′ N. lat., 124°19.19′ W. long.;
(140) 40°7.07′ N. lat., 124°17.75′ W. long.;
(141) 40°5.53′ N. lat., 124°18.02′ W. long.;
(142) 40°4.71′ N. lat., 124°18.10′ W. long.;
(143) 40°2.35′ N. lat., 124°16.57′ W. long.;
(144) 40°1.53′ N. lat., 124°9.82′ W. long.;
(145) 39°58.28′ N. lat., 124°13.51′ W. long.;
(146) 39°56.60′ N. lat., 124°12.02′ W. long.;
(147) 39°55.20′ N. lat., 124°07.96′ W. long.;
(148) 39°52.55′ N. lat., 124°09.40′ W. long.;
(149) 39°42.68′ N. lat., 124°02.52′ W. long.;
(150) 39°35.96′ N. lat., 123°59.49′ W. long.;
(151) 39°34.62′ N. lat., 123°59.59′ W. long.;
(152) 39°33.78′ N. lat., 123°56.82′ W. long.;
(153) 39°33.02′ N. lat., 123°57.07′ W. long.;
(154) 39°32.21′ N. lat., 123°59.13′ W. long.;
(155) 39°7.85′ N. lat., 123°59.07′ W. long.;
(156) 39°00.90′ N. lat., 123°57.88′ W. long.;
(157) 38°59.95′ N. lat., 123°56.99′ W. long.;
(158) 38°56.82′ N. lat., 123°57.74′ W. long.;
(159) 38°56.40′ N. lat., 123°59.41′ W. long.;
(160) 38°50.23′ N. lat., 123°55.48′ W. long.;
(161) 38°46.77′ N. lat., 123°51.49′ W. long.;
(162) 38°45.28′ N. lat., 123°51.56′ W. long.;
(163) 38°42.76′ N. lat., 123°49.76′ W. long.;
(164) 38°41.54′ N. lat., 123°47.76′ W. long.;
(165) 38°40.98′ N. lat., 123°48.07′ W. long.;
(166) 38°38.03′ N. lat., 123°45.78′ W. long.;
(167) 38°37.20′ N. lat., 123°44.01′ W. long.;
(168) 38°33.44′ N. lat., 123°41.75′ W. long.;
(169) 38°29.45′ N. lat., 123°38.42′ W. long.;
(170) 38°27.89′ N. lat., 123°38.38′ W. long.;
(171) 38°23.68′ N. lat., 123°35.40′ W. long.;
(172) 38°19.63′ N. lat., 123°33.98′ W. long.;
(173) 38°16.23′ N. lat., 123°31.83′ W. long.;
(174) 38°14.79′ N. lat., 123°29.91′ W. long.;
(175) 38°14.12′ N. lat., 123°26.29′ W. long.;
(176) 38°10.85′ N. lat., 123°25.77′ W. long.;
(177) 38°13.15′ N. lat., 123°28.18′ W. long.;
(178) 38°12.28′ N. lat., 123°29.81′ W. long.;
(179) 38°10.19′ N. lat., 123°29.04′ W. long.;
(180) 38°07.94′ N. lat., 123°28.45′ W. long.;
(181) 38°06.51′ N. lat., 123°30.89′ W. long.;
(182) 38°04.21′ N. lat., 123°31.96′ W. long.;
(183) 38°02.07′ N. lat., 123°31.3′ W. long.;
(184) 38°00.00′ N. lat., 123°29.55′ W. long.;
(185) 37°58.13′ N. lat., 123°27.21′ W. long.;
(186) 37°55.01′ N. lat., 123°27.46′ W. long.;
(187) 37°51.40′ N. lat., 123°25.18′ W. long.;
(188) 37°43.97′ N. lat., 123°11.49′ W. long.;
(189) 37°36.00′ N. lat., 123°02.25′ W. long.;
(190) 37°13.65′ N. lat., 122°54.18′ W. long.;
(191) 37°00.66′ N. lat., 122°37.84′ W. long.;
(192) 36°57.40′ N. lat., 122°28.25′ W. long.;
(193) 36°59.25′ N. lat., 122°25.54′ W. long.;
(194) 36°56.88′ N. lat., 122°25.42′ W. long.;
(195) 36°57.40′ N. lat., 122°22.62′ W. long.;
(196) 36°55.43′ N. lat., 122°22.43′ W. long.;
(197) 36°52.29′ N. lat., 122°13.18′ W. long.;
(198) 36°47.12′ N. lat., 122°07.56′ W. long.;
(199) 36°47.10′ N. lat., 122°02.11′ W. long.;
(200) 36°43.76′ N. lat., 121°59.11′ W. long.;
(201) 36°38.85′ N. lat., 122°02.20′ W. long.;
(202) 36°23.41′ N. lat., 122°00.11′ W. long.;
(203) 36°19.68′ N. lat., 122°06.93′ W. long.;
(204) 36°14.75′ N. lat., 122°01.51′ W. long.;
(205) 36°09.74′ N. lat., 121°45.00′ W. long.
(206) 36°06.67′ N. lat., 121°41.06′ W. long.;
(207) 35°57.07′ N. lat., 121°34.32′ W. long.;
(208) 35°52.31′ N. lat., 121°32.45′ W. long.;
(209) 35°51.21′ N. lat., 121°30.91′ W. long.;
(210) 35°46.32′ N. lat., 121°30.30′ W. long.;
(211) 35°33.74′ N. lat., 121°20.10′ W. long.;
(212) 35°31.37′ N. lat., 121°15.23′ W. long.;
(213) 35°23.32′ N. lat., 121°11.44′ W. long.;
(214) 35°15.28′ N. lat., 121°04.45′ W. long.;
(215) 35°07.08′ N. lat., 121°00.3′ W. long.;
(216) 34°57.46′ N. lat., 120°58.23′ W. long.;
(217) 34°44.25′ N. lat., 120°58.29′ W. long.;
(218) 34°32.30′ N. lat., 120°50.22′ W. long.;
(219) 34°19.08′ N. lat., 120°31.21′ W. long.;
(220) 34°17.72′ N. lat., 120°19.26′ W. long.;
(221) 34°22.45′ N. lat., 120°12.81′ W. long.;
(222) 34°21.36′ N. lat., 119°54.88′ W. long.;
(223) 34°09.95′ N. lat., 119°46.18′ W. long.;
(224) 34°09.08′ N. lat., 119°57.53′ W. long.;
(225) 34°07.53′ N. lat., 120°06.35′ W. long.;
(226) 34°10.54′ N. lat., 120°19.07′ W. long.;
(227) 34°14.68′ N. lat., 120°29.48′ W. long.;
(228) 34°09.51′ N. lat., 120°38.32′ W. long.;
(229) 34°03.06′ N. lat., 120°35.54′ W. long.;
(230) 33°56.39′ N. lat., 120°28.47′ W. long.;
(231) 33°50.25′ N. lat., 120°09.43′ W. long.;
(232) 33°37.96′ N. lat., 120°00.08′ W. long.;
(233) 33°34.52′ N. lat., 119°51.84′ W. long.;
(234) 33°35.51′ N. lat., 119°48.49′ W. long.;
(235) 33°42.76′ N. lat., 119°47.77′ W. long.;
(236) 33°53.62′ N. lat., 119°53.28′ W. long.;
(237) 33°57.61′ N. lat., 119°31.26′ W. long.;
(238) 33°56.34′ N. lat., 119°26.4′ W. long.;

(239) 33°57.79′ N. lat., 119°26.85′ W. long.;

(240) 33°58.88′ N. lat., 119°20.06′ W. long.;

(241) 34°02.65′ N. lat., 119°15.11′ W. long.;

(242) 33°59.02′ N. lat., 119°02.99′ W. long.;

(243) 33°57.61′ N. lat., 118°42.07′ W. long.;

(244) 33°50.76′ N. lat., 118°37.98′ W. long.;

(245) 33°38.41′ N. lat., 118°17.03′ W. long.;

(246) 33°37.14′ N. lat., 118°18.39′ W. long.;

(247) 33°35.51′ N. lat., 118°18.03′ W. long.;

(248) 33°30.68′ N. lat., 118°10.35′ W. long.;

(249) 33°32.49′ N. lat., 117°51.85′ W. long.;

(250) 32°58.87′ N. lat., 117°20.36′ W. long.; and

(251) 32°35.53′ N. lat., 117°29.67′ W. long.

* * * * *

2. On pages 11218–11221, in section IV., under B. Limited Entry Fishery, Table 3 (North), Table 3 (South), Table 4 (North), and Table 4 (South) are revised to read as follows:

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BILLING CODE 3510–22–S

Table 3 (North). 2003 Trip Limits and Gear Requirements[1/] for Limited Entry Trawl Gear North of 40°10' N. Latitude[2/]

Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table

10/2003

	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area[10/] (RCA): North of 40°10' N. lat.	75 fm - 200 fm	50 fm - 200 fm	50 fm - 200 fm (line modified to incorporate petrale sole fishing grounds)
Small footrope or midwater trawl gear is required shoreward of the RCA; all trawl gear (large footrope, midwater trawl, and small footrope gear) is permitted seaward of the RCA.			
A vessel may have more than one type of limited entry bottom trawl gear on board, but the most restrictive trip limit associated with the gear on board applies for that trip and will count toward the cumulative trip limit for that gear. A vessel may not have limited entry bottom trawl gear on board if that vessel also has trawl gear on board that is permitted for use within a RCA, including limited entry midwater trawl gear, regardless of whether the vessel is intending to fish within a RCA on that fishing trip. **See IV.A.(14)(iv) for details.**			
1 **Minor slope rockfish[3/]**	1,800 lb/ 2 months		
2 **Pacific ocean perch**	3,000 lb/ 2 months		
3 **DTS complex**			
4 Sablefish	9,000 lb/ 2 months, providing that only large footrope or midwater trawl gear is used to land any groundfish species during the entire limit period. If small footrope gear is used at any time in any area (North or South, shoreward or seaward of RCA) during the entire limit period, then the sablefish limit is 3,000 lb/2 months.		7,000 lb/ 2 months, providing that only large footrope or midwater trawl gear is used to land any groundfish species during the entire limit period. If small footrope gear is used at any time in any area (North or South, shoreward or seaward of RCA) during the entire limit period, then the sablefish limit is 2,300 lb/2 months
5 Longspine thornyhead	11,500 lb/ 2 months, providing that only large footrope or midwater trawl gear is used to land any groundfish species during the entire limit period. If small footrope gear is used at any time in any area (North or South, shoreward or seaward of RCA) during the entire limit period, then the longspine thornyhead limit is 5,000 lb/ 2 months.		4,500 lb/ 2 months, providing that only large footrope or midwater trawl gear is used to land any groundfish species during the entire limit period. If small footrope gear is used at any time in any area (North or South, shoreward or seaward of RCA) during the entire limit period, then the longspine thornyhead limit is 2,000 lb/ 2 months
6 Shortspine thornyhead	2,400 lb/ 2 months, providing that only large footrope or midwater trawl gear is used to land any groundfish species during the entire limit period. If small footrope gear is used at any time in any area (North or South, shoreward or seaward of RCA) during the entire limit period, then the shortspoine thornyheads limit is 1,000 lb/2 months.		900 lb/2 months, providing that only large footrope or midwater trawl gear is used to land any groundfish species during the entire limit period. If small footrope gear is used at any time in any area (North or South, shoreward or seaward of RCA) during the entire limit period, then the shortspoine thornyheads limit is 300 lb/2 months

Table 3 (North). Continued

7	Dover sole	34,000 lb/ 2 months, providing that only large footrope or midwater trawl gear is used to land any groundfish species during the entire limit period. If small footrope gear is used at any time in any area (North or South, shoreward or seaward of RCA) during the entire limit period, then the Dover sole limit is 12,500 lb/ 2 months.	30,000 lb/ 2 months, providing that only large footrope or midwater trawl gear is used to land any groundfish species during the entire limit period. If small footrope gear is used at any time in any area (North or South, shoreward or seaward of RCA) during the entire limit period, then the Dover sole limit is 11,000 lb/ 2 months
8	**Flatfish**		
9	All other flatfish[4/]	All other flatfish plus petrale & rex sole: 100,000 lb/ 2 months, no more than 30,000 lb/ 2 months of which may be petrale sole providing that only large footrope or midwater trawl gear is used to land any groundfish species during the entire limit period. If small footrope gear is used at any time in any area (North or South, inshore or offshore of RCA) during the entire limit period, then 20,000 lb/ 2 months, no more than 10,000 lb/ 2 months of which may be petrale sole.	100,000 lb/ 2 months
10	Petrale sole		Not limited
11	Rex sole	Included in all other flatfish	
12	Arrowtooth flounder	200,000 lb/ 2 months providing that only large footrope or midwater trawl gear is used to land any groundfish species during the entire limit period. If small footrope gear is used at any time in any area (North or South, inshore or offshore of RCA) during the entire limit period, then 5,000 lb/2 months.	
13	**Whiting**[5/]	Primary Season (only mid-water trawl permitted in the RCA)	10,000 lb/ trip
14	**Other Fish**[9/]	Not limited	
15	**Use of small footrope bottom trawl**[7/] **or mid-water trawl is required for landing all of the following species:**		
16	**Minor shelf rockfish and widow rockfish**[3/]	1,000 lb/ month, no more than 200 lb/ month of which may be yelloweye rockfish	300 lb/ month
17	**Widow rockfish**		
18	mid-water trawl - permitted within the RCA	During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month	CLOSED[6/]
19	**Canary rockfish**	300 lb/ month	100 lb/ month

Table 3 (North). Continued

20	**Yellowtail**		
21	mid-water trawl - permitted within the RCA	During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month	CLOSED[6/]
22	small footrope trawl[7/]	In landings without flatfish, 1,000 lb/ month. As flatfish bycatch, per trip limit is the sum of 33% (by weight) of all flatfish except arrowtooth flounder, plus 10% (by weight) of arrowtooth flounder. Total yellowtail landings not to exceed 10,000 lb/ 2 months, no more than 1,000 lb of which may be landed without flatfish.	
23	**Minor nearshore rockfish**	300 lb/ month	
24	**Lingcod[8/]**	1,000 lb/ 2 months	800 lb/ 2 months

1/ Gear requirements and prohibitions are explained above. See IV. A.(14).
2/ "North" means 40°10' N. lat. to the U.S.-Canada border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA
3/ Bocaccio and chilipepper are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.
4/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with species specific management measures, including trip limits.
5/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies. See IV. B.(3).
6/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).
7/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter.
8/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
9/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.
10/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at IV. A.(19)(e), that may vary seasonally.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South). 2003 Trip Limits and Gear Requirements[1/] for Limited Entry Trawl Gear South of 40°10' N. Latitude[2/]

Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table

10/2003

	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area[10/] (RCA):			
40°10' - 38° N. lat.	60 fm - 200 fm	60 fm - 200 fm	60 fm - 200 fm (line modified to incorporate petrale sole fishing grounds)
38° - 34°27' N. lat.	60 fm - 200 fm	60 fm - 200 fm	60 fm - 200 fm (line modified to incorporate petrale sole fishing grounds)
South of 34°27' N. lat.	100 fm - 200 fm along the mainland coast; shoreline - 200 fm around islands	100 fm - 200 fm along the mainland coast; shoreline - 200 fm around islands	100 fm - 200 fm along the mainland coast; shoreline - 200 fm around islands (line modified to incorporate petrale sole fishing grounds)

Small footrope or midwater trawl gear is required shoreward of the RCA; all trawl gear (large footrope, midwater trawl, and small footrope gear) is permitted seaward of the RCA.

A vessel may have more than one type of limited entry bottom trawl gear on board, but the most restrictive trip limit associated with the gear on board applies for that trip and will count toward the cumulative trip limit for that gear. A vessel may not have limited entry bottom trawl gear on board if that vessel also has trawl gear on board that is permitted for use within a RCA, including limited entry midwater trawl gear, regardless of whether the vessel is intending to fish within a RCA on that fishing trip. **See IV.A.(14)(iv) for details.**

1	**Minor slope rockfish[3/]**		
2	40°10' - 38° N. lat.	1,800 lb/ 2 months	
3	South of 38° N. lat.	30,000 lb/ 2 months	
4	**Splitnose**		
5	40°10' - 38° N. lat.	1,800 lb/ 2 months	
6	South of 38° N. lat.	30,000 lb/ 2 months	
7	**DTS complex**		
8	Sablefish	9,000 lb/ 2 months	7,000 lb/ 2 months
9	Longspine thornyhead	11,500 lb/ 2 months	4,500 lb/ 2 months
10	Shortspine thornyhead	2,400 lb/ 2 months	900 lb/ 2 months
11	Dover sole	34,000 lb/ 2 months	30,000 lb/ 2 months
12	**Flatfish**		
13	All other flatfish[4/]	All other flatfish plus petrale & rex sole: 70,000 lb/ 2 months, no more than 20,000 lb/ 2 months of which may be petrale sole	70,000 lb/ 2 months
14	Petrale sole		No limit
15	Rex sole	Included in all other flatfish	
16	Arrowtooth flounder	1,000 lb/ 2 months	No limit
17	**Whiting[5/]**	Primary Season (only mid-water trawl permitted within the RCA)	10,000 lb/ trip
18	**Other Fish[9/]**	Not limited	

Table 3 (South). Continued

19	**Use of small footrope bottom trawl[7/] or mid-water trawl is required for landing all of the following species:**		
20	**Minor shelf rockfish, widow, and chilipepper rockfish[3/]**	300 lb/ month	
21	**Widow rockfish**		
22	mid-water trawl - permitted within the RCA	CLOSED[6/]	
23	**Canary rockfish**	300 lb/ month	100 lb/ month
24	**Bocaccio**	CLOSED[6/]	
25	**Cowcod**	CLOSED[6/]	
26	**Minor nearshore rockfish**	300 lb/ month	
27	**Lingcod[8/]**	1,000 lb/ 2 months	800 lb/ 2 months

1/ Gear requirements and prohibitions are explained above. See IV. A.(14).
2/ "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA
3/ Yellowtail is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.
4/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with species specific management measures, including trip limits.
5/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies. See IV. B.(3).
6/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).
7/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter.
8/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
9/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.
10/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat./long. coordinates set out at IV. A.(19)(e), that may vary seasonally.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4 (North). 2003 Trip Limits for Limited Entry Fixed Gear North of 40°10' N. Latitude[1/]

Other Limits and Requirements Apply -- Read Sections IV. A. and B.
NMFS Actions before using this table 10/2003

		JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area[8/] (RCA):			
	North of 46°16' N. lat.	shoreline - 100 fm		
	46°16' N. lat. - 40°10' N. lat.	27 fm - 100 fm		
1	**Minor slope rockfish[4/]**	No more than 25% of the weight of sablefish landed/ trip		1,800 lb/ 2 months
2	**Pacific ocean perch**	1,800 lb/ 2 months		
3	**Sablefish**	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 3,200 lb/ 2 months		300 lb/ day, or 1 landing per week of up to 900 lb, not to exceed 3,600 lb/ 2 months
4	**Longspine thornyhead**	9,000 lb/ 2 months		
5	**Shortspine thornyhead**	2,000 lb/ 2 months		
6	**Dover sole**	5,000 lb/ month		
7	**Arrowtooth flounder**			
8	**Petrale sole**			
9	**Rex sole**			
10	**All other flatfish[2/]**			
11	**Whiting[3/]**	10,000 lb/ trip		
12	**Minor shelf rockfish, widow, and yellowtail rockfish[4/]**	200 lb/ month		
13	**Canary rockfish**	CLOSED[5/]		
14	**Yelloweye rockfish**	CLOSED[5/]		
15	**Cowcod**	CLOSED[5/]		
16	**Minor nearshore rockfish**	4,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[6/]		
17	**Lingcod[7/]**	400 lb/ month		CLOSED[5/]
18	**Other fish[9/]**	Not limited		

Table 4 (North). Continued

1/ "North" means 40°10' N. lat. to the U.S.-Canada border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with species specific management measures, including trip limits.

3/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies. See IV. B.(3).

4/ Bocaccio and chilipepper are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.

5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).

6/ For black rockfish north of Cape Alava (48°09'30" N. lat.), and between Destruction Island (47°40'00" N. lat.) and Leadbetter Point (46°38'10" N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

7/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

8/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat./long. coordinates set out at IV. A.(19)(e), that may vary seasonally.

9/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4 (South). 2003 Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Latitude[1/]

Other Limits and Requirements Apply -- Read Sections IV. A. and B.
NMFS Actions before using this table 10/2003

		JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area[7/] (RCA):			
	40°10' - 34°27' N. lat.	20 fm - 150 fm		
	South of 34°27' N. lat.	20 fm - 150 fm (also applies around islands) (See footnote 8 for description of Pt. Fermin/Newport South Jetty open area)	30 fm - 150 fm (also applies around islands)	
1	**Minor slope rockfish[4/]**			
2	40°10' - 38° N. lat.	No more than 25% of weight of sablefish landed/ trip		1,800 lb/ 2 months
3	South of 38° N. lat.	30,000 lb/ 2 months		
4	**Splitnose**			
5	40°10' - 38° N. lat.	1,800 lb/ 2 months		
6	South of 38° N. lat.	20,000 lb/ 2 months		
7	**Sablefish**			
8	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 3,200 lb/ 2 months		300 lb/ day, or 1 landing per week of up to 900 lb, not to exceed 3,600 lb/ 2 months
9	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb		
10	**Longspine thornyhead**	9,000 lb/ 2 months		
11	**Shortspine thornyhead**	2,000 lb/ 2 months		
12	**Dover sole**	5,000 lb/ month When fishing for Pacific sanddabs, vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb (0.45 kg) of weight per line are not subject to the RCAs.		
13	**Arrowtooth flounder**			
14	**Petrale sole**			
15	**Rex sole**			
16	**All other flatfish[2/]**			
17	**Whiting[3/]**	10,000 lb/ trip		
18	**Minor shelf rockfish, widow, and yellowtail rockfish[4/]**	250 lb/ 2 months	200 lb/ 2 months	100 lb/ 2 months
19	**Canary rockfish**	CLOSED[5/]		
20	**Yelloweye rockfish**	CLOSED[5/]		
21	**Cowcod**	CLOSED[5/]		
22	**Bocaccio**	CLOSED[5/]		

Table 4 (South). Continued

23	**Minor nearshore rockfish**			
24	Shallow nearshore	400 lb/ 2 months	300 lb/ 2 months	200 lb/ 2 months
25	Deeper nearshore	500 lb/ 2 months	400 lb/ 2 months	
26	California scorpionfish	800 lb/ 2 months	CLOSED[5/]	
27	**Lingcod**[6/]	400 lb/ month, when nearshore open		CLOSED[5/]
28	**Other fish**[8/]	Not limited		

1/ "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with species specific management measures, including trip limits.

3/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies. See IV. B.(3).

4/ Chilipepper rockfish is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.

5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).

6/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

7/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at IV. A.(19)(e) that may vary seasonally.

8/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

9/ During July-August, between a line drawn due south from Point Fermin (33° 42' 30" N. lat.; 118° 17' 30" W. long.) and a line drawn due west from the Newport South Jetty (33° 35' 37" N .lat.; 117° 52' 50" W. long.,) vessels fishing for all federal groundfish species, except lingcod and all rockfish other than California scorpionfish, with hook&line and/or trap (or pot) gear may operate from shore to a seaward boundary line which approximates 50 fm.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

* * * * *

3. On pages 11224–11225, in section IV., under C. Trip Limits in the Open Access Fishery, Table 5 (North) and Table 5 (South) are revised to read as follows:

* * * * *

Table 5 (North). 2003 Trip Limits for Open Access Gears North of 40°10' N. Latitude[1/]

Other Limits and Requirements Apply -- Read Sections IV. A. and C.
NMFS Actions before using this table 10/2003

		JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area[8/] (RCA):			
	North of 46°16' N. lat.	0 fm - 100 fm		
	46°16' N. lat. - 40°10' N. lat.	27 fm - 100 fm		
1	**Minor slope rockfish[2/]**	Per trip, no more than 25% of weight of the sablefish landed		
2	**Pacific ocean perch**	100 lb/ month		
3	**Sablefish**	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 3,200 lb/ 2 months		300 lb/ day, or 1 landing per week of up to 900 lb, not to exceed 3,600 lb/ 2 months
4	**Thornyheads**	CLOSED[5/]		
5	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs.		
6	**Arrowtooth flounder**			
7	**Petrale sole**			
8	**Rex sole**			
9	**All other flatfish[3/]**			
10	**Whiting**	300 lb/ month		
11	**Minor shelf rockfish, widow and yellowtail rockfish[2/]**	200 lb/ month		
12	**Canary rockfish**	CLOSED[5/]		
13	**Yelloweye rockfish**	CLOSED[5/]		
14	**Cowcod**	CLOSED[5/]		
15	**Minor nearshore rockfish**	4,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[4/]		
16	**Lingcod[6/]**	300 lb/ month		CLOSED[5/]
17	**Other Fish[7/]**	Not limited		
18	**PINK SHRIMP EXEMPTED TRAWL** *(not subject to RCAs)*			
19	North	**Effective April 1 - October 31, 2003:** groundfish 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.		

Table 5 (North). Continued

20	**PRAWN EXEMPTED TRAWL** *(not subject to RCAs)*	
21	North	Groundfish 300 lb/trip. Limits and closures in this table also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip.
22	**SALMON TROLL**	
23	North	Salmon trollers may retain and land up to 1lb of yellowtail rockfish for every 2 lbs of salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 200 lb per month combined limit for minor shelf rockfish, widow rockfish and yellowtail rockfish, and not in addition to that limit. All groundfish species are subject to the open access limits, seasons and RCA restrictions listed in the table above.

1/ "North" means 40°10' N. lat. to the U.S.-Canada border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ Bocaccio and chilipepper rockfishes are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.

3/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 5 with species specific management measures, including trip limits.

4/ For black rockfish north of Cape Alava (48°09'30" N. lat.), and between Destruction Island (47°40' N. lat.) and Leadbetter Point (46°38'10" N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).

6/ The size limit for lingcod is 24 inches (61 cm) total length.

7/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

8/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours, but specifically defined by lat./long. coordinates set out at IV. A.(19)(e), that may vary seasonally.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 5 (South). 2003 Trip Limits for Open Access Gears South of 40°10' N. Latitude[1/]

Other Limits and Requirements Apply -- Read Sections IV. A. and C. NMFS Actions before using this table 10/2003

		JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area[7/] (RCA):			
	40°10' - 34°27' N. lat.	20 fm - 150 fm		
	South of 34°27' N. lat.	20 fm - 150 fm (also applies around islands) (See footnote 8 for description of Pt. Fermin/Newport South Jetty open area)	30 fm - 150 fm (also applies around islands)	
1	**Minor slope rockfish[2/]**			
2	40°10' - 38° N. lat.	Per trip, no more than 25% of weight of the sablefish landed		
3	South of 38° N. lat.	10,000 lb/ 2 months		
4	**Splitnose**	200 lb/ month		
5	**Sablefish**			
6	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 3,200 lb/ 2 months		300 lb/ day, or 1 landing per week of up to 900 lb, not to exceed 3,600 lb/ 2 months
7	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb		
8	**Thornyheads**			
9	40°10' - 34°27' N. lat.	CLOSED[5/]		
10	South of 34°27' N. lat.	50 lb/ day, no more than 2,000 lb/ 2 months		
11	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. When fishing for Pacific sanddabs, vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb of weight per line are not subject to the RCAs.		
12	**Arrowtooth flounder**			
13	**Petrale sole**			
14	**Rex sole**			
15	**All other flatfish[3/]**			
16	**Whiting**	300 lb/ month		
17	**Minor shelf rockfish, widow and chilipepper rockfish[2/]**	250 lb/ 2 months	200 lb/ 2 months	100 lb/ 2 months
18	**Canary rockfish**	CLOSED[5/]		
19	**Yelloweye rockfish**	CLOSED[5/]		
20	**Cowcod**	CLOSED[5/]		
21	**Bocaccio**	CLOSED[5/]		
22	**Minor nearshore rockfish**			
23	Shallow nearshore	400 lb/ 2 months	300 lb/ 2 months	200 lb/ 2 months
24	Deeper nearshore	500 lb/ 2 months	400 lb/ 2 months	
25	California scorpionfish	800 lb/ 2 months	CLOSED[5/]	
26	**Lingcod[4/]**	300 lb/ month, when nearshore open		CLOSED[5/]
27	**Other Fish[6/]**	Not limited		

Table 5 (South). Continued

28	**PINK SHRIMP EXEMPTED TRAWL GEAR** *(not subject to RCAs)*	
29	South	**Effective April 1 - October 31, 2003:** Groundfish 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.
30	**PRAWN AND, SOUTH OF 38°57'30" N. LAT., CALIFORNIA HALIBUT AND SEA CUCUMBER EXEMPTED TRAWL**	
31	**EXEMPTED TRAWL Rockfish Conservation Area[7/] (RCA):**	
32	40°10' - 38° N. lat.	60 fm - 200 fm
33	38° - 34°27' N. lat.	60 fm - 200 fm
34	South of 34°27' N. lat.	100 fm - 200 fm along the mainland coast; shoreline - 200 fm around islands
35		Groundfish 300 lb/trip. Trip limits in this table also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57'30" N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 25).

1/ "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ Yellowtail rockfish is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.

3/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 5 with species specific management measures, including trip limits.

4/ The size limit for lingcod is 24 inches (61 cm) total length.

5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).

6/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

7/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours, but specifically defined by lat./long. coordinates set out at IV. A.(19)(e), that may vary seasonally.

8/ During July-August, between a line drawn due south from Point Fermin (33° 42' 30" N. lat.; 118° 17' 30" W. long.) and a line drawn due west from the Newport South Jetty (33° 35' 37" N .lat.; 117° 52' 50" W. long.,) vessels fishing for all federal groundfish species, except lingcod and all rockfish other than California scorpionfish, with hook&line and/or trap (or pot) gear may operate from shore to a seaward boundary line which approximates 50 fm.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

* * * * *

Classification

These actions are authorized by the Pacific Coast groundfish FMP and its implementing regulations, and are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS, (see **ADDRESSES**) during business hours.

The Assistant Administrator for Fisheries (AA), NMFS, finds good cause to waive the requirement to provide prior notice and opportunity for public comment on this action pursuant to 5 U.S.C. 553(b)(3)(B), because providing prior notice and opportunity for comment would be impracticable and contrary to the public interest. The data upon which these recommendations were based was provided to the Pacific Council and the Pacific Council made its recommendations at its September 8–12, 2003 meeting in Seattle, WA. There was not sufficient time after that meeting to draft this notice and undergo proposed and final rulemaking before these actions need to be in effect as explained below. For the actions to be implemented in this notice, prior notice and opportunity for comment would be impracticable because affording prior notice and opportunity for public comment would take too long, thus impeding the Agency's function of managing fisheries to approach without exceeding the OYs for federally managed species. For November through December, the trip limit adjustments in this document include both increases and decreases from previously scheduled trip limits, as well as implementation of a trawl RCA boundary line which approximates the 200–fm depth contour as modified to incorporate petrale sole fishing grounds. Trip limit decreases must be implemented in a timely manner to protect overfished groundfish species, such as canary rockfish, and slow the harvest of other groundfish species, such as shortspine thornyhead, thereby, ensuring harvesting opportunities without exceeding the OY for those species throughout the remainder of the year. Additionally, trip limit increases are intended to allow harvest opportunity for fisheries targeting more abundant groundfish stocks with little or no impact on overfished stocks. Implementation of the coordinates for the trawl RCA boundary line which approximates the 200–fm depth contour, as modified to allow access to the petrale sole fishing grounds during the winter months (November and December), is intended to allow fishermen access to fishing grounds in areas when and where petrale sole tend to aggregate. These are also the times and areas where flatfish trawl tows are less likely to intercept overfished groundfish species. Because the Pacific Coast groundfish fishery is managed by trip limits and area closures, most of which are based on a 2 month cumulative period (January-February, March-April, May-June, July-August, September-October, November-December), these actions must be implemented by the beginning of the next cumulative trip limit period (November 1, 2003). Otherwise, for species for which the trip limits are being reduced, fishers may be able to take the entire 2–month cumulative limit before the new lower limits are in place, thereby eliminating the conservation benefit anticipated from the lower trip limits in November and December and possibly exceeding the OY for some species. For the increases to trip limits to be effective November 1, 2003, the increased trip limits allow fishers to access groundfish allocations without exceeding the OY for those species or the OYs of overfished or depleted stocks and delaying the increase could prevent the industry from obtaining the intended benefit of increased harvest opportunity.

For these reasons, good cause also exists to waive the 30 day delay in effectiveness requirement under 5 U.S.C. 553 (d)(3). In addition, the increased trip limits relieve restrictions by allowing fishermen to harvest more fish than would have been allowed under the limits previously scheduled for the remainder of the year; thus, they are not subject to a 30 day delay in effectiveness under 5 U.S.C. 553(d)(1).

These actions are taken under the authority of 50 CFR 660.323(b)(1) and are exempt from review under Executive Order 12866.

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

Dated: October 21, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–26927 Filed 10–23–03; 8:45 am]

BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 68, No. 206
Friday, October 24, 2003

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 40

State of Utah: NRC Staff Assessment of Utah's Proposed Alternative Standard to Use Utah's Existing Groundwater Regulation in Lieu of the Nuclear Regulatory Commission Regulations; Addition of Supplementary Information, Notice of Availability of Documents, and Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Supplementary information on hearing process; availability of documents; extension of comment period.

SUMMARY: The NRC is supplementing the information provided in the Notice and Opportunity for Public Hearing: ''State of Utah: NRC Staff Assessment of Utah's Proposed Alternative Standard to Use Utah's Existing Groundwater Regulation in Lieu of the Nuclear Regulatory Commission Regulations'' (68 FR 51516; August 27, 2003). This supplement provides details about the hearing process discussed in the August 27, 2003 notice. In addition, although already publicly available from the National Technology Information Service (NTIS) where they can be purchased, the two documents referenced in the August notice, *i.e.*, NUREG–0706, *Final Generic Environmental Impact Statement on Uranium Milling* (September 1980), and EPA 520/1–83–008, *Final Environmental Impact Statement for Standards for the Control of Byproduct Materials from Uranium Processing* (September 1983), have been placed into the NRC's Publicly Available Records (PARS) component of NRC's document system (ADAMS). The NRC is also extending the date by which interested persons may submit comments on this action.

DATES: The comment period expires on November 24, 2003. Comments received after this date will be considered if it is practical to do so, but the Commission cannot assure consideration of comments received after the expiration date.

ADDRESSES: Written comments may be submitted to Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff. Email comments to: *SECY@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays.

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

The documents referenced in the **SUMMARY** paragraph, as well as copies of comments received by the NRC, the State's submittals, and the correspondence between the State and the NRC staff, are accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/html*. The ADAMS accession numbers for NUREG–0706, *Final Generic Environmental Impact Statement on Uranium Milling* (September 1980) is ML032751661, and for EPA 520/1–83–008, *Final Environmental Impact Statement for Standards for the Control of Byproduct Materials from Uranium Processing* (September 1983), is ML032751390. The documents, comments, submittals, and correspondence are also available, and may be copied for a fee, at the NRC Public Document Room, 11555 Rockville Pike, Public File Area O–1–F21, Rockville, Maryland 20852.

This notice, the August 27, 2003 (68 FR 51516) notice, and the comments received on the August 27, 2003 notice, are available on the NRC Web site at *http://ruleforum.llnl.gov* under the information/comment request category.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. Copies of documents cited in this section are available through ADAMS. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

The State has posted documents related to its amendment application including the alternative groundwater regulations on the State's Web site at: *http://www.deq.state.ut.us/EQRAD/milllst.htm*.

FOR FURTHER INFORMATION CONTACT: Dennis M. Sollenberger, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone (301) 415–2819 or e-mail *dms4@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Background

By letter dated October 23, 2002, to Paul Lohaus, Director, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission (NRC), William J. Sinclair, Director, Division of Radiation Control (the State), State of Utah, submitted information on how the State proposes to regulate a portion of the groundwater aspects of uranium milling in the State of Utah. Utah's proposed approach is to use its existing groundwater protection regulations, based on Environmental Protection Agency (EPA) drinking water limits, in lieu of a portion of the specific groundwater requirements in Appendix A to 10 CFR part 40 (Appendix A).

The Commission has determined that Utah's proposal constitutes use of alternative standards. The Uranium Mill Tailings Radiation Control Act of 1978 which amended the Atomic Energy Act of 1954 (Act), by adding Section 274o, requires the Commission to make a determination that such alternative standards will achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety, and the environment from radiological and non-radiological hazards associated with such sites, that is equivalent to, to the extent practicable, or more stringent than the level that would be achieved by standards and requirements adopted and enforced by the Commission for the same purpose, after notice and an opportunity for hearing. However, neither the Act nor its legislative history, identify the type of hearing the Commission must use. Therefore, the

Commission has the discretion to determine how to implement this requirement in Section 274o of the Act. The August notice discusses this issue but did not provide the specifics of the Subpart H-like process that the Commission has adopted, based on Subpart H of 10 CFR Part 2, to fulfill the notice and hearing requirement in Section 274o of the Act. This notice is intended to supplement the August notice by providing clarification of what is meant by the Subpart H-like process.

Discussion

The Commission has, in its discretion, adopted the notice and comment process in Subpart H of 10 CFR Part 2 to fulfill its notice and hearing requirement in Section 274o of the Act. The Subpart H-like process described in this notice is similar to that in 10 CFR 2.804. Specifically, notice for this Section 274o process provides for: (1) A notice that includes the substance of the proposal or specifications of the subject and issues involved (the August 27, 2003 notice as supplemented by this notice); (2) the manner and time within which interested members of the public may comment (the information regarding the submittal of comments and the deadline, which has been extended to November 24, 2003 for submitting comments), and an opportunity for members of the public to examine those comments at the NRC Web site; and (3) such explanatory statements as the Commission may consider appropriate (which refers to the Supplemental Information provided in the August 27, 2003 notice as supplemented by this notice). In addition, the Subpart H-like process will (4) also provide, similar to the provision in 10 CFR 2.805(a), that in such proceedings, the Commission will afford interested persons the opportunity to participate through the submission of statements, information, opinions, and arguments in the manner stated in the notice, as well as additional reasonable opportunity for the submission of comments.

Accordingly, the August 27, 2003 notice as supplemented by this notice, constitute the notice required by Section 274o of the Act.

Dated at Rockville, Maryland, this 20th day of October, 2003.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 03–26895 Filed 10–23–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 71

Regulations for the Safe Transport of Radioactive Material; Public Meeting

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of public meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) and the U.S. Department of Transportation (DOT) are jointly seeking public views on U.S. DOT positions on the proposed changes to the requirements of the 1996 Edition for the Safe Transport of Radioactive Material (TS–R–1). The changes will likely necessitate domestic compatibility rulemakings by both NRC and DOT. To discuss U.S. DOT positions on the proposed changes, DOT is convening a public meeting as the U.S. competent authority for transportation matters before IAEA. Recognizing DOT's role, in lieu of separate meeting, NRC will participate at the meeting.

DATES: The public meeting will be held on November 5, 2003, from 9:30 a.m. to 11 a.m.

ADDRESSES: The meeting will be conducted at the Department of Transportation, Nassif Building, 400 Seventh Street, SW., Room 6244, Washington, DC, 20590–0001 in room 8236–8240.

FOR FURTHER INFORMATION CONTACT: John Cook, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–8521; e-mail: *jrc1@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

On May 9, 2003, the International Atomic Energy Agency (IAEA) posted 63 proposed changes to the requirements of the 1996 Edition of the Agency's Regulations for the Safe Transport of Radioactive Material (TS–R–1) on the World Wide Web [see *http://hazmat.dot.gov/files/IAEA_TS–R–1_rev_prop.pdf*]. IAEA's revision process calls for Member States and International Organizations to have an opportunity for a period of 120 days to provide comments. The objective is publication of revised regulations in 2005, nominally to become effective worldwide in 2007.

The IAEA periodically revises its transportation regulations (referred to as TS–R–1) to reflect new information and accumulated experience. In 2000, IAEA requested proposals for change to ultimately result in a 2005 edition of TS–R–1. Over 200 proposals were submitted to IAEA to change the regulations, guidance material, or identify problems for further work. These were later narrowed down to 63 proposals that were accepted for comment.

Because some of the proposed changes being considered for the 2005 edition of TS–R–1 would, if approved, result in a need to consider a revision of U.S. transport regulations (49 CFR 100–185 and 10 CFR part 71), the DOT and the NRC are jointly seeking public views on the U.S. DOT positions on the proposed changes. This information will assist DOT and NRC in having a full range of views as the proposals are developed. Note that future domestic rulemakings, if necessary, will continue to follow established rulemaking procedures, including the opportunity to formally comment on proposed rules.

The DOT is the U.S. competent authority before IAEA for radioactive material transportation matters. On July 22, 2003, DOT held a public meeting to obtain public comment on the proposed changes (as was announced in the **Federal Register** on June 10, 2003, 68 FR 34695), and accepted written comments through August 8, 2003. Rather than convene a separate public meeting, as co-regulators for U.S. radioactive material transportation matters, NRC announced on June 26, 2003 (68 FR 3796), that it would participate at DOT's public meeting.

DOT has since considered public comments received and forwarded U.S. DOT positions on the proposed changes to IAEA. A summary of the U.S. DOT positions may be downloaded at *http://hazmat.dot.gov/files/IAEA_TS–R–1_dot_postition.pdf.* On October 14, 2003, DOT published a notice in the **Federal Register** announcing that DOT will conduct a public meeting to discuss U.S. DOT positions on the proposed changes on November 5, 2003, at DOT Headquarters. NRC staff will be available at that meeting to respond to any technical questions concerning the positions' potential impacts to Type B or fissile materials regulated in 10 CFR part 71.

Dated at Rockville, Maryland, this 20th day of October 2003.

For the Nuclear Regulatory Commission.

David W. Pstrak,

Transportation and Storage Project Manager, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–26892 Filed 10–23–03; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 114

[NOTICE 2003—18]

Rulemaking Petition: Payroll Deduction Contributions to a Trade Association's Separate Segregated Fund

AGENCY: Federal Election Commission.

ACTION: Rulemaking petition: notice of availability.

SUMMARY: On September 3, 2003, the Commission received a Petition for Rulemaking from America's Community Bankers (''ACB''), a trade association, and its separate segregated fund (''SSF''), COMPAC. The Petition urges the Commission to revise the rule prohibiting the use by member corporations of payroll deductions for contributions to a trade association's separate segregated fund. The Petition is available for inspection in the Commission's Public Records Office, through its Faxline service, and on its Web site, *http://www.fec.gov.*

DATES: Statements in support of or in opposition to the Petition must be submitted on or before November 24, 2003.

ADDRESSES: All comments should be addressed to Mr. John C. Vergelli, Acting Assistant General Counsel, and must be submitted in either electronic or written form. Electronic mail comments should be sent to *payrollded03@fec.gov* and must include the full name, electronic mail address, and postal service address of the commenter. Electronic mail comments that do not contain the full name, electronic mail address, and postal service address of the commenter will not be considered. If the electronic mail comments include an attachment, the attachment must be in the Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up to ensure legibility. Written comments and printed copies of faxed comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. The Commission will make every effort to have public comments posted on its web site within ten business days of the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Mr. John C. Vergelli, Acting Assistant General Counsel, or Ms. Esa L. Sferra, Law Clerk, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Election Commission (''Commission'') has received a Petition for Rulemaking from America's Community Bankers and its SSF. Petitioners ask that the Commission revise 11 CFR 114.8(e)(3) to permit, rather than prohibit, the use of payroll deductions for contributions to a trade association's separate segregated fund by a member corporation's executive and administrative personnel.

The Commission seeks comments on this issue. In particular, the Commission asks: Do the proposals by the petitioners represent permissible interpretations of the Federal Election Campaign Act, as amended, specifically 2 U.S.C. 441b? If so, which policy and factual considerations support, and which oppose, petitioners' proposal?

Copies of the Petition for Rulemaking are available for public inspection at the Commission's Public Records Office, 999 E Street, NW., Washington, DC 20463, Monday though Friday between the hours of 9 a.m. and 5 p.m., and on the Commission's Web site, *http://www.fec.gov.* Interested persons may also obtain a copy of the Petition by dialing the Commission's Faxline service at (202) 501–3413 and following its instructions, at any time of the day and week. Request document #255.

Consideration of the merits of the Petition will be deferred until the close of the comment period. If the Commission decides that the Petition has merit, it may begin a rulemaking proceeding. Any subsequent action taken by the Commission will be announced in the **Federal Register**.

Dated: October 17, 2003.

Michael E. Toner,

Commissioner, Federal Election Commission.

[FR Doc. 03–26749 Filed 10–23–03; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–37–AD]

RIN 2120–AA64

Airworthiness Directives; AeroSpace Technologies of Australia Pty Ltd. Models N22B, N22S, and N24A Airplanes

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 AeroSpace Technologies of Australia Pty Ltd. (ASTA) Models N22B, N22S, and N24A airplanes. This proposed AD would require you to repetitively inspect wing fittings for fatigue defects, replace or correct defective wing fittings, and replace the stub wing front spar assembly and wing fitting when fatigue life limits are reached. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Australia. We are issuing this proposed AD to detect and correct defects in the wing strut upper end fittings, wing strut lower end fittings, stub wing strut pick up fittings, and the stub wing front spar assembly. These defects could result in failure of the fittings or spar assembly and lead to reduced structural capability or reduced controllability of the airplane.

DATES: We must receive any comments on this proposed AD by December 4, 2003.

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

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–37–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail: 9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2003–CE–37–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this proposed AD from Nomad Operations, Aerospace Support Division, Boeing Australia, PO Box 767, Brisbane, QLD 4000 Australia; telephone 61 7 3306 3366; facsimile 61 7 3306 3111.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–37–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ron Atmur, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5224; facsimile (562) 627–5210.

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 ''AD Docket No. 2003–CE–37–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it. We will date-stamp your postcard and mail it back to you.

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.

Discussion

What events have caused this proposed AD? The Civil Aviation Safety Authority (CASA), which is the airworthiness authority for Australia, recently notified FAA that an unsafe condition may exist on all ASTA Models N22B, N22S, and N24A airplanes. The CASA reports that fatigue tests on the wing strut upper end fitting have shown premature failures and rapid crack growth. Also, fatigue tests on the wing strut lower end fittings, stub wing strut pick up fitting, and stub wing front spar assembly have identified appropriate fatigue lives for the respective parts.

What are the consequences if the condition is not corrected? Fatigue loading could result in failure of the wing strut upper end fitting, wing strut lower end fittings, stub wing strut pick up fitting, or stub wing front spar assembly. Such failure could lead to reduced structural capability or reduced controllability of the airplane.

Is there service information that applies to this subject? Boeing Australia (formerly ASTA) Aerospace Technologies of Australia has issued:

—Nomad Alert Service Bulletin No. ANMD–57–12, Revision 2, dated May 25, 1999;
—Nomad Service Bulletin No. NMD–53–18, dated February 8, 1996; and
—Nomad Service Bulletin No. NMD–53–18, Revision 1, dated September 3, 2002.

What are the provisions of this service information? The service bulletins include procedures for:

—Performing a fatigue inspection of the stub wing strut pick-up fittings for cracks;
—Replacing the stub wing strut pick-up fittings;
—Inspecting (visually) the strut to upper strut fittings bolt holes for scoring, ovality, fretting, corrosion, and dimensions;
—Inspecting (eddy current method) the strut to upper strut fittings bolt holes for cracks;
—Modifying (line ream) the strut to upper strut fitting bolt holes;
—Replacing bolts for the strut upper end fittings; and
—Replacing the strut upper end fittings.

What action did the CASA take? The CASA classified these service bulletins as mandatory and issued these Australian ADs in order to ensure the continued airworthiness of these airplanes in Australia:

—AD Number AD/GAF–N22/2, Amendment 3, dated January 28, 2003; and
—AD Number AD/GAF–N22/70, Amendment 2, dated January 28, 2003.

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? We have examined the CASA'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 ASTA Models N22B, N22S, and N24A airplanes of the same type design that are registered in the United States, we are proposing AD action to detect and correct defects in the wing strut upper end fittings, wing strut lower end fittings, stub wing strut pick up fittings, and the stub wing front spar assembly. These defects could result in failure of the fittings or spar assembly and lead to reduced structural capability or reduced controllability of the airplane.

What would this proposed AD require? This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

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

Costs of Compliance

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 15 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the proposed inspection of the wing strut upper end fitting bolt holes:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
12 workhours × $65 per hour = $780	Not applicable	$780	15 × $780 = $11,700

We estimate the following costs to accomplish the proposed inspection of the stub wing strut pick up fittings:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
16 workhours × $65 per hour = $1,040	Not applicable	$1,040	15 × $1,040 = $15,600

We estimate the following costs to accomplish any necessary replacements of the wing strut upper end fittings that would be required based on the results of the proposed inspection or on reaching the fatigue life limit. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
10 workhours × $65 per hour = $650	$679	$650 + $679 = $1,329

We estimate the following costs to accomplish any necessary replacements of the wing strut lower end fittings that would be required based on reaching the fatigue life limit. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
12 workhours × $65 per hour = $780	$193	$780 + $193 = $973

We estimate the following costs to accomplish any necessary replacements of the stub wing strut pick up fittings that would be required based on the results of the proposed inspection or on reaching the fatigue life limit. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
80 workhours × $65 per hour = $5,200	$985	$5,200 + $985 = $6,185

We estimate the following costs to accomplish any necessary replacements of the stub wing front spar assembly that would be required based on reaching the fatigue life limit. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
370 workhours × $65 per hour = $24,050	$4,820	$24,050 + $4,820 = $28,870

Regulatory Findings

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

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

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

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket No. 2003–CE–37–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

AeroSpace Technologies of Australia Pty Ltd.: Docket No. 2003–CE–37–AD

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

(a) We must receive comments on this proposed airworthiness directive (AD) action by December 4, 2003.

Are Any Other ADs Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects Models N22B, N22S, and N24A airplanes, all serial numbers, that are 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 Australia. The actions specified in this AD are intended to detect and correct defects in the wing strut upper end fittings, wing strut lower end fittings, stub wing strut pick up fittings, and the stub wing front spar assembly. These defects could result in failure of the fittings or spar assembly and lead to reduced structural capability or reduced controllability of the airplane.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Inspect the wing strut upper end fitting bolt holes: (i) Visually inspect for scoring, ovality, fretting, corrosion, and dimensions; and (ii) Inspect, using eddy current inspection, for cracks.	For Models N22S and N24A: Initially inspect before 3,600 hours time-in-service (TIS) on the wing strut upper end fitting or within the next 100 hours TIS after the effective date of this AD, whichever occurs later. Repetitively inspect thereafter at every 900 hours TIS until 14,400 hours TIS are accumulated on the wing strut upper end fitting. For Model N22B: Initially inspect before 5,400 hours TIS on the wing strut upper end fitting or within the next 100 hours TIS after the effective date of this AD, whichever occurs later. Repetitively inspect thereafter at every 1,200 hours TIS until 14,400 hours TIS are accumulated on the wing strut upper end fitting.	Follow the Accomplishment Instructions in Boeing Australia Aerospace Technologies of Australia Nomad Alert Service Bulletin No. ANMD–57–12, Revision 2, dated May 25, 1999.
(2) Complete corrective actions for defects of the wing strut upper end fittings: (i) If a crack is found or the hole in the strut upper end fitting is damaged and will not clean up, replace the wing strut upper end fittings. (ii) If the hole in the strut is oval or damaged, and the oversize line reamer will not repair it: (A) Get a repair scheme from the manufacturer; and (B) Follow this repair scheme. (iii) If scoring, fretting, or corrosion is found, or all dimensions are within limits, line ream the hole and replace the bolt.	Before further flight after the inspection required in paragraph (e)(1) of this AD, unless already accomplished.	Follow the Accomplishment Instructions in Boeing Australia Aerospace Technologies of Australia Nomad Alert Service Bulletin No. ANMD–57–12, Revision 2, dated May 25, 1999; and any repair scheme obtained from Nomad Operations, Aerospace Support Division, Boeing Australia, PO Box 767, Brisbane, QLD 4000 Australia; telephone 61 7 3306 3366; facsimile 61 7 3306 3111. Obtain approval of this repair scheme through the FAA at the address specified in paragraph (f) of this AD.
(3) Replace the wing strut upper end fittings	Before further flight when cracks are found by the inspection required in paragraph (e)(1); and upon the accumulation of 14,400 hours TIS on the fitting or within the next 100 hours TIS after the effective date of this AD, whichever occurs later. For Models N22S and N24A: start repetitive inspections of paragraph (e)(1) of this AD when 7,200 hours TIS are accumulated on the wing strut upper end fitting. For Models N22B: start repetitive inspections of paragraph (e)(1) of this AD when 10,800 hours TIS are accumulated on the wing strut upper end fitting.	Follow the Accomplishment Instructions in Boeing Australia Aerospace Technologies of Australia Nomad Alert Service Bulletin No. ANMD–57–12, Revision 2, dated May 25, 1999.
(4) Replace the wing strut lower end fittings: (i) Get a repair scheme from the manufacturer; and (ii) Follow this repair scheme.	Upon the accumulation of 14,000 hours TIS on the fitting or within the next 100 hours TIS after the effective date of this AD, whichever occurs later.	Follow a repair scheme from Nomad Operations, Aerospace Support Division, Boeing Australia, PO Box 767, Brisbane, QLD 4000 Australia; telephone 61 7 3306 3366; facsimile 61 7 3306 3111. Get approval of this repair scheme through the FAA at the address specified in paragraph (f) of this AD.
(5) Inspect the stub wing strut pick up fittings for cracks.	Initially inspect upon the accumulation of 5,400 hours TIS on the fitting or within the next 300 hours TIS on the fitting after the effective date of this AD, whichever occurs later. Repetitively inspect thereafter at every 1,800 hours TIS until 18,800 hours TIS are accumulated on the stub wing strut pick up fitting.	Follow the Accomplishment Instructions in Aerospace Technologies of Australia Nomad Service Bulletin No. NMD–53–18, dated February 8, 1996; or Boeing Australia Aerospace Technologies of Australia Nomad Service Bulletin No. NMD–53–18, Revision 1, dated September 3, 2002; and the applicable airplane maintenance manual.
(6) Replace the stub wing strut pick up fittings ..	Before further flight when cracks are found after the inspection required in paragraph (e)(5) of this AD, unless already accomplished; and upon the accumulation of 18,800 hours TIS or 300 hours TIS after the effective date of this AD, whichever occurs later.	Follow the Accomplishment Instructions in Aerospace Technologies of Australia Nomad Service Bulletin No. NMD–53–18, dated February 8, 1996; or Boeing Australia Aerospace Technologies of Australia Nomad Service Bulletin No. NMD–53–18, Revision 1, dated September 3, 2002; and the applicable airplane maintenance manual.

Actions	Compliance	Procedures
(7) Replace the stub wing front spar assembly: (i) Get a repair scheme from the manufacturer; and (ii) Follow this repair scheme.	Upon the accumulation of 25,000 hours TIS on the fitting or within the next 100 hours TIS after the effective date of this AD, whichever occurs later.	Follow a repair scheme from Nomad Operations, Aerospace Support Division, Boeing Australia, PO Box 767, Brisbane, QLD 4000 Australia; telephone 61 7 3306 3366; facsimile 61 7 3306 3111. Get approval of this repair scheme through the FAA at the address specified in paragraph (f) of this AD.

What About Alternative Methods 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 39.13. Send your request to the Manager, Los Angeles Aircraft Certification Office, FAA. For information on any already approved alternative methods of compliance, contact Ron Atmur, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5224; facsimile (562) 627–5210.

How Do I Get Copies of the Documents Referenced in This AD?

(g) You may get copies of the documents referenced in this AD from Nomad Operations, Aerospace Support Division, Boeing Australia, PO Box 767, Brisbane, QLD 4000 Australia; telephone 61 7 3306 3366; facsimile 61 7 3306 3111. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Is There Other Information That Relates to This Subject?

(h) These Australian ADs also address the subject of this AD: AD Number AD/GAF-N22/2, Amendment 3, dated January 28, 2003, and AD Number AD/GAF–N22/70, Amendment 2, dated January 28, 2003.

Issued in Kansas City, Missouri, on October 20, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–26899 Filed 10–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740 and 774

[Docket No. 031016261–3261–01]

RIN 0694–AC95

Computer Technology and Software, and Microprocessor Technology Eligible for Export or Reexport Under License Exception

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Proposed rule.

SUMMARY: The Bureau of Industry and Security (BIS) proposes to expand the availability of license exceptions for exports and reexports of computer technology and software, and microprocessor technology on the Commerce Control List (CCL) of the Export Administration Regulations (EAR) under Export Classification Control Numbers (ECCNs) 3E002, 4D001 and 4E001. These ECCNs control technology and software that can be used for the development, production, or use of computers, and development and production of microprocessors. The goal of this proposed rule is to solicit public comments to assist BIS in evaluating the effect of the proposed amendments. In addition, this proposed rule requests industry to suggest alternatives for a different method or parameter for controlling exports of computers and microprocessors, and the technology and software therefore.

DATES: Comments must be received by November 24, 2003.

ADDRESSES: Written comments (four copies) should be sent to Sharron Cook, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue, NW., P.O. Box 273, Room 2705, Washington, DC 20230; or one copy e-mailed to: *scook@bis.doc.gov*; or faxed to 202–482–3355.

FOR FURTHER INFORMATION CONTACT: Sharron Cook, Senior Export Policy Analyst, Office of Exporter Services, Regulatory Policy Division, Bureau of Industry and Security, Telephone: (202) 482–2440.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Industry and Security (BIS) proposes to expand license exception availability under the Export Administration Regulations (EAR) for certain exports of computer technology and software and microprocessor technology. Industry has requested that BIS raise the Composite Theoretical Performance (CTP) eligibility level for computer and microprocessor technology and software to correspond with that for equipment, in order to enable companies to provide access to this technology and software to foreign nationals working in their U.S. and foreign facilities.

Computer Technology and Software

The EAR control the export and reexport of technology and software for the development, production, or use of computers with a CTP greater than 28,000 Millions of Theoretical Operations per Second (MTOPS) under Export Control Classification Numbers (ECCNs) 4D001 and 4E001 of the Commerce Control List (CCL). Such technology and software requires a license, for national security (NS) reasons, to all destinations except Canada. However, ECCNs 4D001 and 4E001 provide that License Exception TSR (section 740.6 of the EAR) is available for exports and reexports of such technology and software: (1) For computers of unlimited CTP to 22 countries; and (2) for computers with a CTP less than or equal to 33,000 MTOPS to countries listed in Country Group B (Supplement No. 1 to part 740). License Exception TSR availability for computer software and technology is inconsistent with License Exception CTP availability for computer hardware in two ways: (1) The countries eligible; and (2) the MTOPS level.

On June 4, 2002, BIS published a notice of inquiry (67 FR 39675), requesting information from industry to assist BIS in evaluating the license exception eligibility level of 33,000 MTOPS for exports and reexports of computer technology and software controlled under ECCNs 4D001 and 4E001. BIS received four comments in response to the notice of inquiry, all stating that the license exception threshold should be adjusted.

This proposed rule would remove License Exception TSR eligibility for certain computer technology and software under ECCNs 4D001 and 4E001, but would make this computer technology and software eligible for License Exception CTP (section 740.7 of the EAR). License Exception CTP currently only applies to computer hardware classified under ECCN 4A003. The 22 countries that are currently eligible to receive technology and

software for computers with unlimited CTP under License Exception TSR would continue to be eligible for the same, unlimited level of technology and software under License Exception CTP. All of these 22 countries are in ''Computer Tier 1'' for purposes of License Exception CTP. Technology and software for computers with a CTP equal to or less than 150,000 MTOPS for export or reexport to Computer Tier 1 destinations other than these 22 countries would be eligible for License Exception CTP. Technology and software for computers with a CTP equal to or less than 75,000 MTOPS would be eligible for License Exception CTP to ''Computer Tier 3'' destinations. Exports and reexports to countries in Country Group E:1 (terrorist supporting countries) will continue to be ineligible for License Exception CTP. The following chart shows the proposed eligibility thresholds under License Exception CTP.

PROPOSED COMPUTER TECHNOLOGY AND SOFTWARE ELIGIBILITY THRESHOLDS UNDER LICENSE EXCEPTION CTP

Unlimited CTP	22 ''Tier 1'' countries: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, and the United Kingdom.
150,000 MTOPS	All other ''Tier 1'' countries: Antigua and Barbuda, Argentina, Bahamas, Bangladesh, Barbados, Belize, Benin, Bhutan, Bolivia, Botswana, Brazil, Brunei, Burkina Faso, Burma, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Chile, Colombia, Congo, Costa Rica, Cote d'Ivoire, Cyprus, Czech Republic, Dominica, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Gabon, Gambia (The), Ghana, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hong Kong, Hungary, Iceland, Indonesia, Jamaica, Kenya, Kiribati, Korea (Republic of), Latvia, Lesotho, Liberia, Liechtenstein, Lithuania, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritius, Mexico, Micronesia (Federated States of), Monaco, Mozambique, Namibia, Nauru, Nepal, Nicaragua, Niger, Nigeria, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Romania, Rwanda, St. Kitts & Nevis, St. Lucia, St. Vincent and Grenadines, Sao Tome & Principe, San Marino, Senegal, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Sri Lanka, Surinam, Swaziland, Taiwan, Tanzania, Togo, Tonga, Thailand, Trinidad and Tobago, Tuvalu, Uganda, Uruguay, Vatican City, Venezuela, Western Sahara, Western Samoa, Zaire, Zambia, and Zimbabwe.
75,000 MTOPS	All ''Tier 3'' countries: Afghanistan, Albania, Algeria, Andorra, Angola, Armenia, Azerbaijan, Bahrain, Belarus, Bosnia & Herzegovina, Bulgaria, Cambodia, China (People's Republic of), Comoros, Croatia, Djibouti, Egypt, Georgia, India, Israel, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Laos, Lebanon, Macau, Macedonia (The Former Yugoslav Republic of), Mauritania, Moldova, Mongolia, Morocco, Oman, Pakistan, Qatar, Russia, Saudi Arabia, Tajikistan, Tunisia, Turkmenistan, Ukraine, United Arab Emirates, Uzbekistan, Vanuatu, Vietnam, Yemen, and Federal Republic of Yugoslavia (Serbia and Montenegro).
Not eligible	Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

Microprocessor Technology

Technology for the development and production of microprocessors that have a CTP exceeding 530 MTOPS and an arithmetic logic unit with an access width of 32 bits or more are controlled by ECCN 3E002. License Exception TSR is available for the export and reexport of technology for microprocessors of unlimited CTP to occur to all Country Group B countries (*see* Supplement No. 1 to part 740 of the EAR), if all the criteria of License Exception TSR are met (*see* section 740.6 of the EAR for License Exception TSR requirements).

This rule proposes to make technology for the development and production of microprocessors also eligible for License Exception CIV. The threshold for eligibility would be limited by CTP at a level that is yet to be determined. License Exception CIV is available for exports and reexports of items that require a license for national security reasons only that are destined to civil end-users for civil end-uses in Country Group D:1, except North Korea. CIV may not be used for exports and reexports to military end-users or to known military uses. In addition to conventional military activities, military uses include any proliferation activities described in part 744 of the EAR. It should be noted that a license is also required for transfer of items exported under License Exception CIV to military end-users or end-uses within Country Group D:1 countries.

Request for Comments

The goals of this proposed rule are to solicit public comments to assist BIS in evaluating the effect the proposed amendments to expand license exception availability would have on industry, and to discover whether industry would suggest a different method or parameter for controlling exports of computers and microprocessors, and the technology and software therefor. To ensure maximum public participation in the review process, comments are solicited for the next 30 days. In particular, BIS is interested in comments relating to the following:

1. What impact would the proposed revision of computer technology and software controls have on your company?

2. Is there another proposal regarding computer technology and software, and microprocessor technology controls that you would like Commerce to consider? If so, describe your proposal in detail and please give technical and other justifications for your proposal.

3. What is the highest CTP level for microprocessors currently being manufactured by your company?

4. What should be the CTP MTOPS limitation for microprocessor technology under the proposed License Exception CIV? Please provide detailed technical and other justification for your proposal.

5. How do other countries license the transfer of computer technology and software, and microprocessor technology? Have there been instances where your company has been placed at a competitive disadvantage based on current U.S. license requirements?

6. What are your predictions for the CTP level of microprocessors that will be in production 3 and 5 years from now? On what basis did you make your predictions?

7. What percentage of your research and development is accomplished: (1)

Outside of the United States; and (2) with the assistance of foreign nationals within the United States?

8. Is there an alternative method or parameter for controlling exports of computers and microprocessors and the technology and software therefore that industry believes would be more in-line with the way industry produces, develops, or measures these items?

Parties submitting comments are asked to be as specific as possible. The Department encourages interested persons who wish to comment to do so at the earliest possible time.

The period for submission of comments will close November 24, 2003. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in the development of final regulations. All comments on these regulations will be a matter of public record and will be available for public inspection and copying. The Department requires comments be submitted in written form.

The public record concerning these comments will be maintained in the Bureau of Industry and Security, Office of Administration, U.S. Department of Commerce, Room 6883, 14th and Constitution Avenue, NW., Washington, DC 20230; (202) 482–0637. This component does not maintain a separate public inspection facility. Requesters should first view BIS's FOIA Web site (which can be reached through *http://www.bis.doc.gov/foia*). If the records sought cannot be located at this site, or if the requester does not have access to a computer, please call the phone number above for assistance.

Although the Export Administration Act expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), as extended by the Notice of August 14, 2002 (3 CFR, 2002 Comp., p. 306 (2003)), continues the Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This regulation involves collections previously approved by the Office of Management and Budget under control numbers 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 45 minutes per manual submission and 40 minutes per electronic submission. Miscellaneous and recordkeeping activities account for 12 minutes per submission.

3. This rule does not contain policies with federalism implications as this term is defined in Executive Order 13132.

4. Pursuant to 5 U.S.C. 553(b)(A), the provisions of the Administrative Procedure Act requiring a notice of proposed rulemaking and the opportunity for public comment are waived, because this regulation involves a general statement of policy and rule of agency procedure. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. However, in view of the importance of this proposed rule, which represents the first comprehensive statement of BIS's approach toward these issues, BIS is seeking public comments before these revisions take effect. The period for submission of comments will close November 24, 2003. BIS will consider all comments received before the close of the comment period in developing a final rule. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. BIS will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. BIS will return such comments and materials to the persons submitting the comments and will not consider them in the development of the final rule. All public comments on this proposed rule must be in writing (including fax or e-mail) and will be a matter of public record, available for public inspection and copying. The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays these public comments on BIS's Freedom of Information Act (FOIA) Web site at *http://www.bis.doc.gov/foia*. This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this Web site, please call BIS's Office of Administration at (202) 482–0637 for assistance.

List of Subjects

15 CFR Part 740

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

15 CFR Part 774

Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, parts 740 and 774 of the Export Administration Regulations (15 CFR parts 730–799) are proposed to be amended as follows:

PART 740—[AMENDED]

1. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 901–911, Pub. L. 106–387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, August 11, 2003.

2. Section 740.7 is revised to read as follows:

§ 740.7 Computers (CTP).

(a) *Scope.* (1) *Commodities.* License Exception CTP authorizes exports and reexports of computers, including ''electronic assemblies'' and specially designed components therefor controlled by ECCN 4A003, exported or reexported separately or as part of a system for consumption in Computer Tier countries as provided by this section. When evaluating your computer to determine License Exception CTP eligibility, use the CTP parameter to the exclusion of other technical parameters for computers classified under ECCN 4A003.a or .b, and ''electronic assemblies'' under ECCN 4A003.c, except for parameters specified as Missile Technology (MT) concerns or 4A003.e (equipment performing analog-to-digital conversions exceeding the limits in ECCN 3A001.a.5.a).

(2) *Technology and software.* License Exception CTP authorizes exports and reexports of software and technology controlled by ECCNs 4D001 and 4E001 specially designed or modified for the ''development'', ''production'', or ''use''

of computers, including ''electronic assemblies'' and specially designed components therefor classified in ECCN 4A003 or 4A994 to Computer Tier countries as provided by this section.

(b) *Restrictions.* (1) Related equipment controlled under 4A003.d and .g may not be exported or reexported under this License Exception when exported or reexported separately from eligible computers authorized under this License Exception.

(2) Access and release restrictions. (i) *Computers.* Computers eligible for License Exception CTP may not be accessed either physically or computationally by nationals of Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria, except that commercial consignees described in Supplement No. 3 to part 742 of the EAR are prohibited only from giving such nationals user-accessible programmability.

(ii) *Technology and software.* Technology and software eligible for License Exception CTP may not be released to nationals of Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria.

(3) Computers, software and technology eligible for License Exception CTP may not be reexported or retransferred without prior authorization from BIS, *i.e.*, a license, a permissive reexport, another License Exception, or ''No License Required''. This restriction must be conveyed to the consignee, via the Destination Control Statement, see § 758.6 of the EAR. Additionally, the end-use and end-user restrictions in paragraph (d)(3) of this section must be conveyed to any consignee in Computer Tier 3.

(4) You may not use this License Exception to export or reexport items that you know will be used to enhance the CTP beyond the eligibility limit allowed to your country of destination.

(c) *Computer Tier 1.* (1) *Eligible countries.* The countries that are eligible to receive exports under this License Exception include Antigua and Barbuda, Argentina, Australia, Austria, Bahamas, Bangladesh, Barbados, Belgium, Belize, Benin, Bhutan, Bolivia, Botswana, Brazil, Brunei, Burkina Faso, Burma, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Chile, Colombia, Congo, Costa Rica, Cote d'Ivoire, Cyprus, Czech Republic, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Gambia (The), Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hong Kong, Hungary, Iceland, Indonesia, Ireland, Italy, Jamaica, Japan, Kenya, Kiribati, Korea (Republic of), Latvia, Lesotho, Liberia, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritius, Mexico, Micronesia (Federated States of), Monaco, Mozambique, Namibia, Nauru, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Rwanda, St. Kitts & Nevis, St. Lucia, St. Vincent and Grenadines, Sao Tome & Principe, San Marino, Senegal, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Spain, Sri Lanka, Surinam, Swaziland, Sweden, Switzerland, Taiwan, Tanzania, Togo, Tonga, Thailand, Trinidad and Tobago, Turkey, Tuvalu, Uganda, United Kingdom, Uruguay, Vatican City, Venezuela, Western Sahara, Western Samoa, Zaire, Zambia, and Zimbabwe.

(2) *Eligible commodities.* All computers, including electronic assemblies and specially designed components therefor are eligible for License Exception CTP to Tier 1 destinations, subject to the restrictions in paragraph (b) of this section.

(3) *Eligible software and technology.* (i) Software and technology described in paragraph (a)(2) of this section are eligible for License Exception CTP to: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, or the United Kingdom; and.

(ii) Software and technology described in paragraph (a)(2) of this section for computers with a CTP less than or equal to 150,000 MTOPS are eligible for License Exception CTP to Tier 1 destinations, other than the destinations that are listed in paragraph (c)(3)(i) of this section, subject to the restrictions in paragraph (b) of this section.

(d) *Computer Tier 3.* (1) *Eligible countries.* The countries that are eligible to receive exports and reexports under this License Exception are Afghanistan, Albania, Algeria, Andorra, Angola, Armenia, Azerbaijan, Bahrain, Belarus, Bosnia & Herzegovina, Bulgaria, Cambodia, China (People's Republic of), Comoros, Croatia, Djibouti, Egypt, Georgia, India, Israel, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Laos, Lebanon, Macau, Macedonia (The Former Yugoslav Republic of), Mauritania, Moldova, Mongolia, Morocco, Oman, Pakistan, Qatar, Russia, Saudi Arabia, Tajikistan, Tunisia, Turkmenistan, Ukraine, United Arab Emirates, Uzbekistan, Vanuatu, Vietnam, Yemen, and Federal Republic of Yugoslavia (Serbia and Montenegro).

(2) *Eligible commodities.* All computers, including electronic assemblies and specially designed components therefor having a CTP less than or equal to 190,000 MTOPS are eligible for License Exception CTP to Tier 3 destinations, subject to the restrictions in paragraphs (b) and (d)(4) of this section.

(3) *Eligible software and technology.* Software and technology described in paragraph (a)(2) of this section for computers with a CTP less than or equal to 75,000 MTOPS are eligible for License Exception CTP to Tier 3 destinations, subject to the restrictions in paragraphs (b) and (d)(4) of this section.

(4) *Eligible exports.* Only exports and reexports to permitted end-users and end-uses located in countries in Computer Tier 3 are permitted under License Exception CTP; however, License Exception CTP does not authorize exports and reexports to Computer Tier 3 for nuclear, chemical, biological, or missile end-users and end-uses subject to license requirements under § 744.2, § 744.3, § 744.4, and § 744.5 of the EAR. Such exports and reexports will continue to require a license and will be considered on a case-by-case basis. Retransfers to these end-users and end-uses in eligible countries are strictly prohibited without prior authorization.

(e) *Reporting requirements.* See § 743.1 of the EAR for reporting requirements of certain items under License Exception CTP.

PART 774—[AMENDED]

3. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, August 11, 2003.

4. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3E002 is amended by revising the ''CIV'' paragraph in the License Exceptions section, to read as follows:

3E002 ''Technology'' according to the General Technology Note other than

that controlled in 3E001 for the ''development'' or ''production'' of ''microprocessor microcircuits'', ''microcomputer microcircuits'' and microcontroller microcircuits having a ''composite theoretical performance'' (''CTP'') of 530 million theoretical operations per second (MTOPS) or more and an arithmetic logic unit with an access width of 32 bits or more.

* * * * *

License Exceptions

CIV: Yes, for general purpose microprocessors with a CTP equal to or less than [NUMBER YET TO BE DETERMINED].

TSR: * * *

* * * * *

5. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4D001 is amended by revising the License Exception section, to read as follows:

4D001 ''Software'' specially designed or modified for the ''development'', ''production'' or ''use'' of equipment or ''software'' controlled by 4A001 to 4A004, or 4D (except 4D980, 4D993 or 4D994), and other specified software, see List of Items Controlled.

* * * * *

License Exceptions

CIV: N/A

TSR: Yes, for all other ''software'' not eligible for License Exception CTP.

CTP: Yes (see 740.7 of the EAR for eligibility criteria).

* * * * *

6. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4E001 is amended by revising the License Exception section, to read as follows:

4E001 ''Technology'' according to the General Technology Note, for the ''development'', ''production'' or ''use'' of equipment or ''software'' controlled by 4A (except 4A980, 4A993 or 4A994) or 4D (except 4D980, 4D993, 4D994), and other specified technology, see List of Items Controlled.

* * * * *

License Exceptions

CIV: N/A.

TSR: Yes, for all other ''technology'' not eligible for License Exception CTP.

CTP: Yes (see 740.7 of the EAR for eligibility criteria).

* * * * *

Dated: October 20, 2003.

Matthew S. Borman,

Acting Assistant Secretary for Export Administration.

[FR Doc. 03–26788 Filed 10–23–03; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–132483–03]

RIN–1545–BC40

Remedial Actions for Tax-Exempt Bonds; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels the public hearing on proposed regulations under section 103(a) of the Internal Revenue Code that amend the final regulations that provide certain permitted remedial actions for tax-exempt bonds issued by State and local governments.

DATES: The public hearing originally scheduled for November 4, 2003, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Sonya M. Cruse of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration), (202) 622–4693 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Monday, July 21, 2003 (68 FR 43059), announced that a public hearing was scheduled for November 4, 2003, at 10 a.m., in the auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 103(a) of the Internal Revenue Code.

The public comment period for these regulations expired on October 14, 2003. The outlines of oral testimony were due on October 14, 2003. The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit an outline of the topics to be addressed. As of Tuesday, October 21, 2003, no one has submitted an outline of oral testimony. Therefore, the public hearing scheduled for November 4, 2003, is cancelled.

Cynthia E. Grigsby,

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

[FR Doc. 03–26941 Filed 10–23–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–03–156]

RIN 1625–AA08

Special Local Regulations for Marine Events; Nanticoke River, Sharptown, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent special local regulations for the Sharptown Outboard Regatta, a marine event held on the waters of the Nanticoke River near Sharptown, Maryland. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Nanticoke River during the event.

DATES: Comments and related material must reach the Coast Guard on or before January 22, 2004.

ADDRESSES: You may mail comments and related material to Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 119 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398–6203. The Auxiliary and Recreational Boating Safety Branch, Fifth Coast Guard District, 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 above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S. L. Phillips, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–03–156), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The North-South Racing Association sponsors the Sharptown Outboard Regatta annually on the last Saturday and Sunday in June. The event consists of approximately 50 hydroplanes and runabouts conducting high-speed competitive races on the waters of the Nanticoke River between the Maryland S.R. 313 Highway Bridge and Nanticoke River Light 43 (LLN–24175). The races usually begin at 12 noon and conclude at 5 p.m. each day. A fleet of spectator vessels normally gathers nearby to view the event. To provide for the safety of participants, spectators and transiting vessels, the Coast Guard intends to temporarily restrict vessel movement in the event area before, during and after the event.

Discussion of Proposed Rule

The Coast Guard proposes to establish a permanent regulated area on specified waters of the Nanticoke River, near Sharptown, Maryland. The regulated area would include waters of the Nanticoke River between the Maryland S.R. 313 Highway Bridge and Nanticoke River Light 43 (LLN–24175). The proposed special local regulations would restrict general navigation in the regulated area on the last Saturday and Sunday in June and would be enforced from one hour prior to the start of the event to one hour after the event each day. Except for participants in the Sharptown Outboard Regatta and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel would be allowed to enter or remain in the regulated area. The Patrol Commander would allow non-participating vessels to transit the regulated area between races, when it is safe to do so. The proposed regulated area is needed to control vessel traffic before, during and after the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

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

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. Although this proposed regulation would prevent traffic from transiting a portion of the Nanticoke River during the event, the effect of this proposed regulation would not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, vessel traffic would be able to transit the regulated area when the Coast Guard Patrol Commander deems it is safe to do so.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605 (b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Nanticoke River during the event.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This proposed rule would be in effect for only two days each year. Vessel traffic would be able to transit the regulated area when the Coast Guard Patrol Commander deems it is safe to do so. Before the enforcement period, we would issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed 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 proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**.

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

Collection of Information

This 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 Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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 proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We prepared an ''Environmental Assessment'' in accordance with Commandant Instruction M16475.1D, and determined that this rule will not significantly affect the quality of the human environment. The ''Environmental Assessment'' and ''Finding of No Significant Impact'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

2. Add § 100.532 to read as follows:

§ 100.532 Nanticoke River, Sharptown, MD.

(a) *Regulated Area.* The regulated area includes all waters of the Nanticoke River, near Sharptown, Maryland, between Maryland S.R. 313 Highway Bridge and Nanticoke River Light 43 (LLN–24175), bounded by a line drawn between the following points: southeasterly from latitude 38°32′46″ N, longitude 075°43′14″ W, to latitude 38°32′42″ N, longitude 75°43′09″ W, thence northeasterly to latitude 38°33′04″ N, longitude 075°42′39″ W, thence northwesterly to latitude 38°33′09″ N, longitude 75°42′44″ W, thence southwesterly to latitude 38°32′46″ N, longitude 75°43′14″ W. All coordinates reference Datum NAD 1983.

(b) *Definitions.* The following definitions apply to this section:

Coast Guard Patrol Commander means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

Official Patrol means any vessel assigned or approved by Commander, Coast Guard Activities Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) *Special local regulations:*

(1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in this area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol; and

(ii) Proceed as directed by any Official Patrol.

(d) *Enforcement period.* This section will be enforced annually on the last Saturday and Sunday in June. Notice of the specific event times will be given via marine Safety Radio Broadcast on VHF–FM marine band radio channel 22 (157.1 MHz).

Dated: October 10, 2003.

Ben R. Thomason, III,

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

[FR Doc. 03–26868 Filed 10–23–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Application for Approval of Hevi-Steel as a Nontoxic Shot Material for Waterfowl Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of application.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is providing public notification that ENVIRON-Metal, Inc. of Sweet Home, Oregon, has applied for approval of HEVI-Steel shot as nontoxic for waterfowl hunting in the United States. The Service has initiated review of Hevi Steel under the criteria set out in Tier 1 of the nontoxic shot approval procedures.

DATES: A comprehensive review of the Tier 1 information is to be concluded by December 23, 2003.

ADDRESSES: ENVIRON-Metal's application may be reviewed in Room 4091 at the Fish and Wildlife Service, Division of Migratory Bird Management, 4501 N. Fairfax Drive, Arlington, Virginia, 22203–1610. Comments on this notice may be submitted to the Division of Migratory Bird Management at 4401 North Fairfax Drive, MS MBSP–4107Arlington, VA 22203–1610. Comments will become part of the Administrative Record for the review of

the application. The public may review comments at Room 4091 at the Fish and Wildlife Service, Division of Migratory Bird Management, 4501 North Fairfax Drive, Arlington, Virginia, 22203–1610.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, Division of Migratory Bird Management, (703) 358–1714, or John J. Kreilich, Jr., Wildlife Biologist, Division of Migratory Bird Management, (703) 358–1928.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of 1918 (Act) (16 U.S.C. 703–712 and 16 U.S.C. 742 a–j) implements migratory bird treaties between the United States and Great Britain for Canada (1916 and 1996 as amended), Mexico (1936 and 1972 as amended), Japan (1972 and 1974 as amended), and Russia (then the Soviet Union, 1978). These treaties protect certain migratory birds from take, except as permitted under the Act. The Act authorizes the Secretary of the Interior to regulate take of migratory birds in the United States. Under this authority, the Fish and Wildlife Service controls the hunting of migratory game birds through regulations in 50 CFR part 20.

Since the mid-1970s, the Service has sought to identify types of shot for waterfowling that, when spent, do not pose a significant toxic hazard to migratory birds and other wildlife when ingested. We have approved several types of shot as nontoxic and added them to the migratory bird hunting regulations in 50 CFR 20.21. We believe that compliance with the use of nontoxic shot will continue to increase with the approval and availability of other nontoxic shot types. Therefore, we continue to provide producers of shot with the opportunity to submit for approval alternative types of nontoxic shot.

ENVIRON-Metal, Inc. has submitted its application with the counsel that it contained all of the specified information for a complete Tier 1 submittal, and has requested unconditional approval pursuant to the Tier 1 time frame. We have determined that the application is complete, and have initiated a comprehensive review of the Tier 1 information. After the review, we will either publish a Notice of Review to inform the public that the Tier 1 test results are inconclusive or publish a proposed rule for approval of the candidate shot. If the Tier 1 tests are inconclusive, the Notice of Review will indicate what other tests will be required before approval of the HEVI-Steel shot as nontoxic is again considered. If the Tier 1 data review results in a preliminary determination that the candidate material does not pose a significant hazard to migratory birds, other wildlife, or their habitats, the Service will commence with a rulemaking proposing to approve the candidate shot.

Dated: October 10, 2003.

Matt Hogan,

Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 03–26934 Filed 10–23–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting: Application for Approval of Silvex Metal as a Nontoxic Shot Material for Waterfowl Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of application.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is providing public notification that Victor Oltrogge of Arvada, Colorado, has applied for approval of Silvex shot as nontoxic for waterfowl hunting in the United States. The Service has initiated review of Silvex under the criteria set out in Tier 1 of the nontoxic shot approval procedures.

DATES: A comprehensive review of the Tier 1 information is to be concluded by December 23, 2003.

ADDRESSES: Mr. Oltrogge's application may be reviewed in Room 4091 at the Fish and Wildlife Service, Division of Migratory Bird Management, 4501 N. Fairfax Drive, Arlington, Virginia, 22203–1610. Comments on this notice may be submitted to the Division of Migratory Bird Management at 4401 North Fairfax Drive, MS MBSP–4107, Arlington, VA 22203–1610. Comments will become part of the Administrative Record for the review of the application. The public may review comments at Room 4091 at the Fish and Wildlife Service, Division of Migratory Bird Management, 4501 North Fairfax Drive, Arlington, Virginia, 22203–1610.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, Division of Migratory Bird Management, (703) 358–1714, or John J. Kreilich, Jr., Wildlife Biologist, Division of Migratory Bird Management, (703) 358–1928.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of 1918 (Act) (16 U.S.C. 703–712 and 16 U.S.C. 742 a–j) implements migratory bird treaties between the United States and Great Britain for Canada (1916 and 1996 as amended), Mexico (1936 and 1972 as amended), Japan (1972 and 1974 as amended), and Russia (then the Soviet Union, 1978). These treaties protect certain migratory birds from take, except as permitted under the Act. The Act authorizes the Secretary of the Interior to regulate take of migratory birds in the United States. Under this authority, the Fish and Wildlife Service controls the hunting of migratory game birds through regulations in 50 CFR part 20.

Since the mid-1970s, the Service has sought to identify types of shot for waterfowling that, when spent, do not pose a significant toxic hazard to migratory birds and other wildlife when ingested. We have approved several types of shot as nontoxic and added them to the migratory bird hunting regulations in 50 CFR 20.21. We believe that compliance with the use of nontoxic shot will continue to increase with the approval and availability of other nontoxic shot types. Therefore, we continue to provide producers of shot with the opportunity to submit for approval alternative types of nontoxic shot.

Mr. Oltrogge submitted his application with the counsel that it contained all of the specified information for a complete Tier 1 submittal and requested unconditional approval pursuant to the Tier 1 time frame. We have determined that the application is complete, and have initiated a comprehensive review of the Tier 1 information. After the review, the Service will either publish a Notice of Review to inform the public that the Tier 1 test results are inconclusive or publish a proposed rule for approval of the candidate shot. If the Tier 1 tests are inconclusive, the Notice of Review will indicate what other tests will be required before approval of the Silvex shot as nontoxic is again considered. If the Tier 1 data review results in a preliminary determination that the candidate material does not pose a significant hazard to migratory birds, other wildlife, or their habitats, the Service will commence with a rulemaking proposing to approve the candidate shot.

Dated: October 10, 2003.

Matt Hogan,

Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 03–26935 Filed 10–23–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 031003245–3245–01;I.D. 122702A]

RIN 0648–AR14

Designating the AT1 Group of Transient Killer Whales as a Depleted Stock Under the Marine Mammal Protection Act (MMPA)

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to designate the AT1 group of transient killer whales as a depleted stock of marine mammals pursuant to the MMPA. This action is being taken pursuant to a status review conducted by NMFS in response to a petition to designate a group of transient killer whales in Alaska (known as the AT1 group). The biological evidence indicates that the group is a population stock as defined by the MMPA, and the stock is depleted as defined by the MMPA.

DATES: Comments and information must be received by January 22, 2004.

ADDRESSES: Comments should be addressed to the Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Kaja Brix NOAA/NMFS, Alaska Region, (907) 586–7235.

SUPPLEMENTARY INFORMATION:

Electronic Access

Information related to the petition and the status of the AT1 group of killer whales is available on the Internet at the following address: *http://www.fakr.noaa.gov/protectedresources/whales/default.htm*.

NMFS guidelines for preparing stock assessment reports, which contain guidance for identifying population stocks of marine mammals, may be found on the Internet at the following address: *http://nmml.afsc.noaa.gov/library/gammsrep/gammsrep.htm*.

Background

NMFS received a petition on November 13, 2002, from the National Wildlife Federation, on behalf of itself, Alaska Center for the Environment, Alaska Community Action on Toxics, Center for Biological Diversity, Coastal Coalition, Defenders of Wildlife, and Eyak Preservation Council, to designate the AT1 group of transient killer whales as a depleted population stock under the MMPA. NMFS published a notice that the petition was available (67 FR 70407, November 22, 2002). After evaluating the petition, NMFS determined that the petition contained substantial information indicating that the petitioned action may be warranted (68 FR 3483, January 24, 2003). Following its determination that the petitioned action may be warranted, NMFS conducted a status review to evaluate whether the AT1 group is a population stock and, if so, whether that stock is depleted. This proposed rule is based upon that status review.

Killer whales in the Pacific Northwest and Alaska are classified into three distinct forms: ''Residents,'' ''transients,'' and ''offshores.'' All three forms occur in Prince William Sound and the Kenai Fjords region of Alaska

The core of the resident killer whale social structure is the matrilineal group, or matriline. A matrilineal group, which may be as small as two animals, consists of a female and all her offspring of both sexes. Permanent associations of matrilines are termed ''pods''. Resident pods of killer whales usually contain 3–52 individuals; emigration or immigration occurs only by birth or death (Saulitis, 2000; Matkin and Saulitis, 1994; Matkin *et al.,* 1999). Breeding by resident killer whales typically does not occur within pods but between whales from distantly related pods (Barrett-Lennard, 2001). A number of associating and potentially interbreeding resident pods may form a ''population,'' the largest social division. A resident population may number in the hundreds and may be distinguished from other populations on the basis of genetic or acoustic analysis and association patterns.

The social structure of transient killer whales is not as well understood as that of resident killer whales. Some movement of individuals occurs between groups within a population and thus there is a lack of clearly defined pods. However, at the population level the same separations based on genetic and acoustic analysis and association patterns can be made for transients as for residents.

A definitive characteristic of transient killer whales is that they prey on other marine mammals, unlike resident killer whales which subsist on fish. Other documented differences between transient and resident killer whales include differences in morphology, group size (transient groups tend to have fewer whales), social organization, and acoustic calls. Transients and residents avoid one another and do not interbreed, although rare interactions between transients and residents have been observed. Thus, a very small transient group may exist among a much larger resident population and remain demographically isolated.

Recent genetics analysis by Barrett-Lennard (2000) indicate that there are three distinct transient killer whale groups present in the eastern North Pacific: The West Coast (WC) transients, the Gulf of Alaska (GOA) transients and the AT1 transients. These three groups are genetically separate but their geographic ranges overlap (Barrett-Lennard, 2000). The GOA transient group and the AT1 transient group exclusively inhabit Alaskan waters. GOA transients are found in the waters west of Glacier Bay (as far as Kodiak Island), and occasionally enter Prince William Sound. The AT1 transients appear to have a more limited range and have only been seen year-round in Prince William Sound and the Kenai Fjords region of Alaska (Saulitas *et al.* 2000). Consequently, most members of the AT1 group are resighted every year or two. Interactions between members of the different transient killer whale groups have not been observed. Genetic evidence indicates they have been separate for thousands of years (Barrett-Lennard, 2000) although, given the small size of the AT1 group, observed genetic differences could have arisen within a few killer whale generations.

The AT1 Group of Transient Killer Whales

AT1 killer whales have been recognized in Prince William Sound since at least 1978 (Leatherwood *et al.* 1984a, Saulitas 1993). Three AT1 whales (AT7, AT15, AT16) were first photographed in 1978; other animals were likely not photographed due to the low level of research effort in Prince William Sound at that time. In the 1980s, the AT1 transient group was one of the most frequently encountered killer whale groups in Prince William Sound (Matkin *et al.* 1999). Once a major research effort began in Prince William Sound, 20 individuals were identified in 1984 (though 2 others were known to be present), 17 in 1985, and 21 in 1986. All individuals identified prior to 1984 (from 1978–1983) were seen alive in 1984.

The AT1 transient group has been sighted year-round in Prince William Sound, as well as in Resurrection and Aialik Bays of adjacent Kenai Fjords (Saulitis, 2000). While the group is known to have once had as many as 22 members, the number of AT1 transient killer whales has been reduced by more

than half since the 1989 *Exxon Valdez* oil spill (Matkin *et al.*, 1999). Only 11 members of the AT1 group have been seen since 1992 and the missing 11 members are either known or presumed to be dead (Matkin *et al.* 2000). Two additional males from this group have been confirmed dead within the past few summers. The deaths of these two whales reduced the known AT1 group to nine individuals. Of the remaining nine members, four are female. No new calves have been observed since the AT1 group was first recognized in 1984.

Identifying a ''Population Stock'' or ''Stock'' Under the MMPA

To designate the AT1 group of killer whales as a depleted stock under the MMPA, it must be a ''population stock'' or ''stock''. Section 3(11) of the MMPA defines ''population stock'' or ''stock'' as a group of marine mammals of the same species or smaller taxon, in a common spatial arrangement, that interbreeds when mature. Under the MMPA, population stocks must be identified and stock assessment reports must be prepared on the basis of the best scientific information available.

To interpret this definition fully, the objectives of the MMPA must be considered. Section 2(2) of the MMPA (16 U.S.C. 1361(2)(2)) states that species and population stocks of marine mammals ''should not be permitted to diminish beyond the point at which they cease to be a significant functioning element in the ecosystem in which they are a part, and, consistent with this major objective, they should not be permitted to diminish below their optimum sustainable population.'' Further, section 2(6) provides that ''the primary objective of their management should be to maintain the health and stability of the marine ecosystem. Whenever consistent with this primary objective, it should be the goal to obtain an optimum sustainable population, keeping in mind the carrying capacity of the habitat.'' Stocks must be identified in such a way that is consistent with these goals.

In interpreting the MMPA's guidance to identify stocks of marine mammals, NMFS reviewed legislative guidance related to population stocks and consequences for making incorrect decisions in its guidelines for preparing marine mammal stock assessment reports (see Electronic Access). In these guidelines, NMFS states, ''For the purposes of management under the MMPA, a stock is recognized as being a management unit that identifies a demographically isolated biological population. It is recognized that in practice, defined stocks may fall short of this ideal because of a lack of information, or for other reasons.'' The guidelines further stated, ''Many types of information can be used to identify stocks of a species: distribution and movements, population trends, morphological differences, genetic differences, contaminants and natural isotope loads, parasite differences, and oceanographic habitat differences. Evidence of morphological or genetic differences in animals from different geographic regions indicates that these populations are reproductively isolated. Reproductive isolation is proof of demographic isolation, and thus separate management is appropriate when such differences are found.'' NMFS considered the following lines of evidence regarding the AT1 group of killer whales in proposing this stock determination: association information, acoustic and dialect differences, and genetic differences between AT1 and other groups of transient killer whales.

Association Information

The association data, which includes information on the movements and distribution of transient killer whales, support the conclusion that the AT1 group is discrete from other transient killer whales in Alaska. Although the distributions of AT1 killer whales and other transient killer whales have limited overlap, the AT1 group of transient killer whales does has never been seen moving in association with sympatric resident killer whale pods or with other transient groups that occasionally use Prince William Sound (Matkin *et al.* 1999a).

Matkin and Saulitis (1994) reported that seven different groups of GOA transients have been seen using Prince William Sound, that most of the whales in these seven groups were photographed only once, and that whales from the GOA transients were usually seen only once in a season. The AT1 group is regularly encountered in Prince William Sound and has been seen only in Prince William Sound and the Kenai Fjords. Matkin and Saulitis (1994) also reported that other transient whales were never seen mixing with the AT1 group.

Acoustic Differences

Acoustic analysis of the calls made by transient killer whales in Alaska provides further support for the discreteness of the AT1 group.Like many species of dolphins, killer whales have developed and depend on a complex system of communication and echolocation. Scientists have been able to distinguish different populations of killer whales by their vocal repertoire, and dialects of some killer whale groups have remained constant for more than 25 years (Ford *et al.*, 2000).

The AT1 group has a vocal dialect distinct from that of any resident pod or other transient group in the eastern North Pacific (Saulitis *et al.*,1993; Matkin *et al.*, 1999). Researchers have identified 14 discrete pulsed calls for the AT1 group in addition to echolocation clicks, and only one call produced by the AT1 group is similar to any other call used by transient groups between southeast Alaska and California (Saulitis, 1993). Under the assumption that the acoustic repertoire is learned at a young age and is thought to be relatively fixed for life, then the AT1 group has been separate for at least a period longer than the oldest individual in the group.

Genetic Relationships

At this time, NMFS recognizes one stock of transient killer whales, the eastern North Pacific stock. However, recent genetic analyses indicate that a finer structure exists and that the eastern North Pacific stock may consist of up to three stocks.

The population structure of transients in the North Pacific has been investigated by Barrett-Lennard (2000), who identified three groups of mammal-eating killer whales using genetics: WC transients, GOA transients, and the AT1 transients. Mitochondrial DNA (mtDNA) and nuclear DNA analyses indicate that the AT1 group is genetically isolated from the other killer whales within the currently defined eastern North Pacific transient stock (Barrett-Lennard, 2000; Matkin *et al.,* 1999).

mtDNA: Until recently, the mtDNA haplotype, which is inherited only from the mother, found in the AT1 whales has not been found in killer whales from other populations (Barrett-Lennard, 2000). The ''AT1 haplotype'' has recently been found in 4 whales from the Bering Sea area, which might suggest that there are individuals closely related to the AT1 group that frequent other parts of the North Pacific. However, mtDNA haplotypes are often of limited use in determining whether a particular individual is a member of a particular population. In contrast, mtDNA haplotype frequencies are very useful in describing population structure. Since all members of the AT1 group have the so-called AT1 haplotype, and only a few individuals in the Bering Sea have been found to have this haplotype, it is clear that the frequencies are quite different, which strongly suggests they are separate populations. Preliminary analysis of photographs of the Bering Sea whales

recently found to have the AT1 haplotype conclusively indicate that they are not the ''missing'' whales from the AT1 group.

Nuclear DNA: Barrett-Lennard (2000) found significant genetic differences in nuclear (microsatellite) DNA, which is inherited from both parents, among AT1s, GOA transients, and WC transients. In particular, the AT1 group sample was found to be the most divergent in its microsatellite allele frequencies because they were more divergent from the nearby GOA Transients and WC Transients than those groups were from each other. The differences between the AT1 group and the other groups would be considered ''large'' by most population geneticists.

In the case of the AT1 group, the high level of divergence from other transient killer whale groups might be related to the group's very small size. The average level of heterozygosity in the AT1 group is approximately 60 percent that of the other transient groups, which is consistent with the AT1 group being a small population. For a small population the level of genetic difference seen between AT1 killer whales and other transient groups could occur relatively quickly (perhaps within a few generations; one killer whale generation is 50–100 years). Regardless of how many generations it took to generate, the degree of difference in microsatellite DNA is consistent with current demographic isolation between the AT1 group and GOA and WC transients.

New genetic samples from the northern Gulf of Alaska: Since the analyses documented in Barrett-Lennard (2000), the number of biopsy samples of transient killer whales from the Gulf of Alaska to the Bering Sea has increased substantially. A preliminary analysis of those new data (in combination with existing data) was undertaken to clarify the relationship between the AT1 group and other transient killer whales in Alaska, and these preliminary results were described in the report of NMFS' status review on AT1 killer whales The analysis indicated that the Umnak killer whale with the AT1 haplotype is not a member of the AT1 group nor a member of a closely-related population. Furthermore, there was no clear evidence that any of the other transient whales sampled in the Gulf of Alaska are closely related to the AT1 group.

Alternatives to Explain the Genetic Differences

The AT1 group is currently considered part of the eastern North Pacific transient killer whale stock, the only currently identified ''stock'' of transient killer whales in the North Pacific. However, the new information described above indicates that the stock structure of transient killer whales should be reviewed, and that the AT1 group is genetically separate from other transient killer whales.

There are at least three possible scenarios that might lead to the genetic differences that are seen between AT1 and other transient groups, though the three scenarios are not necessarily equally plausible given the available information. An assumption that is made when speculating about these scenarios is that a very small population (circa 22 animals) could not persist as an independent population for a very long time.

The first scenario is that the AT1 group represents a remnant of a previously larger population. In this situation, there would have been two separate populations of transient killer whales in Alaska that were genetically and demographically isolated. One of these populations declined in population size, and its remainder is now known as the AT1 group.

The second scenario is that the AT1 group separated from another transient population relatively recently and has never been particularly large. Genetic drift may occur rapidly in a small population so the observed genetic differences could have arisen fairly recently. A small unit like the AT1 group would likely not have had a high probability of persisting as a separate population over a long time period. In other words, if the AT1 group arose from another transient population and was never large in size, it may have been doomed to extinction since its beginning. One problem with evaluating the importance of this possible scenario is that the terms ''relatively recent'' and ''long time'' are hard to define. A third scenario is that the AT1 group is part of a larger population of transient killer whales that have not yet been sampled for genetics analysis.

Although the population structure of transient killer whales in the Aleutians, Bering Sea, and in the western North Pacific is not yet fully understood, it is possible to eliminate some of the scenarios above from consideration. The data available are reasonably consistent with the first two scenarios and will be discussed below. However, at this time, there is no evidence to support the third scenario (that the AT1 group are part of a more widespread Alaska transient population that is largely sympatric with the GOA transients from Prince William Sound to the Bering Sea). Substantial sampling along the Alaska Peninsula, the Aleutian Islands, and in the Bering Sea has failed to find killer whales that are closely-related, genetically, to the AT1 group. Although four individuals have been found with the same mtDNA haplotype as found in the AT1 group, the one individual for which a complete microsatellite analysis was available was strongly assigned to GOA transient whales, rather than the AT1 group.

As stated above, the available data are consistent with the scenario where the AT1 group may be a remnant of a much larger population that has been separate for a long time and are also consistent with the scenario where the AT1 group may consist of a very small number of animals that split off from a larger group in the recent past. Genetic data alone are insufficient to distinguish between these two scenarios. The AT1 group has less genetic diversity than other North Pacific transients, but more genetic diversity than would be expected if they had been at a very small population size for a long time.

In its status review of AT1 killer whales, NMFS included literature on genetic relationships in other species of mammals that live in highly structured societies (e.g., monkeys, lions, wild dogs). Results from the review of 17 studies indicated that strong genetic differentiation between social groups of terrestrial mammals appears relatively rare, occurring in only one of the 17 studies reviewed. The status review cautioned against making strong conclusions based on these other studies because these terrestrial mammals and resident and transient killer whales do not exhibit identical social behavior.

The Depleted Determination

The AT1 Group as a Stock

As discussed above, NMFS' guidelines for identifying population stocks of marine mammals state that many different types of information can be used to identify stocks, reproductive isolation is proof of demographic isolation, and demographically isolated groups of marine mammals should be identified as separate stocks. These guidelines were based upon the MMPA's definition of population stock and with the purposes and polices of the MMPA. The biological information discussed above, particularly molecular genetics and associations (distribution and movements), supports a determination that AT1 killer whales are demographically isolated from other groups of killer whales. Therefore, based upon the best available scientific information, NMFS proposes to determine that the AT1 group of

transient killer whales is a population stock.

Status of the Stock

Section 3(1)(A) of the MMPA (16 U.S.C. 1362(1)(A)) defines the term, ''depletion'' or ''depleted'', as any case in which ''the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals * * * determines that a species or population stock is below its optimum sustainable population [(OSP)].'' Section 3(9) of the MMPA defines OSP ''* * * with respect to any population stock, [as] the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity [(K)] of the habitat and the health of the ecosystem of which they form a constituent element.'' NMFS' regulations at 50 CFR 216.3 clarify the definition of OSP as a population size which falls within a range from the population level of a given species or stock that is the largest supportable within the ecosystem (carrying capacity [K]) to the population level that results in the maximum net productivity level (MNPL). MNPL is the greatest net annual increment (increase) in population numbers resulting from additions due to reproduction less losses due to natural mortality.

A population stock below its MNPL is, by definition, below OSP and, thus, would be considered depleted under the MMPA. Historically, the estimated MNPL has been expressed as a range of values, generally 50 to 70 percent of K (42 FR 12010, March 1, 1977). In 1977, the midpoint of this range (60 percent of K) was used to determine whether dolphin stocks in the eastern tropical Pacific Ocean were depleted under the MMPA (42 FR 64548, December 27, 1977). The 60–percent-of-K value was used in the final rule governing the taking of marine mammals incidental to commercial tuna purse seine fishing in the eastern tropical Pacific Ocean (45 FR 72178, October 31, 1980) and has been used since that time for other status reviews under the MMPA. For stocks of marine mammals, including killer whales, K is generally unknown. NMFS, therefore, has used the best estimate available of maximum historical abundance as a proxy for K.

As required by the MMPA, NMFS initiated consultation with the Marine Mammal Commission related to the petition to designate the AT1 group of killer whales as a depleted population stock. In a letter dated December 23, 2002, the Commission noted that there were uncertainties regarding the relationships of the AT1 group to other killer whales in the North Pacific. The Commission recommended as a precautionary approach that, until these uncertainties are resolved, NMFS should designate the AT1 group of transient killer whales as a depleted stock.

There is no information on population trends or historical abundance of the Eastern North Pacific transient stock of killer whales, which is the population stock in which the AT1 group is currently recognized. Similarly there is insufficient historical data on Alaska transients to provide information on trends in abundance in Alaska. The AT1 group is the only group of transient whales whose recent history is known.

As discussed above, the available information supports the conclusion that the AT1 group is a population stock of marine mammals. The genetics data suggest that the group size was larger than 22 animals prior to 1984. However, the abundance of this group prior to 1984 is unknown. Consequently, there is no estimate for the maximum historical abundance. In 1984, the group had 22 members, and its current abundance has been reduced to nine or fewer whales. The current abundance is less than 60 percent of the known abundance in 1984; therefore, the group is below its MNPL or the lower limit of its OSP. Consequently, the group meets the statutory definition of a depleted stock. Based on the best scientific information available, NMFS proposes to designate the AT1 group of transient killer whales in Alaska as a depleted population stock under the MMPA.

Public Comments Solicited

NMFS is soliciting comments on this proposed rule for the designation of this stock as depleted under the MMPA from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party.

References

References are available upon request (*See* **FOR FURTHER INFORMATION CONTACT**).

Classification

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866. Depletion designations under the MMPA are similar to ESA listing decisions, which are exempt from the requirement to prepare an environmental assessment or environmental impact statement under the National Environmental Policy Act. See NOAA Administrative Order 216–6.03(e)(1). Thus, NMFS has determined that the proposed depletion designation of this stock under the MMPA is exempt from the requirements of the National Environmental Policy Act of 1969, and an Environmental Assessment or Environmental Impact Statement is not required.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows: The MMPA imposes a general moratorium on the taking of marine mammals. This proposed rule would designate a group of transient killer whales in Alaska (known as the AT1 group) as depleted; however, this designation would not, by itself, place any additional restrictions on the public. A stock that is designated as depleted meets the definition of a strategic stock under the MMPA. Under provisions of the MMPA, a take reduction team must be established and a take reduction plan developed and implemented within certain time frames if a strategic stock of marine mammals interacts with a Category I or II commercial fishery. However, NMFS has not identified any interactions between commercial fisheries and this group of killer whales that would result in such a requirement. In addition, under the MMPA, if NMFS determines that impacts on areas of ecological significance to marine mammals may be causing the decline or impeding the recovery of a strategic stock, it may develop and implement conservation or management measures to alleviate those impacts. However, NMFS has not identified information sufficient to make any such determination for this group of killer whales. Finally, the MMPA requires NMFS to prepare a conservation plan to conserve and restore any stock designated as depleted to its optimum sustainable population, unless NMFS determines that such a plan would not promote the conservation of the stock. However, NMFS has not prepared any such plan, and the plan is not self-executing. Any measures identified in the plan to conserve and restore the stock would require separate action before the action could be implemented. Any subsequent restrictions placed on the public to protect these whales would be included in separate regulations, and appropriate analyses under the Regulatory Flexibility Act would be conducted during those rulemaking procedures. Hence, implementation of this proposed

rule would not have a significant economic impact on a substantial number of small entities. As a result, no regulatory flexibility analysis for this proposed rule has been prepared.

This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act of 1980. This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Exports, Imports, Marine mammals, Transportation.

Dated: October 20, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 216 is proposed to be amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.* unless otherwise noted.

2. In § 216.15,a new paragraph (i) is added to read as follows:

§ 216.15 Depleted species.

* * * * *

(i) AT1 stock of killer whales (*Orcinus orca*). The stock includes all killer whales belonging to the AT1 group of transient killer whales occurring primarily in waters of Prince William Sound, Resurrection Bay and the Kenai Fjords region of Alaska.

[FR Doc. 03–26931 Filed 10–23–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 206

Friday, October 24, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 03–036N]

Codex Alimentarius Commission: Meeting of the Codex Committee on General Principles

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), U.S. Department of Health and Human Services (HHS), are sponsoring a public meeting on October 27, 2003. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States' positions that will be discussed at the 19th (Extraordinary) Session of the Codex Committee on General Principles (CCGP) to be held in Paris, France, November 17–21, 2003. The Under Secretary for Food Safety and FDA recognize the importance of providing interested parties with the opportunity to obtain background information on the 19th (Extraordinary) Session of CCGP and to address items on the agenda.

DATES: The public meeting is scheduled for Monday, October 27, 2003 from 1 p.m. to 4 p.m.

ADDRESSES: The public meeting will be held in Room 107A, JLW Building, U.S. Department of Agriculture, 1400 Independence Avenue, Washington, DC. To receive copies of the Codex documents pertaining to the agenda items for the 19th (Extraordinary) CCGP session, contact the FSIS Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. The documents will also be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net.* If you would like to submit comments on one or more agenda items, please send them to the FSIS Docket Clerk and reference Docket #03–036N. All comments submitted in response to this notice will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ed Scarbrough, U.S. Manager for Codex, U.S. Codex Office, FSIS, Room 4861, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250, Telephone (202) 205–7760; Fax: (202) 720–3157. Persons requiring a sign language interpreter or other special accommodations should notify Dr. Scarbrough at the above number.

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. The Codex Committee on General Principles was established to deal with such procedural and general matters as are referred to it by the Codex Alimentarius Commission. Such matters have included the establishment of the General Principles that define the purpose and scope of the Codex Alimentarius, the nature of Codex standards and the forms of acceptance by countries of Codex standards; the development of Guidelines for Codex Committees; the development of a mechanism for examining any economic impact statements submitted by governments concerning possible implications for their economies of some of the individual standards or some of the provisions thereof; and the establishment of a Code of Ethics for the International Trade in Food. The Committee is hosted by the government of France.

Issues To Be Discussed at the Public Meeting

Items on the Provisional Agenda will be discussed at the public meeting.

Provisional Agenda

Agenda Item 1
- Adoption of the Agenda CX/GP 03/19/1

Agenda Item 2
- Matter Referred by the Codex Alimentarius Commission, including the Joint FAO/WHO Evaluation of the Codex Alimentarius and Other FAO and WHO Work on Food Standards CX/GP 03/19/2

Agenda Item 3
- (a) Proposed Amendments to the Rules of Procedure, including the Structure and Functions of the Executive Committee CX/GP 03/19/3
- (b) Proposed Amendment to Rule VII.5 CX/GP 03/19/3 Add. 2
- (c) Consideration of the Status of Observers in the Executive Committee CX/GP 03/19/3 Add.2

Agenda Item 4
- Processes for Standards Management (including the Critical Review):
- (a) Revision of the Criteria for the Establishment of Work Priorities CX/GP 03/19/4
- (b) Processes for Standards Management (including the review of the Elaboration Procedures) CX/GP 03/19/4 Add. 1

Agenda Item 5
- Review of the Principles concerning the Participation of International Non-Governmental Organizations in the Work of the Codex Alimentarius Commission CX/GP 03/19/5

Agenda Item 6
- Review of the Guidelines for Codex Committees
- (a) advice to host countries (including criteria for the selection of chairpersons) CX/GP /03/19/6
- (b) conduct of meetings CX/GP 03/19/6 Add. 1

Agenda Item 7
- Other proposals to facilitate standard development (other than Standard management Process): Review of the Guidelines for Codex Committees and other additional

text CX/GP 03/19/7

Public Meeting

At the public meeting, the issues and draft United States' positions on the issues will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Comments may be sent to the FSIS Docket Room (*see* **ADDRESSES**). In addition, they may be sent electronically to the U.S. Delegate (*see* **ADDRESSES**). Please state that your comments relate to CCGP activities and specify which issues your comments address.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS Web page located at *http://www.fsis.usda.gov.* The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and Web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the ''Constituent Update'' page on the FSIS Web site at *http://www.fsis.usda.gov/oa/update/update.htm.* Click on the ''Subscribe to the Constituent Update Listserv'' link, then fill out and submit the form.

Done at Washington, DC, on October 20, 2003.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 03–26817 Filed 10–23–03; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Intergovernmental Advisory Committee Meeting, Northwest Forest Plan

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Intergovernmental Advisory Committee (IAC), Northwest Forest Plan (NWFP), will meet on November 5, 2003, at the DoubleTree Hotel, located at the DoubleTree Hotel, 1000 NE Multnomah, Portland, Oregon 97232. The meeting will begin at 10 a.m. and adjourn at approximately 4 p.m. In general, the purpose of the meeting is to continue committee discussions related to NWFP implementation. Meeting agenda items include, but are not limited to, a report from the Regional Interagency Executive Committee on potential NWFP implementation improvements, an overview of how the Federal budget process affects plan implementation, along with other progress reports (such as updates on the Survey and Manage and the Aquatic Conservation Strategy supplemental environmental impact statements). The meeting is open to the public and fully accessible for people with disabilities. A 15-minute time slot is reserved for public comments at 10:15 a.m. Interpreters are available upon request at least 10 days prior to the meeting. Written comments may be submitted for the meeting record. Interested persons are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Questions regarding this meeting may be directed to Kath Collier, Management Analyst, Regional Ecosystem Office, 333 SW First Avenue, P.O. Box 3623, Portland, OR 97208 (Phone: 503–808–2165).

Dated: October 7, 2003.

Anne Badgley,

Designated Federal Official.

[FR Doc. 03–26975 Filed 10–23–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on Nov. 14, 2003, at the North Tahoe Conference Center, 8318 North Lake Blvd., Kings Beach, CA. This Committee, established by the Secretary of Agriculture on December 15, 1998, (64 FR 2876) is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held Nov. 14, 2003, beginning at 9 a.m. and ending at 1 p.m.

ADDRESSES: The meeting will be held at the North Tahoe Conference Center, 8318 North Lake Blvd., Kings Beach, CA.

FOR FURTHER INFORMATION CONTACT: Maribeth Gustafson or Jeannie Stafford, Lake Tahoe Basin Management Unit, Forest Service, 870 Emerald Bay Road, Suite 1, South Lake Tahoe, CA 96150, (530) 543–2642.

SUPPLEMENTARY INFORMATION: The committee will meet jointly with the Lake Tahoe Basin Executives Committee. Items to be covered on the agenda include: Welcome Introductions & Review of Agenda, Federal Transportation Administration participation discussion, Role of LTFAC With the SNPLMA, USACE Tahoe Framework Implementation Study Update, TIIMS Prototype Rollout Presentation, Logistics/Review, and public comment. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: October 20, 2003.

Mary Morgan,

Acting Deputy Forest Supervisor.

[FR Doc. 03–26835 Filed 10–23–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Fresno County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Fresno County Resource Advisory Committee will meet in Clovis, California. The purpose of the meeting is to discuss and to recommend

project proposals for FY2004 funds regarding the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) for expenditure of Payments to States Fresno County Title II funds.

DATES: The meeting will be held on November 18, 2003 from 6:30 p.m. to 9:30 p.m.

ADDRESSES: The meeting will be held at the Sierra National Forest, Supervisor's Office, 1600 Tollhouse Road, Clovis, California 93612. Send written comments to Rick Larson, Fresno County Resource Advisory Committee Coordinator, c/o Sierra National Forest, High Sierra Ranger District, 29688 Auberry Road, Prather, CA 93651 or electronically to *relarson@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Rick Larson, Fresno County Resource Advisory Committee Coordinator, (559) 855–5355, ext. 3319.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Payments to States Fresno County Title II project matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Public sessions will be provided and individuals who made written requests by November 18, 2003 will have the opportunity to address the Committee at those sessions. Agenda items to be covered include: (1) Call for new projects; (2) Status report from project recipients; and (3) Public comment.

Dated: October 20, 2003.

Ray Porter,

District Ranger.

[FR Doc. 03–26900 Filed 10–23–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

McNally Fire Restoration Projects

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Sequoia National Forest will host a field trip on Saturday, November 22, 2003, to visit the McNally Fire/Sherman Pass Restoration (Sherman Pass) and McNally Fire Roadless Restoration (Roadless) Projects. The purpose of the meeting is to aid the participants in the review and understanding of the two projects through on-the-ground discussions. Both of these projects are expected to have Draft Environmental Impact Statements (DEIS) available for public review and comment sometime in November. We will travel to several key locations that will focus attention on the Sherman Pass and Roadless DEISs, proposed actions, and environmental effects.

DATES: The meeting will be held Saturday, November 22, 2003, from 9 a.m. to 3 p.m., Pacific daylight time.

ADDRESSES: Members of the public should meet at the Cannell Meadow Ranger District Office, 105 Whitney, Kernville, California.

FOR FURTHER INFORMATION CONTACT: To receive further information, contact Cindy Thill, (760) 376–3781, extension 625.

SUPPLEMENTARY INFORMATION: The Sherman Pass project involves the areas with roads in them on the Kern Plateau. Of particular interest is the approximately 4,900 acres of conifer stands severely damaged or destroyed by the fire. The analysis area is over 20,000 acres.

The Roadless project involves inventoried roadless areas outside of the Giant Sequoia National Monument. Again, of particular interest is the approximately 11,000 acres of conifer stands severely damaged or destroyed by fire. The analysis area is over 60,000 acres.

The meeting is open to the public. If you are planning to attend, please contact Cindy Thill at the Cannell Meadow Ranger District by November 17. Some transportation will be available, but we will also rely on participants to provide assistance in transporting people in the sites. Please bring your own lunch and wear appropriate field clothing. The meeting is accessible to persons with disabilities. If you need accommodations, please contact Cindy Thill at the number provided.

Dated: October 20, 2003.

Arthur L. Gaffrey,

Forest Supervisor, Sequoia National Forest.

[FR Doc. 03–26832 Filed 10–23–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Interim Direction for Processing Interstate Natural Gas Pipeline Proposals on National Forest System Lands

AGENCY: Forest Service, USDA.

ACTION: Notice of issuance of agency directive.

SUMMARY: The Forest Service is issuing an interim directive to guide its employees in processing proposals for interstate natural gas pipeline projects. This interim directive is designed to supplement existing direction in the Forest Service Manual chapter 2720, consistent with a May 2002 interagency agreement between the Department of Agriculture and the Federal Energy Regulatory Commission. The agreement establishes procedures for responding to and processing applications for interstate natural gas pipeline projects when the Federal Energy Regulatory Commission will be the lead agency in conducting the required environmental and historic preservation reviews.

DATES: This interim directive is effective October 24, 2003.

ADDRESSES: This interim directive (ID 2720–2003–2) is available electronically from the Forest Service via the World Wide Web/Internet at *http://www.fs.fed.us/im/directives.* Single paper copies of the ID are also available by contacting Melissa Hearst, Lands Staff (Mail Stop 1124), Forest Service, 1400 Independence Avenue, SW., Washington, DC 20250–1124 (telephone 202–205–1196).

FOR FURTHER INFORMATION CONTACT: Melissa Hearst, Lands Staff (202–205–1196).

SUPPLEMENTARY INFORMATION: The Forest Service is issuing an interim directive (ID) to Forest Service Manual (FSM) chapter 2720 to guide its employees in the streamlining of proposal and application procedures for interstate natural gas pipelines certified by the Federal Energy Regulatory Commission (FERC) and adopted in a May 2002 agreement between the FERC, the Department of Agriculture, and other Federal agencies.

The May 2002 agreement entitled ''Interagency Agreement on Early Coordination of Required Environmental and Historic Preservation Reviews Conducted in Conjunction with the Issuance of Authorizations to Construct and Operate Interstate Natural Gas Pipelines Certificated by the Federal Energy Regulatory Commission'' eliminates overlapping and duplicative environmental processes required by the numerous Federal agencies having jurisdiction in the permitting of interstate natural gas pipeline projects. Minimizing the duplication and overlap of procedures shortens the cumulative processing time for evaluating applications and making decisions on these projects. The ID to FSM 2720 provides Forest Service field officers with specific procedures to ensure that

the agency carries out the streamlining processes in the agreement and directs that field officers fully engage as a cooperating agency in the FERC's processing of these types of applications.

The interim directive to FSM 2720 is issued as ID number 2720–2003–2.

Dated: October 16, 2003.

Sally Collins,

Associate Chief.

[FR Doc. 03–26814 Filed 10–23–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Little Wood River Irrigation District, Gravity Pressurized Irrigation Delivery System, Blaine County, ID

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Draft environmental impact statement availability for review and comment.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that a draft environmental impact statement has been prepared for a Federally assisted proposed project by the Little Wood River Irrigation District, Blaine County, Idaho.

DATES: Comments will be received for a 45 day period commencing with this date of publication.

FOR FURTHER INFORMATION CONTACT: Richard Sims, State Conservationist, Natural Resources Conservation Service, 9173 W. Barnes Dr., Suite C, Boise, Idaho, 83709–1574, telephone: 208–378–5700.

SUPPLEMENTARY INFORMATION: The preliminary information of this Federally assisted proposed action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Richard Sims, State Conservationist, has determined that the preparation and review of an environmental impact statement is needed for this project.

The objective of the Little Wood River Irrigation District proposed action is to maximize the conservation and use of irrigation water and the energy required to irrigate all of the existing cropland within the project area. The proposed project would convert the open canal irrigation delivery system to a closed, gravity pressurized delivery system. Alternatives evaluated were No Action, Gravity Pressurized Irrigation Delivery System with On-Farm Irrigation Systems and Gravity Pressurized Irrigation Delivery System with On-Farm Irrigation Systems and Hydroelectric Generation.

The Little Wood River Irrigation District invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. A limited number of copies of the EIS are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Richard Sims.

Further information on the proposed action or future public meetings may be obtained from Richard Sims, State Conservationist, at the above address or telephone 208–378–5700.

Dated: October 15, 2003.

Richard Sims,

State Conservationist.

[FR Doc. 03–26907 Filed 10–23–03; 8:45 am]

BILLING CODE 3410–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Addition to procurement list.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: November 23, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On August 22, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 FR 50750) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service

Service Type/Location: Custodial Services, Whidbey Island Naval Air Station, Building 2644, Oak Harbor, Washington.

NPA: New Leaf, Inc., Oak Harbor, Washington.

Contract Activity: Naval Facilities Engineering Command, Oak Harbor, Washington.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–26947 Filed 10–23–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a product

and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received On or Before: November 23, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments of the proposed actions. If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the product and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the product and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following product and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Product

Product/NSN: Nylon Duffel Bag, 8465–01–117–8699 (Surge requirements only above current contractor capacity, not to exceed 180,000 units).

NPA: Industrial Opportunities, Inc., Andrews, North Carolina.

Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

Services

Service Type/Location: Custodial Services, Marine Corps Air Station, Camp Lejeune, North Carolina.

NPA: Coastal Enterprises of Jacksonville, Inc., Jacksonville, North Carolina.

Contract Activity: Naval Facilities Engineering Command, Camp Lejeune, North Carolina.

Service Type/Location: Mail and Messenger Service, Tobyhanna Army Depot, Tobyhanna, Pennsylvania.

NPA: The Burnley Workshop of the Poconos, Inc., Stroudsburg, Pennsylvania.

Contract Activity: Tobyhanna Army Depot, Tobyhanna, Pennsylvania.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–26948 Filed 10–23–03; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Vermont Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Vermont Advisory Committee to the Commission will convene at 9:30 a.m. to 2 p.m. on Thursday, October 30, 2003, at the Vermont State House, 115 State Street, Montpelier, Vermont 05633. The Committee will hold a planning meeting from 9:30 a.m. to 10 a.m. to prepare for a press conference scheduled for 10 a.m. to 12 p.m. to releases its report, Racial Harassment in Vermont Public Schools: A Progress Report, in Room 11. Following the press conference release, the Committee will hold a second planning meeting form 12 p.m. to 2 p.m. at 159 State Street, to hear from community activists about emerging civil rights issues and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Marc Pentino of the Eastern Regional Office, (202) 376–7533, TDD (202) 376–8116. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated: at Washington, DC, October 17, 2003.

Ivy L. Davis, Chief,

Regional Programs Coordination Unit.

[FR Doc. 03–27007 Filed 10–22–03; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: Bureau of Economic Analysis.

Title: Annual Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons.

Form Number(s): BE–82.

Agency Approval Number: 0608–0063.

Type of Request: Extension of a currently approved collection without any change in the substance or in method of collection.

Burden: 2,100 hours.

Number of Respondents: 300.

Avg Hours Per Response: 7.

Needs and Uses: The Government requires data from the BE–82, Annual Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons, to obtain accurate and up-to-date information on U.S. financial services transactions with unaffiliated foreign persons. It will use the data collected in monitoring U.S. exports and imports of financial services; analyzing their impact on the U.S. and foreign economies; supporting U.S. international trade policy on financial services; compiling the international transactions, national income and product, and input-output accounts of the United States; assessing U.S. competitiveness in international trade in services; and improving the ability of U.S. businesses to identify and evaluate market opportunities.

Affected Public: U.S. businesses or other for-profit institutions engaging in international financial services transactions with unaffiliated foreign persons.

Frequency: Annual.

Respondent's Obligation: Mandatory.

Legal Authority: Title 22 U.S.C., Sections 3101–3108, as amended.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

You may obtain copies of the above information collection proposal by calling or writing Departmental Paperwork Clearance Officer, Diana Hynek, (202) 482–3201, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 or by e-mail to *dhynek@doc.gov.*

Send comments on the proposed information collection within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, via e-mail at *pbugg@omb.eop.gov* or by fax at (202) 395–7245.

Dated: October 21, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–26876 Filed 10–23–03; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: Bureau of Economic Analysis.

Title: Annual Survey of Royalties, License Fees, and Other Receipts and Payments for Intangible Rights Between U.S. and Unaffiliated Foreign Persons.

Form Number(s): BE–93.

Agency Approval Number: 0608–0017.

Type of Request: Extension of a currently approved collection without any change in the substance or in method of collection.

Burden: 2,520 hours.

Number of Respondents: 630.

Avg Hours Per Response: 4.

Needs and Uses: The Government requires data from the BE–93, Annual Survey of Royalties, License Fees, and Other Receipts and Payments for Intangible Rights Between U.S. and Unaffiliated Foreign Persons, to obtain accurate and up-to-date information on transactions in intangible rights between U.S. and unaffiliated foreign persons. It will use the data collected in monitoring U.S. exports and imports of intangible rights, analyzing their impact on the U.S. and foreign economies, supporting U.S. international commercial policy on such services, compiling the international transactions, national income and product, and input-output accounts of the United States, assessing U.S. competitiveness in international trade in services, and improving the ability of U.S. businesses to identify and evaluate market opportunities.

Affected Public: U.S. businesses or other for-profit institutions that transact with unaffiliated foreign persons in intangible rights.

Frequency: Annual.

Respondent's Obligation: Mandatory.

Legal Authority: Title 22 U.S.C., sections 3101–3108, as amended.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

You may obtain copies of the above information collection proposal by calling or writing Departmental Paperwork Clearance Officer, Diana Hynek, (202) 482–0266, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230 or by e-mail to *dhynek@doc.gov.*

Send comments on the proposed information collection within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, via e-mail at *pbugg@omb.eop.gov* or by fax at (202) 395–7245.

Dated: October 21, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–26878 Filed 10–23–03; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Defense Priorities and Allocations System

ACTION: Notice and request for comments.

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 December 23, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Office of the Chief Information Officer, 202–482–0266, Room 6625, 14th and Constitution Avenue, NW., Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Marna Dove, BIS ICB Liaison, Department of Commerce, BIS Office of the Chief Information Officer, Room 6622, 14th and Constitution Avenue, NW., Washington DC 20230.

SUPPLEMENTARY INFORMATION

I. Abstract

The record keeping requirement is necessary for administration and enforcement of delegated authority under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*) and the Selective Service Act of 1948 (50 U.S.C. App. 468). Any person who receives a priority rated order under the implementing DPAS regulation (15 CFR 700) must retain records for at least 3 years.

II. Method of Collection

Records retention.

III. Data

OMB Number: 0694–0053.

Form Number: N/A.

Type of Review: Regular Submission.

Affected Public: Businesses and other for-profit institutions, small businesses or organizations.

Estimated Number of Respondents: 700,000.

Estimated Time Per Response: 1 to 31.5 minutes.

Estimated Total Annual Burden Hours: 14,477 hours.

Estimated Total Record Keeping Costs: $10,150.00.

Estimated Total Annual Cost: No start-up costs or capital expenditures.

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 will also become a matter of public record.

Dated: October 21, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–26877 Filed 10–23–03; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

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

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with September anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: October 24, 2003.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2002), for administrative reviews of various antidumping and countervailing duty orders and findings with September anniversary dates.

Initiation of Reviews

In accordance with sections 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than September 30, 2004.

	Period to be reviewed
Antidumping Duty Proceedings	
Latvia:	
Steel Concrete Reinforcing Bars, A–449–804	9/1/02–8/31/03
Joint Stock Company Liepajas Metalurgs	
Mexico:	
Oil Country Tubular Goods, A–201–817	8/1/02–7/31/03
Tubos de Acero de Mexico, S.A.[1]	
South Africa:	
Certain Hot-Rolled Carbon Steel Flat Products, A–791–809	9/1/02–8/31/03
Iscor, Ltd.	
Highveld Steel and Vanadium Corp., Ltd.	
Saldanha Steel, Ltd.	
South Korea:	
Steel Concrete Reinforcing Bars, A–580–844	9/1/02–8/31/03
Dongil Industries Co., Ltd.	
Dongkuk Steel Mill Co., Ltd.	
Hanbo Iron & Steel Co., Ltd.	
INIsteel	
Kosteel Co., Ltd.	
The People's Republic of China:	
Freshwater Crawfish Tail Meat[2], A–570–848	9/1/02–8/31/03
China Everbright	
China Kingdom Import & Export Co., Ltd., aka China Kingdoma Import & Export Co., Ltd., aka Zhongda Import & Export Co., Ltd.	
Fujian Pelagic Fishery Group Co.	
Huaiyin Foreign Trade Corporation (5)	
Jiangsu Hilong International Trading Co., Ltd.	
Huaiyin Foreign Trade Corporation (30)	
Jiangsu Cereals, Oils, & Foodstuffs Import & Export Corp.	
Hubei Qiangjiang Houhu Cold & Processing Factory	
Nantong Delu Aquatic Food Co., Ltd.	
Nantong Shengfa Frozen Food Co., Ltd.	
Ningbo Nanlian Frozen Foods Co., Ltd.	
North Supreme Seafood	
Qingdao Jinyongxiang Aquatic Foods Co., Ltd.	
Qingdao Rirong Foodstuff Co., Ltd., aka Qingdao Rirong Foodstuffs	
Qingdao Xiyuan Refrigerated Food Co., Ltd.	
Qingdao Zhengri Seafood Co., Ltd., aka Qingdao Zhengri Seafoods	
Shanghai Ocean Flavor International Tading Co., Ltd.	
Shanghai Taoen International Trading Co., Ltd.	
Shanghai Yangfen International Trading Co., Ltd.	
Shouzhou Huaxiang Foodstuffs Co., Ltd.	
Suqian Foreign Trade Corp., aka Suqian Foreign Trading	
Weishan Fukang Foodstuffs Co., Ltd.	
Weishan Zhenyu Foodstuff Co., Ltd.	
Yancheng Baolong Biochemical Products Co., Ltd.	
Yancheng Foreign Trade Corp., aka Yancheng Foreign Trading, aka Yang Chen Foreign Trading	
Yancheng Fuda Foods Co., Ltd.	
Yancheng Haiteng Aquatic Products & Foods Co., Ltd.	
Yancheng Yaou Seafoods	
Yangzhou Lakebest Foods Co., Ltd.	

	Period to be reviewed
Zhoushan Huading Seafood Co., Ltd.	

[1] Inadvertently omitted from previous initiation notice.
[2] If one of the above named companies does not qualify for a separate rate, all other exporters of freshwater crawfish tail meat from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

Countervailing Duty Proceedings

None.

Suspension Agreements

None.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: October 20, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Group II for Import Administration.

[FR Doc. 03–26940 Filed 10–23–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–867]

Automotive Replacement Glass Windshields from the People's Republic of China: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

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

ACTION: Notice of extension of time limit for the preliminary results of antidumping duty administrative review.

EFFECTIVE DATE: October 24, 2003.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for the preliminary results of the antidumping duty review of automotive replacement glass windshields from the People's Republic of China. This review covers the period September 19, 2001 through March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Jonathan Herzog, AD/CVD Enforcement, Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–4243 and (202) 482–4271, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 7, 2003, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on automotive replacement glass windshields (''ARG'') from the People's Republic of China (''PRC'') for the period September 19, 2001 through March 31, 2003. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 68 FR 16761 (April 7, 2003). On April 15, 2003, Dongguan Kongwan Automobile Glass Limited and Peaceful City Limited, requested an administrative review of their sales to the United States during the period of review (''POR''). On April 21, 2003, an importer, Pilkington North America requested an administrative review of the sales of Changchun Pilkington Safety Glass Company Limited, Guilin Pilkington Safety Glass Company Limited, Shanghai Yaohua Pilkington Autoglass Company Limited, and Wuhan Yaohua Pilkington Safety Glass Company Limited to the United States during the POR. On April 22, 2003, TCG International Inc. (''TCGI''), requested an administrative review of its sales to the United States during the POR. On April 30, 2003, Xinyi Automotive Glass (Shenzhen) Company, Limited (''Xinyi''), Shenzhen CSG Automotive Glass Company, Limited (reported to be the former company Shenzhen Benxun Auto Glass Company, Limited) (''Benxun''), and Fuyao Glass Industry Group Company, Limited requested an administrative review of their sales to the United States during the POR. On May 21, 2003, the Department published in the **Federal Register** a notice of the initiation of the antidumping duty administrative review of ARG from the PRC for the period September 19, 2001 through March 31, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 68 FR 27781 (May 21, 2003). On September 8, 2003, the Department published a notice in the Federal Register rescinding the administrative reviews of TCGI, Xinyi, and Benxun.[1] *See Certain Automotive Replacement Glass Windshields from the People's Republic of China: Notice of Partial Rescission of the Antidumping Duty Administrative Review*, 68 FR 52893 (September 8, 2003). The preliminary results of review are currently due no later than December 31, 2003.

Extension of Time Limit of Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), states that if it is not practicable to complete the review within the time specified, the administering authority may extend the 245-day period to issue its preliminary results by up to 120 days. Completion of the preliminary results of this review within the 245-day period is not practicable for the following reasons: (1) The review involves several complicated issues which require the Department to gather and analyze a significant amount of information pertaining to each company's sales practices, factors of production, and corporate relationships; and (2) responses from the participating companies required the Department to issue multiple supplemental

[1] Because Bexun withdrew its request for review, the Department did not have the information necessary to make a successor-in-interest determination. Therefore the Department did not determine that Shenzhen CSG Automotive Glass Company, Limited is entitled to receive the same antidumping cash deposit rate accorded Benxun.

questionnaires which delayed the planned verification schedules and, therefore, will not allow sufficient time to complete the preliminary results by the scheduled deadline of December 31, 2003.

Because it is not practicable to complete this review within the time specified under the Act, we are extending the time period for issuing the preliminary results of review by 60 days until February 29, 2004, in accordance with section 751(a)(3)(A) of the Act. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: October 17, 2003.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–26938 Filed 10–23–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–807]

Certain Hot-Rolled Carbon Steel Flat Products From The Netherlands: Notice of Final Court Decision and Suspension of Liquidation

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

ACTION: Notice of Final Court Decision and Suspension of Liquidation.

SUMMARY: On September 29, 2003, in *Corus Staal BV et al.* v. *United States III*, Consol. Court No. 02–00003, Slip Op. 03–127 (CIT 2003), the United States Court of International Trade (the Court) affirmed the Department of Commerce's (the Department's) remand determination and entered a final judgment order in regards to *Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products From The Netherlands*, 66 FR 50408 (October 3, 2001) and accompanying Issues and Decision Memorandum, *as amended*, *Notice of Amended Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products From The Netherlands*, 66 FR 55637 (November 2, 2001) and *Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From The Netherlands*, 66 FR 59565 (November 29, 2001). In its remand determination the Department explained its practice in calculating the provisional measures time period, *i.e.*, explained its interpretation of the term ''6 months'' in section 733(d) of the Tariff Act of 1930, as amended (the Tariff Act). *See* ''Final Results of Redetermination Pursuant to Court Remand: Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands,'' Consol. Court No. 02–00003, Slip Op. 03–25 (CIT 2003) (Final Results of Redetermination).

As a result of the remand determination, the Department will amend the antidumping duty order on certain hot-rolled carbon steel flat products (hot-rolled steel) from the Netherlands to lift suspension of liquidation 180 days from the date of publication of the preliminary determination in the **Federal Register**. Because the preliminary determination was published on May 3, 2001, the amended antidumping duty order will indicate October 30, 2001 as the date of termination of suspension of liquidation in this case. In addition, as a result of the remand determination, the Department will inform the Bureau of Customs and Border Protection (Customs) to lift suspension of liquidation on October 30, 2001, and to resume collection of definitive duties on November 29, 2001, the date of publication of the antidumping duty order in the **Federal Register**.

Consistent with the decision of the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the Department will continue to order the suspension of liquidation of the subject merchandise until there is a conclusive decision in this case. If this case is not appealed, or if it is affirmed on appeal, the Department will publish an amended antidumping duty order for hot-rolled steel from the Netherlands in accord with its redetermination, and instruct Customs to terminate the suspension of liquidation for the period October 30, 2001 through November 28, 2001 and to resume collection of cash deposits on November 29, 2001.

EFFECTIVE DATE: October 24, 2003.

FOR FURTHER INFORMATION CONTACT: Deborah Scott at (202) 482–2657 or Robert James at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On October 3, 2001, the Department published in the **Federal Register** its notice of final determination that sales of hot-rolled steel from the Netherlands were being sold at less than fair value (LTFV) in the United States, and on November 2, 2001 the Department published an amended final determination regarding the sale of hot-rolled steel from the Netherlands at LTFV in the United States. *See Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products From The Netherlands*, 66 FR 50408 (October 3, 2001) and accompanying Issues and Decision Memorandum, *as amended*, *Notice of Amended Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products From The Netherlands*, 66 FR 55637 (November 2, 2001) (collectively, *Final Determination*). On November 15, 2001, the International Trade Commission (the Commission) published its final determination that an industry in the United States is materially injured by reason of LTFV imports of hot-rolled steel from the Netherlands. *See Hot Rolled Steel Products From China, India, Indonesia, Kazakhstan, The Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine*, 66 FR 57482 (November 15, 2001). On November 29, 2001, the Department published the antidumping duty order on hot-rolled steel from the Netherlands. *See Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From The Netherlands*, 66 FR 59565 (November 29, 2001).

Subsequent to the publication of the Department's antidumping duty order, the petitioners (National Steel Corporation, Bethlehem Steel Corporation, and United States Steel Corporation) and the respondent (Corus Staal BV and Corus Steel USA Inc. (collectively, Corus)) challenged certain aspects of the Department's *Final Determination* before the Court. In addition, the Department requested a voluntary remand with respect to the inadvertent omission of the proper language from the antidumping duty order to cease collection of provisional measures six months after the publication of the preliminary determination, in accordance with section 733(d) of the Tariff Act. Corus also raised this issue, but argued the Department had interpreted the six month provisional measures period as constituting 180 days, as opposed to six calendar months. This issue arose due to the following chain of events: In the underlying investigation, the Department published its preliminary determination on May 3, 2001. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain*

Hot-Rolled Carbon Steel Flat Products from the Netherlands, 66 FR 22146 (May 3, 2001). Following publication of the preliminary determination, Corus requested that the Department extend the deadline for the final determination, and in making this request, agreed to an extension of provisional measures from a four-month period to not more than six months. However, the Department inadvertently excluded language from the antidumping duty order indicating it would lift suspension of liquidation (*i.e.*, cease collection of provisional measures) six months after the date of the preliminary determination, consistent with section 733(d) of the Tariff Act.

On March 7, 2003, the Court issued a remand order to the Department to revise its antidumping duty order to preclude collection of provisional measures beyond the six month period, and to also explain its practice of interpreting the provisional measures time period, *i.e.*, in calendar months or the equivalent in six 30-day periods. *See Corus Staal BV et al. v. United States I*, Consol. Ct. No. 02–00003, Slip Op. 03–25 (March 7, 2003). The Department released its ''Draft Redetermination Pursuant to Court Remand'' (Draft Results) on March 20, 2003, noting that in cases subsequent to the final determination in the underlying investigation, the Department has followed the practice of interpreting six months to mean 180 days. *See*, *e.g.*, *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Antidumping Investigation of Low Enriched Uranium From France*, 67 FR 6680 (February 13, 2002) and *Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine*, 67 FR 65945, 65947 (October 29, 2002). Because 180 days from the publication of the preliminary determination was October 30, 2001, the Department stated in its Draft Results that provisional measures should not have been collected after October 29, 2001 and therefore it would amend its instructions to Customs to lift suspension of liquidation on October 30, 2001. The Department also clarified in its Draft Results that the appropriate date to resume collection of definitive duties, pursuant to section 737 of the Tariff Act, was the date when the Commission publishes a final injury determination, which in this case was November 15, 2001. Therefore, the Department proposed instructing Customs to resume collection of cash deposits effective November 15, 2001. In response to the Department's Draft Results, Corus submitted comments on March 31, 2003, stating that while it agreed with the Department on the date of termination of suspension of liquidation, it disagreed with the Department on the date on which the collection of definitive duties was to resume. Instead, Corus argued, the collection of cash deposits should resume on the date of publication of the antidumping duty order, *i.e.*, November 29, 2001.

On April 7, 2003, the Department filed with the Court its Final Results of Redetermination, stating that upon approval by the Court it would issue an amended antidumping duty order and instructions to Customs including language lifting suspension of liquidation ''180 days from the publication of the preliminary determination until publication of the Commission's final affirmative determination.'' On August 12, 2003, the Court sustained the portion of the Department's Final Results of Redetermination which stated that provisional measures should not have been collected more than 180 days after the preliminary determination. However, the Court ruled that the issue of the end date of the provisional measures time period could not be raised on remand. Thus, the Court ordered the Department to amend its remand determination to declare the date of publication of the antidumping duty order (*i.e.*, November 29, 2001) to be the end date for the termination of suspension of liquidation in this case. *See Corus Staal BV et al.* v. *United States II*, Consol. Ct. No. 02–00003, Slip Op. 03–101 (August 12, 2003). Pursuant to the Court's order in *Corus Staal BV* v. *United States II*, on September 2, 2003 the Department filed a revised final results of redetermination stating that consistent with the Court's order, the end date for the termination of suspension of liquidation in this case was November 29, 2001. The Department also indicated that upon issuance of a final and conclusive decision by the Court, it would publish an amended antidumping duty order and issue instructions to Customs to resume the collection of cash deposits effective November 29, 2001. *See* ''Final Results of Redetermination Pursuant to Second Court Remand: Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands,'' Consol. Court No. 02–00003, Slip Op. 03–101 (CIT 2003). On September 29, 2003, the Court affirmed the Department's amended remand redetermination and entered a final judgment order with regards to the *Final Determination*. *See Corus Staal BV et al.* v. *United States III*, Consol. Court No. 02–00003, Slip Op. 03–127 (CIT September 29, 2003). As there is now a final court decision with respect to this litigation, we are publishing this notice of final court decision affirming our remand redetermination.

Suspension of Liquidation

In *Timken*, the Federal Circuit held that the Department must publish notice of a decision made by the Court or the Federal Circuit which is not ''in harmony'' with the Department's final determination or final results. The Federal Circuit also held that the Department must suspend liquidation of the subject merchandise until there is a ''conclusive'' decision in the case. Therefore, pursuant to Timken, the Department must continue to suspend liquidation for all subject merchandise entered, or withdrawn from warehouse, for consumption between October 30, 2001 and November 28, 2001, inclusive, pending the expiration of the period of appeal for *Corus Staal BV* v. *United States III*, or, if that decision is appealed, pending a final decision by the Federal Circuit. Upon expiration of the period of appeal or completion of any future litigation in this matter, the Department will issue instructions to Customs to liquidate all entries of subject merchandise made between October 30, 2001 and November 28, 2001, inclusive, without regard to antidumping duties (*i.e.*, release all bonds and refund all cash deposits). The Department will also instruct Customs to resume collection, effective November 29, 2001, of a cash deposit equal to the estimated weighted-average antidumping duty margins published in the *Final Determination.*

Dated: October 20, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–26939 Filed 10–23–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588–046]

Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Polychloroprene Rubber from Japan

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

ACTION: Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review.

SUMMARY: On July 31, 2003, the Department of Commerce (the Department) published a notice of initiation of changed circumstances review of the antidumping duty finding on polychloroprene rubber (PR) from Japan to determine whether Showa Denko Elastomers, K.K. (SDEL) and Showa Denko K.K. (SDK) are the successor-in-interest companies to Showa DDE Manufacturing K.K. (SDEM) and DDE Japan Kabushiki Kaisha (DDE Japan). *See Notice of Initiation of Antidumping Duty Changed Circumstances Review: Polychloroprene Rubber from Japan*, 68 FR 44924 (July 31, 2003) (*Notice of Initiation*). We have preliminarily determined that the restructured manufacturing and marketing joint venture, SDEL and SDK, are the successor-in-interest companies to SDEM and DDE Japan, for purposes of determining antidumping liability in this proceeding. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 24, 2003.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Ronald Trentham, AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4114 or (202) 482–6320, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 6, 1973, the Treasury Department published in the **Federal Register** (38 FR 33593) the antidumping finding on PR from Japan. On June 17, 2003, SDEL and SDK submitted a letter stating that they are the successor-in-interest to SDEM and DDE Japan, and, as such, entitled to receive the same antidumping treatment as these companies have been accorded. On July 18, 2003, at the request of the Department, SDEL and SDK submitted additional information and documentation pertaining its change circumstances request.

Scope of Review

Imports covered by this review are shipments of PR, an oil resistant synthetic rubber also known as polymerized chlorobutadiene or neoprene, currently classifiable under items 4002.42.00, 4002.49.00, 4003.00.00, 4462.15.21 and 4462.00.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). HTSUS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Preliminary Results of Changed Circumstances Review

In submissions to the Department dated June 17 and July 18, 2003, SDEL and SDK advised the Department that on November 1, 2002, the joint venture of SDEM and DDE Japan was restructured. Prior to the current restructure, SDEM and DDE Japan were co-owned by Dupont Dow Elastomers L.L.C. (Dupont Dow) and SDK. *See Notice of Final Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber from Japan*, 67 FR 58 (January 2, 2002). In the original joint venture, SDEM was the manufacturing arm of joint venture producing PR while DDE Japan was the marketing arm of the joint venture. As part of the current restructuring, DuPont Dow transferred its interest in SDEM to SDK. SDK , in turn, transferred its interest in DDE Japan to DuPont Dow. As a result of these interest transfers, SDK became the sole owner of SDEM and DuPont Dow became the sole owner of DDE Japan. On the same date, SDEM was renamed SDEL while maintaining the original production facility. The marketing end of SDEL's business was assumed by SDK.

In making a successor-in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See Brass Sheet and Strip from Canada: Notice of Final Results of Antidumping Administrative Review*, 57 FR 20460, 20462 (May 13, 1992) (*Canadian Brass*). While no one or several of these factors will necessarily provide a dispositive indication, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is not materially dissimilar to that of its predecessor. *See, e.g., Industrial Phosphoric Acid from Israel: Final Results of Changed Circumstances Review*, 59 FR 6944, 6945 (February 14, 1994) and *Canadian Brass*, 57 FR 20460. Therefore, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company essentially operates as the same business entity as the former company, the Department will assign the new company the cash deposit rate of its predecessor.

Our review of the evidence provided by SDEL and SDK indicates, preliminarily, that the change in ownership has not significantly changed the companies' personnel, operations, supplier/customer relationship, or production facilities. The new corporate entity of SDEL and SDK provided a certified copy of the official corporate registry showing SDEL as a successor to SDEM as of November 1, 2002, the effective date of the restructuring, as well as documents showing that since the name change, SDEL continued its production of PR in the same manner using the same suppliers and facilities as it did under its previous name of SDEM. Additionally, the corporate registry indicates that the majority of SDEM's management was retained by the new corporate entity SDEL.

Furthermore, SDK provided certified statements from its general manager that certain activities undertaken by DDE Japan prior to November 1, 2002, (*i.e.*, sales and marketing, technical services, order receiving and freight forwarding of PR) have since been performed by SDK. SDK also certified that it rehired key marketing personnel from DDE Japan. Finally, SDK provided a copy of Stock Purchase Agreement for DDE Japan and a copy of Offers of Employment for DDE Japan's key marketing employees as evidence that the marketing functions, performed originally by DDE Japan, have been assumed by SDK.

In sum, SDEL and SDK have presented evidence to establish a prima facie case of their successorship status. The restructuring has precipitated minimal changes to the original structure of the SDEM and DDE Japan joint venture. The management, production facilities, supplier relationships, sales facilities and customer base are essentially unchanged from those of SDEM and DDE Japan. Therefore, the record evidence demonstrates that the new entity essentially operates in the same manner as the predecessor companies of SDEM and DDE Japan. As SDEL manufactures PR and SDK sells/distributes PR produced by SDEL for the newly restructured entity, we preliminarily determine that SDEL and SDK should be given the same antidumping duty treatment as SDEM and DDE Japan, *i.e.*, zero percent antidumping duty cash deposit rate.

The cash deposit determination from this changed circumstances review will apply to all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this changed circumstances review. *See Granular Polytetrafluoroethylene Resin from Italy; Final Results of Antidumping Duty Changed Circumstances Review*, 68 FR

25327 (May 12, 2003). This deposit rate shall remain in effect until publication of the final results of the next administrative review in which SDK and SDEL participate.

Public Comment

Any interested party may request a hearing within 30 days of publication of this notice. 19 CFR 351.310 (c)(2003). Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first working day thereafter. Interested parties may submit case briefs and/or written comments not later than 30 days after the date of publication of this notice. 19 CFR 351.309(c)(ii)(2003). Rebuttal briefs, which must be limited to issues raised in such briefs or comments, may be filed not later than 37 days after the date of publication of this notice. *See* 19 CFR 351.309(d)(2003). Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.

Consistent with section 351.216(e) of the Department's regulations, we will issue the final results of this changed circumstances review no later than 270 days after the date on which this review was initiated.

This notice is in accordance with sections 751(b) and 777(i)(1) of the Tariff Act of 1930, as amended, and section 351.221(c)(3)(i)(2003) of the Department's regulations.

Dated: October 17, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–26937 Filed 10–23–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-583–816]

Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Extension of Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of extension of time limit for final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for the final results of the review of stainless steel butt-weld pipe fittings from Taiwan. This review covers the period June 1, 2001 through May 31, 2002.

EFFECTIVE DATE: October 24, 2003.

FOR FURTHER INFORMATION CONTACT: Jon Freed, Enforcement Group III--Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3818.

Background

On July 8, 2003, the Department published the preliminary results of the administrative review of the antidumping duty order on stainless steel butt-weld pipe fittings from Taiwan. *See Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part*, 68 FR 40637 (July 8, 2003). The final results of this administrative review are currently due no later than November 5, 2003.

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Act states that if it is not practicable to complete the review within the time specified, the administering authority may extend the 120-day period, following the date of publication of the preliminary results, to issue its final results by an additional 60 days. Completion of the final results within the 120-day period is not practicable for the following reasons: (1) this review involves certain complex Constructed Export Price (''CEP'') adjustments including, but not limited to CEP profit and CEP offset; and (2) this review involves a complex affiliation issue.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing the final results of review by 35 days until no later than December 10, 2003.

Dated: October 17, 2003.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–26936 Filed 10–23–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100903B]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of availability and request for comment.

SUMMARY: Notice is hereby given that NMFS has prepared a draft Environmental Assessment (EA) under the National Environmental Policy Act (NEPA) of the potential effects of approval of a Fishery Management and Evaluation Plan (FMEP) submitted by the Oregon Department of Fish and Wildlife (ODFW) for a coho salmon fishery in Siltcoos and Tahkenitch Lakes, located south of the town of Florence along the Oregon Coast. The objectives of the FMEP are to provide some fishing opportunity in years when coho salmon returns are high and in a manner that does not affect the viability of the local coho population and the Oregon Coast Evolutionarily Significant Unit (ESU) as a whole. This document serves to notify the public of the availability of the draft EA for public comment before a final decision on whether to issue a Finding of No Significant Impact is made by NMFS.

DATES: Written comments on the draft EA must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific daylight time on November 10, 2003.

ADDRESSES: Written comments and requests for copies of the draft EA and ODFW's FMEP should be addressed to Lance Kruzic, Salmon Recovery Division, 2900 N.W. Stewart Parkway, Roseburg, OR 97470 or faxed to (541) 957–3381. The documents are also available on the Internet at *http://www.nwr.noaa.gov/1fmep/fmepsbmt.htm*. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Lance Kruzic, Roseburg, OR, at phone number (541) 957–3381 or e-mail: *lance.kruzic@noaa.gov*.

SUPPLEMENTARY INFORMATION: This notice is relevant to the Oregon Coast coho salmon (Oncorhynchus kisutch) Evolutionarily Significant Unit.

Background

The ODFW has submitted to NMFS a FMEP for a recreational fishery in Siltcoos and Tahkenitch Lakes, located along the Oregon Coast. As specified in the July 10, 2000, Endangered Species Act 4(d) rule for salmon and steelhead (65 FR 42422), NMFS may approve an FMEP if it meets criteria set forth in § 223.203 (b)(4)(i)(A) through (I). Prior to final approval of an FMEP, NMFS must publish notification announcing its availability for public review and

comment. The notice of availability of this FMEP was published on August 29, 2003 (68 FR 51995). The comment period closed on September 29, 2003.

NEPA requires Federal agencies to conduct an environmental analysis of their proposed actions to determine if the actions may affect the human environment. The proposed action is to approve the FMEP submitted by the ODFW. The proposed coho salmon fishery would occur in Siltcoos and Tahkenitch Lakes in years when returns are high and expected to exceed specified spawning escapement guidelines. In the draft EA currently available for public comment, NMFS considered the effects of this action on the physical, biological, and socioeconomic environments. NMFS is seeking public input on the scope of the required NEPA analysis, including the range of reasonable alternatives and associated impacts of any alternatives.

Dated: October 20, 2003.

Phil Williams,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–26930 Filed 10–23–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 073003D]

Taking Marine Mammals Incidental to Specified Activities; Oceanographic Surveys in the Eastern Tropical Pacific Ocean

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 surveys in the Eastern Tropical Pacific Ocean (ETP), has been issues to the Scripps Institution of Oceanography (SIO).

DATES: Effective from September 27, 2003, through September 26, 2004.

ADDRESSES: The application, a list of references used in this document, and the IHA are available by writing to the Acting Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here.

FOR FURTHER INFORMATION CONTACT: Sarah C. Hagedorn, Office of Protected Resources, NMFS, (301) 713–2322, ext 117.

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.''

Subsection 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. Under section 3(18)(A), 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; 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.

The term ''Level A harassment'' means harassment described in subparagraph (A)(i). The term ''Level B harassment'' means harassment described in subparagraph (A)(ii).

Subsection 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 small numbers 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 16, 2003, NMFS received an application from SIO for the taking, by harassment, of several species of marine mammals incidental to conducting a seismic survey program in international waters of the ETP and in the Exclusive Economic Zones (EEZ) of several coastal states (Mexico, Costa Rica, Panama, Columbia, Ecuador, and Peru), from which permission to conduct this type of scientific research has been requested. SIO's *R/V Roger Revelle* is scheduled to undertake a multidisciplinary research cruise, including some seismic reflection profiling and echo-sounding studies, in the ETP from September 2003 to February 2004, primarily 100–400 nautical miles (nm) (185 - 741 km) west of northern Peru and 200–1000 nm (370 - 1852 km) west of the Galapagos Islands. None of these operations would be in U.S. territorial waters or in the U.S. EEZ. A low-energy seismic reflection profiler with a small airgun sound source will be used on 3 of the 8 legs of the cruise. The purpose of this survey is to study the shape and structure of the sediment-buried oceanic crust in this part of the ETP.

Description of the Activity

SIO's seismic surveys will involve one vessel, the *R/V Roger Revelle* (under a cooperative agreement with the U.S. Navy, owner of the vessel). The *Roger Revelle* will deploy two airguns as an energy source, plus a single short (300 m or 984 ft) towed streamer of hydrophones to receive the returning acoustic signals, that can be retrieved and deployed in less than 20 minutes.

The bubble-generating chambers of the two small General-Injector (GI) airguns have a combined volume of 90 cubic inches (1475 cubic centimeters (cc)), contrasting with 3000–9000 cubic inches (49,161–147,484 cc) of the large gun arrays typical of academic and commercial seismic surveys. The primary seismic pulse is produced by a 45–in^3 (737 cc) generator chamber, while compressed air from a 105–in^3 (1721 cc) injector chamber is used to maintain the shape of the bubble and reduce its sound-making oscillation. The pair of simultaneously fired airguns would have a peak-to-peak (p-p) amplitude of 236 dB re 1 microPa. In addition, a hull-mounted mid-frequency

multibeam echo-sounder sonar for seafloor mapping will be routinely operated whenever the *Revelle* is underway. The Kongsberg-Simard EM–120 sonar images the seafloor over a 120–140 degree-wide swath (about 10–20 km, or 5–10 nm wide), using very short (15 msec) transmit pulses with a 10–20 second repetition rate and a 11.25–12.60 kHz frequency sweep. Source level in deep water is 240 dB root-mean-squared (rms), but the brevity, directivity, and narrow beam-width (1 degree fore-and-aft) of the transmit pulses make it unlikely that operation of this depth sonar will affect marine mammals.

None of the 3 research legs for which an IHA is requested will be a dedicated seismic reflection survey of the sort typically conducted by a specialized seismic vessel. The seismic reflection profiler will be used as just one tool in integrated marine geology and geophysical studies that also employ bathymetric echo-sounders, passive geophysical sensors (such as a gravimeter and magnetometer), and geologic sampling tools (like rock dredges and cores). Typical operating procedure during these three legs of the cruise will be to conduct seismic profiling, at a ship speed of 9–11 knots for periods of 8–12 hours, interspersed with episodes of geologic sampling and periods of faster steaming with no profiling system deployed. In a few instances (1–3 per leg), longer profiles will need to be collected, requiring up to 36 hours of continuous airgun operation. The objective is not to image deep crustal structureor the stratigraphy of thick sedimentary units (the typical goals of seismic surveys); instead the purpose is to measure the varying thickness of the 100–400 m-thick (328–1312 ft) cover of pelagic sediment that buries and obscures the igneous oceanic crust in the study areas, because establishing the relief of the buried crust is essential for interpreting the bathymetric, magnetic and gravity data. For this limited objective, the large powerful sound sources and hydrophone streamers several kilometers long that typify dedicated seismic surveys are not required. Nor will any broad ocean volume be ensonified by profiling on closely-spaced seismic lines.

Leg 1 of the cruise, from San Diego to Puerto Caldera, Costa Rica, is planned for September 27 - October 9, 2003. This will be primarily a staging and instrument testing and calibration leg, but with 2 days of seismic reflection profiling and rock-dredging 40–80 nm (74–148 km) off the coast of Costa Rica. In addition to the approximately 24 hours of seismic profiling, SIO also plans to test and calibrate new components of the system, and train shipboard technicians in their use, with 2 or 3 12–18 hour test runs along parts of the transit track. Because these test profiles may obtain scientifically useful data, specific sites that are of interest to Mexican researchers have been targeted, in partial fulfillment of SIO's foreign-clearance obligation to collect data of value to coastal states.

Leg 2, from Puerto Caldera, Costa Rica, to Manta, Ecuador, is planned for October 10 - November 6, 2003. The plan for this leg is to (i) conduct a 2–day seismic reflection plus rock dredging survey of Cobia Ridge, south of Panama, (ii) collect a north-south seismic reflection plus magnetics profile across the eastern Panama Basin, and (iii) conduct a 14–day seismic reflection plus bathymetry plus rock dredging survey off northern Peru. A total of 200–250 hours of seismic reflection profiling is anticipated for this leg of the cruise.

Leg 5, from Callao, Peru, to Puerto Caldera, Costa Rica, is planned to take place from December 28, 2003 - February 23, 2004. Primary survey tools will be a multibeam echo-sounder and a new magnetometer system. Seismic reflection profiling will have a subsidiary role, imaging the relief of the igneous crust in the approximately 20 percent of the survey area that has a significant cover of structure-obscuring sediment. A total of 150–200 hours of profiling is anticipated for this leg of the cruise. All three legs will use the same bathymetric sonar and seismic profiling system, described above.

All planned geophysical data acquisition activities are funded by the National Science Foundation (NSF) and will be conducted by SIO scientists, with a specific Principal Investigator aboard the vessel. Additional information on the airgun array and bathymetric multibeam sonar is contained in the application, which is available upon request (see **ADDRESSES**).

Comments and Responses

A notice of receipt of the Scripps' application and proposed IHA was published in the **Federal Register** on August 25, 2003 (68 FR 51240). During the 30–day public comment period, comments were received from the Marine Mammal Commission (Commission) and the Center for Biological Diversity (CBD).

Comment 1: The Marine Mammal Commission (the Commission) believes that NMFS' preliminary determinations are reasonable, provided NMFS is satisfied that the proposed mitigation and monitoring activities are adequate to detect marine mammals in the vicinity of the proposed operations and ensure that marine mammals are not being taken in unanticipated ways or numbers. In this regard, NMFS' **Federal Register** notice states that ''[b]ecause of the ineffectiveness of mammal observers during darkness (even though the vessel is equipped with night-vision binoculars), seismic reflection profiling will be concentrated during daylight hours [but that on] 1–3 occasions....limited night profiling is needed to allow completion of the marine geophysical research.'' However, it remains unclear that, for nighttime activities, the monitoring effort will be sufficient to determine that no marine mammals are within or about to enter the safety zone.

Response: Because the SIO's scientific research cruise is multi-disciplinary, and because the seismic research is fairly short-term, SIO does not propose to use the 2–GI airgun array during nighttime. If a seismic trackline has not been completed, that work will continue provided observers are able to see the entire safety zone. However, because the size of the airgun array to be used is small, and because the safety zones are relatively small, it is unlikely that mammals will be within the appropriate safety zones whenever the airguns are on, either in daylight or nighttime.

Comment 2: The NMFS' **Federal Register** notice states that ''[o]perations would not resume until the animal is observed outside the safety radius or until a minimum of 15 minutes has elapsed since the last sighting.'' The Commission notes, however, that beaked and sperm whales can dive for much longer than 15 minutes and, thus, could be directly below the sound source when it is reactivated.

Response: The NMFS concurs with the Commission on this point. SIO will not proceed with powering up the 2 GI-airgun array unless the entire safety radius is visible and no marine mammals are detected within the appropriate safety zones; or until 15 minutes (for small odontocetes and pinnipeds) or 30 minutes (for mysticetes/large odontocetes) after there has been no further visual detection of the mammal(s) within the safety zone and the trained marine mammal observer on duty is confident that no marine mammals or sea turtles remain within the appropriate safety zone. As added mitigation, SIO will follow standard ramp-up procedures (see Mitigation below). Also, while some whale species may dive for up to 45 minutes, it is unlikely that the ship's bridge personel (who are always on watch) would miss a large whale

surfacing from its previous dive if it is within a mile or two of the vessel.

Comment 3: The Commission notes that it is unclear whether vessel-based passive acoustic monitoring will be conducted as an adjunct to visual monitoring during daytime and particularly during nighttime operations to detect, locate, and identify marine mammals, and, if not, why not.

Response: Passive acoustical monitoring equipment similar to that onboard the *R/V Maurice Ewing* during the 2003 Gulf of Mexico (GOM) Sperm Whale Seismic Study (SWSS), is not the property of SIO or the *Revelle*, and therefore is not available for the ETP cruise. In addition, the expense and logistics involved in operating passive acoustical monitoring as a mitigation measure (requiring triangulation on the vocalization), the fact that the zone where Level A harassment could occur is small (738 ft, 225 m), and no nighttime acoustics are planned during this cruise, indicate that use of passive acoustical monitoring is neither warranted nor practical. The Lamont-Doherty Earth Observatory (LDEO) is presently evaluating the scientific results of the passive sonar from the SWSS trip to determine whether it is practical to incorporate it into future seismic research cruises using large airgun arrays. NMFS expects a report on this analysis shortly.

Comment 4: With respect to pinnipeds, the CBD states that NMFS neglects to state the number that the SIO project will take. Instead, the proposed authorization notes that SIO ''did not estimate numbers of pinnipeds potentially vulnerable to harassment due to insufficient data on distribution, abundance, and pinniped response,'' and nonetheless concludes that the *Revelle* is unlikely to encounter significant numbers of pinnipeds (68 FR 51242). Practical considerations or unavailability of information is no excuse for failing to make the required MMPA findings. The proper course of action in the absence of sufficient data to make the required MMPA findings and ensure compliance with the MMPA is to deny authorization of the project.

Response: The application contains references of known studies on pinniped abundances in the ETP. Insufficient data on distribution, abundance, and pinniped response makes it impossible to estimate an actual number of pinnipeds potentially vulnerable to harassment. However, based on data from these studies, general information exists on locations and seasons in which these pinniped species have been observed in the past. Because of these estimated species ranges and the near-shore nature of many species of pinnipeds, very few, if any, pinnipeds are expected to be encountered along the well-offshore seismic lines proposed by Scripps. Mitigation measures, the downwards directional nature of the low-volume airguns, the brevity of seismic profiling in certain habitats, and the fact that many pinnipeds have been shown to be highly tolerant of high levels of airgun noise, make it even less likely that any pinnipeds encountered will experience harassment.

Comment 5: With respect to cetaceans, the proposed authorization does not provide actual numbers taken, but rather states that the total estimated take by harassment will be less than 1 percent of most cetaceans (including the endangered sperm and blue whales), 1.8 percent of pygmy sperm whales, 6.2 percent of dwarf sperm whales, and 1.8 percent of the endangered humpback whales in the area (68 FR 51243). By dismissing the number of cetaceans affected by the proposed activity with this reasoning, NMFS has improperly conflated its two, distinct statutory obligations to only authorize take of (1) of small numbers; and (2) with no more than a negligible impact.

Response: The SIO application, available by request (see **ADDRESSES**), contains both numbers and percentages of estimated takes. Based on the analysis found in this document and in SIO's application, which NMFS believes is based on the best scientific information available, the notice of proposed authorization (68 FR 51240) used percentages to show that even in cases where the absolute numbers may not seem ''small'', they are small relative to the size of the affected species or stocks. As the SIO application indicates, the absolute numbers of takes by species ranges from 1 animal to 21,450.

Comment 6: While the proposed authorization does outline several monitoring, mitigation, and reporting measures, these measures do not insure the ''least practicable adverse impact'' as required by the MMPA. In addition, NMFS provides no explanation for why seismic profiling cannot be limited to daylight hours when observers are on surveillance duty and marine mammals are far more detectable. Furthermore, under the proposed authorization's shut-down procedures, it is unclear why NMFS only addressed measures necessary to avoid Level A and not Level B harassment when both are prohibited by the MMPA. Also, NMFS failed to mention or require any exclusion zones to avoid seismic operations in coastal areas and key habitat for feeding, mating, breeding and migration.

Response: NMFS is requiring SIO to incorporate the mitigation measures that are standard for significantly larger seismic arrays. SIO may need to continue its operations into night-time hours. Limiting activities to daylight hours only would require the *Roger Revelle* to return to the site during daylight, approach the area for which data is lacking, and begin seismic activities once again. Since this area could not be located exactly, additional seismic operations would need to be conducted. This would result in additional noise in the environment and is not cost-effective (ship operations are approximately $35,000/day). Therefore, the IHA authorizes Scripps to continue seismic into night-time hours. However, if the array is shut-down at night, seismic operations may not begin again until daylight allows the safety zone to be observed for the time period noted in this document.

For similar reasons, shutting down seismic operations to protect marine mammals from Level B disturbance, if protracted, would also require the *Roger Revelle* to return to the site again to re-shoot the seismic lines. It should be understood that ramp-up and the ship's forward speed both allow marine mammals to be exposed to sounds at low levels and thereby move out of the area of annoyance, further limiting Level B harassment. For those reasons, NMFS prefers to limit the amount of noise projected into the water and believes that this suggested mitigation measures are not practicable.

Comment 7: The CBD believes that NMFS determining that a Categorical Exclusion is not appropriate for this action and that use of another Environmental Assessment (EA) for this action is not sufficient.

Response: NMFS followed NOAA Administrative Order (NAO) 216–6 before making a determination that this action qualifies for a Categorical Exclusion. As noted in the proposed authorization notice and this document, an Environmental Assessment (EA) on a similar (i.e., oceanographic research) seismic survey action for this area of the Pacific Ocean was prepared and released to the public on July 11, 2003 (68 FR 41314) for a 30–day public comment period. The seismic airgun array used in that survey and addressed in the EA was for an array of up to 12–airguns with a total volume of 3,721 in^3. No comments were received during that period on the subject EA, and NMFS' analysis of that action resulted in a Finding of No Significant Impact (FONSI)(see 68 FR 41314, July

11, 2003). One of the alternatives addressed in that EA was for alternative seasons of the year, which would include the time of the subject SIO survey. In addition, the acoustic survey described in this document by SIO will use acoustic instruments that are significantly less intense (total volume of 90 in3) and will therefore have a significantly lower impact on the marine environment than acoustic sources used by the *R/V Maurice Ewing* addressed in the EA. Furthermore, under NAO 216–6, this is an action of limited size or magnitude. Therefore, based on that EA, and a review of the information contained in the IHA application from Scripps, NMFS determined that this action will not have a significant effect, individually or cumulatively, on the human environment. Accordingly, the action is categorically excluded from the need to prepare another EA or environmental impact statement. A copy of the categorical exclusion documentation has been sent to the CBD as requested.

Comment 8: Direct impacts of SIO's project on the environment include but are not limited to its effects on marine mammals, fish species, and other sea creatures, such as the giant squid, an important food source for sperm whales that has recently suffered injury linked to acoustic testing. NMFS has failed to assess the cumulative impacts of SIO's project in conjunction with other actions on the environment. A proper cumulative impacts analysis in this case should include past, present, and reasonably forseeable seismic and other actions in the area.

Response: The EA relied upon here describes impacts, both individual and cumulative on marine mammals, sea turtles, and other marine life. Scientific information providing a link between low frequency seismic research and squid is limited (see McCauley *et al.*, 2000). A recent news-wire article noting the possible linkage between Spanish naval exercises and a stranding of several large squid does not establish a causal link until (or if) necropsies can be conducted on those animals.

Mitigation

For the proposed seismic operations in the ETP, SIO will use 2–GI guns with a total volume of 90 in3 (1475 cc). These airguns will be spread out horizontally, so that the energy from the array will be directed mostly downward. The following mitigation measures, as well as marine mammal monitoring, will be adopted during the proposed ETP seismic survey program.

Safety Radii

SIO has adopted conservative methods in defining safety zone calculations using (i) a 9–dB difference between peak-to-peak (p-p) and rms, and (ii) spherical spreading of the sound, even though it is clear that at the low acoustic frequencies which dominate SIO's airgun output, the generated sound pulses have considerable directivity, favoring downward propagation over horizontal propagation. This is because in the near-horizontal direction the direct gun pulse is closely followed by the opposite-phased bounce off the sea surface, if the source is within an acoustic wavelength of the surface. This effect can reduce the effective near-horizontal output by as much as 10 dB. Because the actual seismic source is a distributed sound source rather than a single point source, the highest sound levels measurable at any location in the water will be less than the nominal source level.

The pair of simultaneously fired airguns would have a p-p amplitude of 236 dB re 1 μPa. Converting to rms using the 9 dB difference between p-p and rms for a sine wave yields an output level of 227 dB rms. Therefore, SIO's modeled results for the 2–gun array indicate that, assuming spherical spreading, the paired guns would produce sound levels of 180 dB re 1 μPa (rms) at a range of about 225 m (738 ft); i.e., the radius around the 2–gun array where the received level would be 180 dB re 1 μPa (rms), is estimated to be 225 m (738 ft). The effect of using a conservative calculation, which yields this safety zone for 180 dB rms sound, is to build a safety factor into the airgun shut-down radius; this is desirable because mammals may not be observed while submerged, and might move towards the acoustic sources during dives.

Shutdown Procedures

SIO proposes to shut down seismic sources whenever marine mammals are observed close enough to the vessel that they are at risk of exposure to sound levels greater than 180 dB (rms), where there is a possibility of Level A harassment. Airgun operations will be suspended immediately when marine mammals are observed within, or about to enter, this designated safety zone.

Ramp-up Procedures

SIO will not proceed with powering up the seismic airgun array unless the safety zone is visible and no marine mammals are detected within the appropriate safety zones or until 15 minutes (for small odontocetes and pinnipeds) or 30 minutes (for mysticetes/large odontocetes) after there has been no further visual detection of the mammal(s) within the safety zone and the trained marine mammal observer on duty is confident that no marine mammals or sea turtles remain within the appropriate safety zone. Once the safety zone is clear of marine mammals, the observer will advise that seismic surveys can re-commence.

A standard ''ramp-up'' (soft start) procedure will be followed when the airgun array begins operating after a period without any airgun operations as specified in this paragraph. From shut-down, ramp-up will commence such that the source level of the array will increase in steps not exceeding approximately 6 dB per 5–minute period. Prior to ramp-up, SIO will conduct a 30–minute period of observation by at least one trained marine mammal observer at the commencement of seismic operations and at any time electrical power to the airgun array is discontinued for a period of 1 hour or more. SIO will not commence with ramping-up of the airguns unless the complete safety radii are visible for at least 30 minutes prior in either daylight or nighttime. SIO will not initiate seismic profiling during darkness.

Course Alteration

If a marine mammal is detected at any range beyond the 225 m (738 ft) safety radius but, based on its position and the relative motion, appears to be on a converging course with the ship while profiling is underway, the vessel will be maneuvered in an attempt to maintain a range greater than the shut-down radius. 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 radius. If the mammal appears likely to enter the safety radius, further mitigative actions will be taken, i.e., either further course alterations or shutdown of the airguns.

Because of the relative ineffectiveness of mammal observers during darkness (even though the vessel is equipped with night-vision binoculars), seismic reflection profiling will be concentrated during daylight hours.

Monitoring and Reporting

Effective implementation of these procedures requires surveillance by appropriately equipped skilled observers, who will monitor for marine mammals in the vicinity of the array. Each leg of the cruise will be staffed with two observers who have previously worked for the Southwest Fisheries

Science Center of NMFS, and who are recommended by the Center. These observers will share surveillance duties during daylight hours, and be responsible for computer entry of their observations while off watch. They will be equipped with binoculars and have access to the 50X ''big-eye'' binoculars mounted on the *Revelle's* bridge. For estimating the range of marine mammals that are sighted, the observers will use the optical fixed-interval range-finder described by Heinemann (1981); this instrument relies on measuring the angle between the mammal and the visual horizon, by an observer at known height above sea-level. The observers will be in wireless communication with ship officers on the bridge and scientists in the vessel's operations laboratory, so they can advise promptly of the need for avoidance maneuvers or G.I. gun shut-down.

Monitoring of marine mammals by experienced observers will occur during all daylight hours of the 3 legs of the cruise on the *Revelle*, whether or not G.I. guns are in operation. Except in bad weather, when they will occupy the bridge, observers will be stationed outside, forward on the 03 upper deck at a height of 9 m (30 ft) above the waterline; this has proved to be an effective station for marine mammal surveillance during previous mammal and seabird monitoring exercises from the *Revelle*.

Reporting

Observers will record their observations and range measurements on tape, for subsequent transcription into NMFS format. When a marine mammal or sea turtle sighting is made, the following information about the sighting will be recorded: (1) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to seismic vessel (e.g., none, avoidance, approach, paralleling, etc.), and behavioral pace; and (2) time, location, heading, speed, activity of the vessel (seismic activity or not), sea state, visibility, cloud cover, and sun glare. The data listed under (2) above will also be recorded at the start and end of each observation watch and during a watch, and whenever there is a change in one or more of the variables.

Results from the vessel-based observations of marine mammals and sea turtles will provide: (1) the basis for real-time mitigation (airgun shutdown); (2) information needed to estimate the number of animals potentially taken by harassment, which must be reported to NMFS; (3) data on the occurrence, distribution, and activities of marine mammals and sea turtles in the area where the seismic study is conducted; (4) information to compare the distance and distribution of animals relative to the source vessel at times with and without seismic activity; and (5) data on the behavior and movement patterns of marine mammals and sea turtles seen at times with and without seismic activity.

SIO will submit a report to NMFS within 90 days after the end of the seismic profiling program (June 2004). The report will be submitted to NMFS, providing full documentation of methods, results, and interpretation pertaining to most all monitoring tasks. The 90–day report will summarize the dates and locations of seismic operations, sound measurement data, marine mammal and sea turtle 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. The draft report will be considered the final report unless comments and suggestions are provided by NMFS within 60 days of its receipt of the draft report.

Estimates of Take by Harassment for the ETP Cruise

As described previously (see 68 FR 17909, April 14, 2003), animals subjected to sound levels ≤160 dB may experience disruption in their behavioral patterns and therefore might be taken by Level B harassment.

The estimates of takes by harassment are based on the number of marine mammals that might be found within the 160–dB isopleth radius and potentially disturbed by operations with the 2 GI-guns planned for the project. Based on summer/fall marine mammal density calculations by Ferguson and Barlow (2001), SIO used their average marine mammal densities from the ETP to compute a ''best estimate'' of the number of marine mammals that may be exposed to seismic sounds ≥160 dB re 1μPa (rms) (NMFS' current criterion for onset of Level B harassment). The average densities were then converted to per-km abundances and multiplied (for the appropriate region) by the area that is planned to be ensonified at levels ≥160 dB re 1μPa (rms) during the proposed seismic survey program. Where abundance estimates for certain species (pacific white-sided dolphins, pygmy sperm whales, minke whales, and humpback whales) were not readily available for stocks found within the proposed survey areas, minimum population estimates were taken from individual Marine Mammal Stock Assessment Reports, which are available online as mentioned previously.

SIO did not estimate numbers of pinnipeds potentially vulnerable to harassment due to insufficient data on distribution, seasonal abundance, and pinniped response. However, NMFS agrees with SIO's determination that it is unlikely to encounter significant numbers of any of the pinniped species that live, at least part of the year, in the area of the proposed activity.

Based on this method, Table 3 in the application gives the best estimates of numbers for each species of cetacean that might be exposed to received levels ≥160 dB re 1 μPa (rms), and thus potentially taken by Level B harassment, during seismic surveys in the proposed study areas of the ETP.

Eight species of delphinidae would account for 95 percent of the overall estimate for potential taking by harassment. Common dolphins are the most abundant delphinid in the proposed seismic survey areas, representing 71 percent of the total estimate for potential taking by harassment. Most of the remaining 5 percent of the overall estimate for potential taking by harassment consists of pilot whales, dwarf sperm whales, and five species of beaked whales.

Conclusions-effects on Cetaceans

Baleen whales have been seen to avoid operating airguns with avoidance radii that are quite variable, while some baleen whales show considerable tolerance of seismic pulses. Whales are often reported to show no overt reactions to airgun pulses at distances beyond a few kilometers, even though the pulses remain well above ambient noise levels out to much longer distances. However, recent studies of humpback and especially bowhead whales in the arctic show that reactions, including avoidance, sometimes extend to greater distances than documented earlier, possibly even exceeding the distances at which boat-based observers can see whales. However, reactions at such long distances appear to be atypical of other species of mysticetes, and even for bowheads may only apply during migration. Moreover, few mysticetes occur in the area where seismic surveys are proposed.

Odontocete reactions to seismic pulses, or at least those of dolphins, are expected to extend to lesser distances than those of mysticetes. Odontocete low-frequency hearing is less sensitive than that of mysticetes, and dolphins are often seen from seismic vessels, occasionally even at close distances. 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.

For most species, including endangered sperm and blue whales, the total estimated ''take by harassment'' by species presented in Table 3 of the application (Scripps 2003) represents less than 1.0 percent of the eastern tropical Pacific population of any of these species. For the remaining three cetacean species, the total estimated ''take by harassment'' is 1.8 percent of the estimated pygmy sperm whale population in and adjacent to the study area, 6.2 percent of the dwarf sperm whale population, and 1.8 percent of endangered humpback whales. Although the absolute numbers of odontocetes that may be harassed by the proposed activities may be large, the population sizes of the main species are also large; therefore, the numbers potentially affected are small relative to the population sizes.

Taking account of the mitigation measures that are planned, effects on cetaceans are generally expected to be limited to avoidance of the area around the seismic operation and short-term changes in behavior, falling within the MMPA definition of ''Level B harassment.'' Based on the relatively low numbers of marine mammals that will be exposed at levels ≤160 dB and the expected impacts at these levels, NMFS has determined that this action will have a negligible impact on the affected species or stocks of cetaceans.

Conclusions-effects on Pinnipeds

Responses of pinnipeds to acoustic disturbance are variable, but usually quite limited. Early observations provided considerable evidence that pinnipeds are often quite tolerant of strong pulsed sounds. Visual monitoring from seismic vessels has shown only slight (if any) avoidance of airguns by pinnipeds, and only slight (if any) changes in behavior. These studies show that pinnipeds frequently do not avoid the area within a few hundred meters of an operating airgun array. Even so, results from initial telemetry studies suggest that avoidance and other behavioral reactions may be stronger than has been evident from visual studies.

Very few, if any, pinnipeds are expected to be encountered during the proposed seismic survey by Scripps in the ETP.

If pinnipeds are encountered, the proposed seismic activities would have, at most, a short-term effect on their behavior and no long-term impacts on individual seals or their populations. Effects are expected to be limited to short-term and localized behavioral changes falling within the MMPA definition of Level B harassment. These effects would have no more than a negligible impact on the affected species or stocks of pinnipeds.

Determinations

Based on the information contained in the SIO application, the EA referenced herein, and the August 26, 2003 (68 FR 51245) **Federal Register** notice and this document, NMFS has determined that conducting a seismic survey program in the ETP by the *Revelle* would result in the harassment of small numbers of marine mammals; would have no more than a negligible impact on the affected marine mammal stocks; and would not have an unmitigable adverse impact on the availability of stocks for subsistence uses. This activity will result, at worst, in a temporary modification in behavior by certain species of marine mammals. While behavioral modifications may be made by these species as a result of seismic survey activities, this behavioral change is expected to result in no more than a negligible impact on the affected species. 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, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is low and will be avoided through the incorporation of the mitigation measures mentioned in this document and required under the IHA. For these reasons therefore, NMFS has determined that the requirements of section 101(a)(5)(D) of the MMPA have been met and the authorization can be issued.

Endangered Species Act (ESA)

NMFS has concluded consultation under section 7 of the ESA on NMFS' issuance of an IHA to take small numbers of marine mammals, by harassment, incidental to conducting an oceanographic seismic survey in the ETP by SIO. The consultation concluded with a biological opinion that this action is not likely to jeopardize the continued existence of marine species listed as threatened or endangered under the ESA. No critical habitat has been designated for these species in the ETP; therefore, none will be affected. The Biological Opinion concluded that 1 fin whale may be harassed during the seismic surveys, and that Guadalupefur seals are not likely to be adversely affected by the proposed research activities. Therefore, NMFS has removed the Guadalupe fur seal from, and added the fin whale to, the proposed list of species authorized to be taken by Level B harassment under the IHA. A copy of the Biological Opinion is available upon request (see **ADDRESSES**).

National Environmental Policy Act (NEPA)

An Environmental Assessment (EA) on a similar action for this area of the Pacific Ocean was prepared and released to the public on July 11, 2003 (68 FR 41314). NMFS' analysis resulted in a Finding of No Significant Impact (FONSI). The SIO acoustic survey described in this document will use acoustic instruments that are significantly less intense and will therefore have a significantly lower impact on the marine environment than acoustic sources addressed in the EA. Therefore, based on that EA, and review of the information contained in the IHA application from Scripps, NMFS has made a finding that this action will not have a significant effect, individually or cumulatively, on the human environment. Further, this is an action of limited size or magnitude. Accordingly, under NAO 216–6, the action is categorically excluded from the need to prepare another environmental assessment or environmental impact statement. A copy of the relevant EA and FONSI is available (see **ADDRESSES**).

Authorization

NMFS has issued an IHA to take small numbers of marine mammals, by harassment, incidental to conducting a seismic survey by the *Revelle* in the ETP to Scripps for a 1–year period, provided the proposed mitigation, monitoring, and reporting requirements described in this document and the IHA are incorporated.

Dated: October 17, 2003.

Donna Wieting,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–26929 Filed 10–23–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Performance Review Board (PRB)

AGENCY: United States Patent and Trademark Office.

ACTION: Notice; Update membership list of the United States Patent and

Trademark Office Performance Review Board.

SUMMARY: In conformance with the Civil Service Reform Act of 1978, 5 U.S.C. 4314(c)(4), the United States Patent and Trademark Office announces the appointment of persons to serve as members of its Performance Review Board.

ADDRESSES: Operations Manager, Office of Human Resources, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: William Covey at (703) 305–8062.

SUPPLEMENTARY INFORMATION: The membership of the United States Patent and Trademark Office Performance Review Board is as follows:

Jonathan W. Dudas, Chair, Deputy Under Secretary of Commerce for Intellectual and Deputy Director of the United States Patent and Trademark Office, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, Term expires September 30, 2004.

Jo-Anne D. Barnard, Vice Chair, Chief Financial Officer and Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, Term expires September 30, 2005.

Nicholas Godici, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, Term expires September 30, 2005.

Anne Chasser, Commissioner for Trademarks, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, Term expires September 30, 2005.

Douglas Bourgeois, Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, Term expires September 30, 2004.

James Toupin, General Counsel, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, Term expires September 30, 2004.

Lois E. Boland, Director of International Relations, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, Term expires September 30, 2005.

James Taylor, Deputy Chief Financial Officer and Director for Financial Management, Department of Commerce, Washington, DC 20230, Term expires September 30, 2004.

K. David Holmes, Jr., Assistant Administrator, Internal Affairs and Program Reviews, Transportation Security Administration, Department of Homeland Security, 701 12th Street, West Tower, Arlington, VA 22202, Term expires September 30, 2004.

Dated: October 17, 2003.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 03–26906 Filed 10–23–03; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in Bulgaria

October 20, 2003.

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

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

EFFECTIVE DATE: January 1, 2004.

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

SUPPLEMENTARY INFORMATION:

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

The import restraint limits for textile products, produced or manufactured in Bulgaria and exported during the period January 1, 2004 through December 31, 2004 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the 2004 limits.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the availability of the 2004 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 20, 2003.

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

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in the following categories, produced or manufactured in Bulgaria and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004, in excess of the following levels of restraint:

Category	Twelve-month limit
410/624	4,627,283 square meters of which not more than 931,399 square meters shall be in Category 410.
433	15,694 dozen.
435	28,254 dozen.
442	18,309 dozen.
444	85,691 numbers.
448	32,337 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (see directive dated September 3, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–26839 Filed 10–23–03 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Czech Republic

October 20, 2003.

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

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

EFFECTIVE DATE: January 1, 2004.

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

SUPPLEMENTARY INFORMATION:

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

The import restraint limits for textile products, produced or manufactured in the Czech Republic and exported during the period January 1, 2004 through December 31, 2004 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the 2004 limits.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the availability of the 2004 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 20, 2003.

Commissioner,

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

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in the following categories, produced or manufactured in the Czech Republic and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004, in excess of the following limits:

Category	Restraint limit
410	1,770,801 square meters.
433	6,954 dozen.
435	4,575 dozen.
443	84,779 numbers.
624	3,909,209 square meters.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (see directive dated September 3, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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

Sincerely,

James C. Lenard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–26840 Filed 10–23–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Thailand

October 20, 2003.

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

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

EFFECTIVE DATE: January 1, 2004.

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

SUPPLEMENTARY INFORMATION:

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

The import restraint limits for textile products, produced or manufactured in Thailand and exported during the period January 1, 2004 through December 31, 2004 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the 2004 limits. Carryforward applied to the 2003 limits is being deducted from the 2004 limits.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the 2004 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 20, 2003.

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

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended, and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Thailand and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004.

Category	Twelve-month restraint limit
Level not in a Group	
239pt. [1]	3,201,966 kilograms.
Levels in Group I	
200	2,089,800 kilograms.
218	30,612,223 square meters.
219	11,145,613 square meters.
300	8,359,209 kilograms.
301–P [2]	8,359,209 kilograms.
301–O [3]	1,581,515 kilograms.
313–O [4]	39,009,643 square meters.
314–O [5]	89,164,893 square meters.
315–O [6]	55,728,057 square meters.
317–O/326–O [7]	23,395,178 square meters.
363	36,223,238 numbers.
369–S [8]	557,281 kilograms.
604	1,303,847 kilograms of which not more than 835,920 kilograms shall be in Category 604–A [9].
611–O [10]	14,320,376 square meters.
613/614/615	84,222,635 square meters of which not more than 49,040,692 square meters shall be in Categories 613/615 and not more than 49,040,692 square meters shall be in Category 614.
617	30,413,728 square meters.
619	11,861,336 square meters.
620	11,861,336 square meters.
625/626/627/628/629	23,237,686 square meters of which not more than 19,504,820 square meters shall be in Category 625.
Group II	
237, 331pt.[11], 332–348, 351, 352, 359pt. [12], 433–438, 440, 442–448, 459pt. [13], 631pt. [14], 633–648, 651, 652, 659–H [15], 659pt. [16], 845, 846 and 852, as a group	464,223,863 square meters equivalent.
Sublevels in Group II	
331pt./631pt.	916,059 dozen pairs.
334/634	1,086,698 dozen.
335/635	813,336 dozen.
336/636	557,281 dozen.
338/339	2,641,739 dozen.
340	484,950 dozen.
341/641	1,184,222 dozen.
342/642	1,030,970 dozen.
345	500,812 dozen.
347/348	1,345,444 dozen.
351/651	395,378 dozen.
659–H	2,228,640 kilograms.
433	10,634 dozen.
434	13,127 dozen.
435	59,650 dozen.
438	19,690 dozen.
442	22,865 dozen.
638/639	3,113,478 dozen.
640	919,510 dozen.
645/646	557,281 dozen.
647/648	1,876,726 dozen.

[1] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[2] Category 301–P: only HTS numbers 5206.21.0000, 5206.22.0000, 5206.23.0000, 5206.24.0000, 5206.25.0000, 5206.41.0000, 5206.42.0000, 5206.43.0000, 5206.44.0000 and 5206.45.0000.

[3] Category 301–O: only HTS numbers 5205.21.0020, 5205.21.0090, 5205.22.0020, 5205.22.0090, 5205.23.0020, 5205.23.0090, 5205.24.0020, 5205.24.0090, 5205.26.0020, 5205.26.0090, 5205.27.0020, 5205.27.0090, 5205.28.0020, 5205.28.0090, 5205.41.0020, 5205.41.0090, 5205.42.0020, 5205.42.0090, 5205.43.0020, 5205.43.0090, 5205.44.0020, 5205.44.0090, 5205.46.0020, 5205.46.0090, 5205.47.0020, 5205.47.0090, 5205.48.0020 and 5205.48.0090.

[4] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[5] Category 314–O: all HTS numbers except 5209.51.6015.

[6] Category 315–O: all HTS numbers except 5208.52.4055.

[7] Category 317–O: all HTS numbers except 5208.59.2085; Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[8] Category 369–S: only HTS number 6307.10.2005.

[9] Category 604–A: only HTS number 5509.32.0000.

[10] Category 611–O: all HTS numbers except 5516.14.0005, 5516.14.0025 and 5516.14.0085.

[11] Categories 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[12] Category 359pt.: all HTS numbers except 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[13] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[14] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[15] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[16] Category 659pt.: all HTS numbers except 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (see directives dated October 8, 2002.) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

The conversion factors for Category 659–H and merged Categories 638/639 are 11.5 and 12.96, respectively.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into

the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–26841 Filed 10–23–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

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

October 20, 2003.

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

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

EFFECTIVE DATE: October 24, 2003.

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

SUPPLEMENTARY INFORMATION:

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

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

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 63898, published on October 16, 2002.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 20, 2003.

Commissioner,

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

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 9, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool textile products, produced or manufactured in Ukraine and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on October 24, 2003, you are directed to adjust the limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Ukraine:

Category	Adjusted twelve-month limit [1]
435	111,617 dozen.
444	19,282 numbers.
448	78,943 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

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

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–26842 Filed 10–23–03; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Office of Management and Budget has approved this information collection requirement through February 29, 2004.

DATES: Consideration will be given to all comments received by November 24, 2003.

Title, Form, and OMB Number: Police Records Check; DD Form 369; OMB Number 0704–0007.

Type of Request: Extension of a Currently Approved Collection.

Number of Respondents: 125,000.

Responses Per Respondent: 1.

Annual Responses: 125,000.

Average Burden Per Response: 27 minutes.

Annual Burden Hours: 56,250.

Needs and Uses: Pursuant to Sections 504, 505, 508, and 12101 of Title 10 U.S.C., applicants for enlistment in the Armed Forces must be screened to identify any discreditable involvement with police or other law enforcement agencies. This information is used to identify persons who may be undesirable for military service. The DD Form 369, ''Police Records Check,'' is forwarded to law enforcement agencies to identify if an applicant has any disqualifying history regarding arrests or convictions.

Affected Public: State, Local, or Tribal Government.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Jacqueline A. Zeiher. Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Jacqueline J. Davis. Written requests for copies of the information collection proposal should be sent to Ms. Davis, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: October 16, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–26851 Filed 10–23–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMET OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

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

DATES: Consideration will be given to all comments received by November 24, 2003.

Title, Form, and OMB Number: Air Force Research Laboratory Market Research Survey; OMB Number 0701– (To be determined.).

Type of Request: New Collection.

Number of Respondents: 1,000.

Responses Per Respondent: 1.

Annual Responses: 500

Average Burden Per Response: 15 minutes.

Annual Burden Hours: 125.

Needs and Uses: This survey will serve multiple purposes. It will guage government, industry, and academia's awareness of, familiarity with, attitudes about, and feelings toward the Air Force Research Laboratory (AFRL). It will also gauge what the AFRL Technology Horizons readership thinks of the magazine and the AFRL. The survey asks what they currently know about the laboratory and their experiences with various outreach programs, such as technology transfer, small business innovation research, independent research and analysis, and dual use science and technology. The survey also asks magazine readers to identify strengths and weaknesses of the magazine to guide the AFRL in future changes to the magazine to better meet readers' needs. The survey will allow for comparisons of data to better target communication efforts to effectively communicate AFRL information to the public. Findings from these surveys of the civilian population will be compared with similar data to be gathered from the internal AFRL leadership at approximately the same time, providing a valuable head-to-head comparison of civilian and AFRL leadership perceptions of how well the AFRL does its job.

Affected Public: Business or Other For-Profit.

Frequency: Biennially.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Jacqueline Davis.

Written requests for copies of the information collection proposal should be sent to Ms. Davis, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: October 17, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–26852 Filed 10–23–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 03–23]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Raepresentatives, Transmittal 03–23 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 10, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

24 SEP 2003
In reply refer to:
I-03/008708

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 03-23 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the Taipei Economic and Cultural Representative Office in the United States for defense articles and services estimated to cost $775 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale is described in the enclosed confidential attachment.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Separate Cover:
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 03-23

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Taipei Economic and Cultural Representative Office in the United States

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 86 million
Other	$689 million
TOTAL	$775 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 102 Multifunctional Information Distribution Systems (MIDS)/Low Volume Terminals, 20 MIDS On Ships Terminals, support and test equipment, engineering technical services, supply support, operation and maintenance training, documentation, and program management support.

(iv) **Military Department:** Navy (GMK, Amendment 1)

(v) **Prior Related Cases, if any:** FMS case GMK – $74 million – 20Dec02

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached

(viii) **Date Report Delivered to Congress:** 24 SEP 2003

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office in the United States – Multifunctional Information Distribution Systems/Low Volume Terminals

Taipei Economic and Cultural Representative Office in the United States has requested a possible sale of 102 Multifunctional Information Distribution Systems (MIDS)/Low Volume Terminals, 20 MIDS On Ships Terminals, support and test equipment, engineering technical services, supply support, operation and maintenance training, documentation, and program management support. The estimated cost is $775 million.

This sale is consistent with United States law and policy as expressed in Public Law 96-8.

The Advanced Tactical Data Link systems will improve and integrate the recipient's information flow and display of tactical aircraft, surface ships, and ground stations. The recipient can absorb these systems as it replaces existing independent systems and provides more efficient and less costly management of defensive forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor, either Lockheed Martin of Reston, Virginia or Northrop Grumman of St. Paul, Minnesota, will be selected through a competitive procurement. One or more proposed offset agreements may be related to this proposed sale.

It is estimated that during implementation of this proposed sale a number of U.S. Government and contractor representatives will be assigned to the recipient or travel there intermittently during the program. Implementation of this proposed sale will require the assignment of numerous contractor representatives to perform various tasks during the period of 2004-2009. As the program is defined through consultations between U.S. Government/contractor and recipient program representatives, specific numbers and types of qualified personnel for the many areas of this program will be defined.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 03-23

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The Multifunctional Information Distribution System (MIDS)/Low Volume Terminals and MIDS On Ship Terminal hardware, publications, performance specifications, operational capability, parameters, vulnerabilities to countermeasures, and software documentation are classified Confidential. The classified information to be provided consists of that which is necessary for the operation, maintenance, and repair (through intermediate level) of the data link terminal, installed systems, and related software.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures, which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that the recipient can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 03–26859 Filed 10–23–03; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 03–24]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 03–24 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 10, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

24 SEP 2003
In reply refer to:
I-03/008798

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 03-24, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $96 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 03-24

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Egypt

(ii) **Total Estimated Value:**

Major Defense Equipment*	$60 million
Other	$36 million
TOTAL	$96 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** Co-production of 21 M88A2 HERCULES heavy recovery vehicle kits, 21 M2 machine guns, spare and repair parts, contractor technical support, support and test equipment, publications, program management, personnel training and training equipment, U.S. Government and contractor technical and logistics services and other related elements of program support.

(iv) **Military Department:** Army (NFU, UWC, and UVM, Amendment 1)

(v) **Prior Related Cases, if any:**
FMS case UVM - $15 million - 15Sep02
FMS case UTQ - $ 7 million - 31Jan01
FMS case NFQ - $ 54 million - 3Nov00
FMS case JBM - $183 million - 18Mar98

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached

(viii) **Date Report Delivered to Congress:** 24 SEP 2003

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Egypt – Co-production of M88A2 HERCULES Heavy Recovery Vehicles

The Government of Egypt has requested a possible sale of co-production of 21 M88A2 HERCULES heavy recovery vehicle kits, 21 M2 machine guns, spare and repair parts, contractor technical support, support and test equipment, publications, program management, personnel training and training equipment, U.S. Government and contractor technical and logistics services and other related elements of program support. The estimated cost is $96 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

The proposed co-production program with Egypt and United Defense for the M88A2 heavy recovery vehicles will support the M1A1 tanks in Egypt's inventory. The vehicles will be used for towing, wrecking, and hoisting operations supporting recovery operations and evacuation of heavy tanks and other tracked combat vehicles. Egypt will have no difficulty absorbing the vehicles in its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be United Defense, Limited Partnership of York, Pennsylvania. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of four U.S. Government and 15 contractor representatives for two years to Egypt.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 03-24

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The M88A2 recovery vehicles includes the following classified or sensitive components:

a. This AVDS-1790-8CR Engine Propulsion System is an unique modification to the standard piston engine family found in the M60 series and the base M88A1. Manufacturing processes associated with the production of turbochargers, fuel injection system, and cylinders are proprietary, and therefore, commercially competition sensitive.

b. Hydraulic System - Use of commercially available hydraulic components is not entirely unique in the armored vehicle world. None of the subcomponents of the system are classified. Manufacturing processes associated with winches, hydraulic motors, control valves, and the like are proprietary and therefore, commercially competition sensitive.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Egypt can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 03–26860 Filed 10–23–03; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 03–25]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 03–25 with attached transmittal and policy justification.

Dated: October 10, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

24 SEP 2003
In reply refer to:
I-03/008799

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 03-25, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Pakistan for defense articles and services estimated to cost $97 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 03-25

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Pakistan

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 0 million
Other	$97 million
TOTAL	$97 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 40 Bell 407 helicopters with commercial avionics package, support equipment, spare/repair parts, publications/technical data, personnel training/equipment, and U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support.

(iv) **Military Department:** Army (UZZ)

(v) **Prior Related Cases, if any:** none

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** none

(viii) **Date Report Delivered to Congress:** 24 SEP 2003

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Pakistan – Bell 407 Helicopters

The Government of Pakistan has requested a possible sale of 40 Bell 407 helicopters with commercial avionics package, support equipment, spare/repair parts, publications/technical data, personnel training/equipment, and U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support. The estimated cost is $97 million.

This proposed sale will enhance the foreign policy and national security of the United States by providing Pakistan increased technological capacity to support the U.S. Government Operation Enduring Freedom efforts.

The proposed sale of Bell helicopters will have a significant impact on Pakistan's ability to secure its borders. At the same time, this technology poses no threat to the balance of power in the region. This proposed sale will have a dramatic impact on Pakistan's ability to support U.S. objectives in the Global War on Terror. The terrain along Pakistan's border is extremely rugged and difficult to secure. Its dense mountainous regions, rugged terrain and vast borders make it virtually impossible to secure without the mobility provided by aviation assets. Vehicle support is limited to utility trucks, and there is limited cross-country capability. The lack of mobility for observation, transportation and interdiction seriously limits Pakistan's ability to stop border-crossing violations. The addition of U.S. provided helicopters would add the following capabilities required for anti-terrorist and border security operations: (1) observation platform to better patrol the mountainous border region, and (2) transportation platform to move personnel to areas of suspected infiltrations.

The prime contractor will be Bell Helicopter of Fort Worth, Texas. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of a contractor representative in Pakistan for two years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 03–26861 Filed 10–23–03; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 03–33]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 03–33 with attached transmittal, policy justification, Sensitivity of Technology and Section 620(C)(d) certification.

Dated: October 10, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

24 SEP 2003
In reply refer to:
I-03/009531

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 03-33 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Greece for defense articles and services estimated to cost $150 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

You will also find attached a certification as required by Section 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with Section 620C(b) of that statute.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 03-33

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Greece

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 0 million
Other	$150 million
TOTAL	$150 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** non-MDE items: 14 Aircraft Survivability Equipment (AN/ALQ-162(V)6 Radar Jammers, AN/ALQ-39B(V)2 Radar Signal Detecting and Laser Detecting Sets) or 12 Helicopter Integrated Defensive Aid Systems and software support facilities in conjunction with a commercial sale of AH-64D Apache helicopters. Included are: Aviation Life Support Equipment, Aviation Mission Planning Systems, Embedded Global Positioning System, Modernized Target Acquisition Designated Sight/Pilot Night Vision System spare parts, threat library, spare and repair parts, communications equipment, support equipment, tools and test sets, software support, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical assistance and other related elements of logistics and program support.

(iv) **Military Department:** Army (XMJ and XMI)

(v) **Prior Related Cases, if any:** none

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** none

(viii) **Date Report Delivered to Congress:** 24 SEP 2003

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Greece – Aircraft Survivability Equipment or Helicopter Integrated Defensive Aid Systems

The Government of Greece has requested a possible sale of non-MDE items: 14 Aircraft Survivability Equipment (AN/ALQ-162(V)6 Radar Jammers, AN/ALQ-39B(V)2 Radar Signal Detecting and Laser Detecting Sets) or 12 Helicopter Integrated Defensive Aid Systems and software support facilities in conjunction with a commercial sale of AH-64D Apache helicopters. Included are: Aviation Life Support Equipment, Aviation Mission Planning Systems, Embedded Global Positioning System, Modernized Target Acquisition Designated Sight/Pilot Night Vision System spare parts, threat library, spare and repair parts, communications equipment, support equipment, tools and test sets, software support, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical assistance and other related elements of logistics and program support. The estimated cost is $150 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Greece and enhancing weapon system standardization and interoperability with U.S. forces.

Greece wants to maintain a "like fleet configuration" and seeks the same performance and reliability improvements demanded by the U.S. Army. This proposed sale will contribute significantly to U.S. strategic and tactical objectives by strengthening the unity and interoperability within NATO. Greece will have no difficulty absorbing systems into its armed forces. These systems will be provided to Greece in accordance with and subject to the limitations on use and transfer of the Arms Export Control Act, as embodied in the terms of sale. This proposed sale will not adversely affect either the military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus question.

The principal contractors will be: Lockheed Martin Corporation of Orlando, Florida and BAE Systems Avionics Limited of Stanmore, Middlesex, England. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Greece.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 03-33

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. There are no MDE items being offered to the Government of Greece in this proposed sale. Identification and security classification of sensitive technological information and/or restricted information contained in the equipment, major components, subsystems, software, technical data, documentation, training devices and services to be conveyed with this proposed sale:

a. The AN/ALQ-162(V)6 Radar Jammer is a system which provides radar jamming and protection against surface-to-air missiles and airborne intercept missiles that use continuous wave radar for guidance. Monitors the radio frequency (RF) environment for potential threats, identifies the threats and provides the most appropriate radar jamming technique to protect the aircraft. Offers rail keeping and terminal threat protection from RF guided missiles, thus improving the survivability of aircraft and crew. System classification is Secret. Operational Flight Program source program source code and related software documentation will not be released, minimizing the risk for software exploitation.

b. The AN/APR-39B(V)2 Radar Signal Detecting Set is a system which provides warning of a radar directed air defense threat to allow appropriate countermeasures. It is programmed with appropriate threat data. Hardware is Confidential when programmed with U.S. threat data; releasable technical manuals for operation and AVUM level maintenance are Unclassified and Confidential; releasable (technical performance) data is classified Secret. Reverse engineering and development of counter-countermeasures are concerns if the hardware and releasable technical data are compromised to a competent adversary.

c. The AN/ALQ-144(V)3 is an active, continuous operating, omni directional, electrically fired infrared jammer system designed to confuse or decoy threat IR missile systems, in conjunction with low reflective paint and engine suppressors. Hardware is classified Confidential; releasable technical manuals for operation and maintenance are classified Secret. Reverse engineering and development of counter-countermeasures are concerns if the hardware and releasable technical data are compromised to a competent adversary.

d. The AN/AVR-2A Laser Detecting Set is a passive laser warning system which receives, processes, and displays threat information resulting from aircraft illumination by lasers, on the IP-1150A indicator. The hardware is classified Confidential; releasable technical manuals for operation and maintenance are concerns if hardware and releasable technical data are compromised to a competent adversary. There would be a substantial technology loss/transfer.

2. Helicopter Integrated Defensive Aids System (HIDAS) is an integrated suite of EW sub-systems designed to provide a highly effective multi-spectral platform protection system. Information from different sensor types supports rapid threat identification and significantly reduces the likelihood of incorrectly identifying a threat system. In turn, the most appropriate defensive reaction may be rapidly initiated and efficiently controlled to protect the platform. HIDAS consists of Sky Guardian 2000 Radar Warning Receiver (RWR)

including DAS Controller; Series 1223 Laser Warning Receiver (LWR) and Data Transfer Unit; Vican 78 Series 455 Countermeasures Dispensing System (CMDS); and AN/AAR-57 Missile Warning System (MWS). The AN/AAR-57 Missile Warning System (MWS) is the only U.S. component of the HIDAS system. Thus, it is the only sub-system of HIDAS for which we have a concern for sensitivity of technology.

a. Sky Guardian 2000 RWR is an ultra-broad band digital Radar Warning Receiver with a built in Defensive Aids Suite Controller. Sky Guardian 2000 RWR consists of 1 each RWR Receiver Processor, 4 each of Quadrant Receiver, and 2 each of Anti Vibration Mounts. Advanced hardware and software processing extracts emitter information from the dense electromagnetic spectrum. Highly sensitive, it provides the vital situational awareness needed on the battlefield. User-programmability with over 4000 entries, it provides the capability to adapt to the mission.

b. The Series 1223 Laser Warning Receiver represents technology advancement necessary for today's battlefield aircraft. Series 1223 LWR consists of 4 each of Sensor Head Unit, 1 each of Data Transfer Unit, and 1 each of PC Card. With extremely high sensitivity, its specialized detectors provide detection of very low power threats including all types of Beamrider systems as well as the higher power types of laser threat system. User-programmability with over 1000 entries, it provides the capability to adapt to the mission.

c. Vicon 78 Series 455 CMDS provides both Chaff and Flare capability. Series 455 CMDS consists of 2 each of CMDS Countermeasures Dispenser, 1 each of CMDS Chaff Dispenser Unit, 1 each of Safety Disarm Unit, and 1 each of Pin and Flag. Being fully programmable, dispense sequences can be tailored to the mission. Dispensing can be automatic, semi automatic or manual and the sequences are adaptive in flight to the aircraft dynamics. The chaff dispenser accommodates mini-block chaff allowing 64 'shot' from the single dispenser, which is aimed at the tail rotor to aid 'blooming'.

d. AN/AAR-57 MWS is a U.S. tri-service developed passive Missile Warning System. AN/AAR-57 MWS consists of 1 each of Countermeasures Receiver, 4 each of Sensor Assembly Electro-Optic Missile Sensor (EOMS), and 1 each of User Data Module. The AN/AAR-57 passively detects missile plume energy, tracks multiple energy sources and classifies each source as a lethal missile, non-lethal missile (not intercepting the aircraft) or clutter. Its very fine angle-of-arrival (AOA) capability delivers rapid and accurate hand-off to cue an IRCM pointing/tracking subsystem or for the deployment of chaff, and or flares for missile defense. Fine AOA processing provides detection ranges nearly double that of existing fielded passive systems and greatly reduces false alarm rates. This provides all weather, all-altitude operation while protecting against multiple simultaneous engagements in dense clutter environments. The AN/AAR-57 has already been released to numerous countries. The risk management factor also is low. Disclosure of the advanced technology, if compromised, will not constitute an unreasonable risk to the United States.

3. In summary, HIDAS provides: Improved aircraft survivability through – a prioritized and co-ordinated, timely response to multiple threats. Improved situational awareness through – a single, integrated cockpit display of the combined sensor inputs; reduced false alarm rates through correlation of data. Improved mission effectiveness through – reduced crew workload through automated, effective and efficient use of countermeasures; user control and re-programmability at the flight line. Improved supportability through – integrated mission dependent data preparation and up loading; recording and analysis of detected emitters and countermeasures activity; integrated BIT and a reduced number of LRUs.

4. Reverse engineering and development of countermeasures are concerns if the hardware and releasable technical data are compromised to a competent adversary; however, Greece can provide substantially the same degree of protection for the technology being released as the U.S. Government.

5. A determination has been made that Greece can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

Certification Under § 620C(d)
Of The Foreign Assistance Act of 1961, As Amended

Pursuant to § 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163 (§ 1-201(a)13)) and State Department Delegation of Authority No. 145 (§ 1(a)(1)), I hereby certify that the furnishing to Greece of 14 Aircraft Survivability Equipment sets (AN/ALQ-162(V)6 Radar Jammers, AN/ALQ-39B(V)2 Radar Signal Detecting and Laser Detecting Sets) or 12 Helicopter Integrated Defensive Aid Systems and software support facilities in conjunction with a commercial sale of AH-64D APACHE helicopters (including with either system Aviation Life Support Equipment, Aviation Mission Planning Systems, Embedded Global Positioning System, Modernized Target Acquisition Designated Sight/Pilot Night Vision System spare parts, threat library, spare and repair parts, communications equipment, support equipment, tools and test sets, software support, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical assistance and other related elements of logistics and program support), is consistent with the principles contained in § 620C(b) of the Act.

This certification will be made part of the notification to Congress under § 36(b) of the Arms Export Control Act regarding the proposed sale of the above-named articles and services and is based on the justification accompanying said notification, of which said justification constitutes a full explanation.

JRB

John R. Bolton
Under Secretary of State
for Arms Control and
International Security Affairs

[FR Doc. 03–26862 Filed 10–23–03; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 03–35]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirement of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 03–35 with attached transmittal, policy justification, and Sensitivity of Technology.

Patricia L. Toppings,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

24 SEP 2003
In reply refer to:
I-03/010125

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 03-35, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Finland for defense articles and services estimated to cost $130 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 03-35

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Finland

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 60 million
Other	$ 70 million
TOTAL	$130 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** second phase of the F/A-18 Mid-Life Upgrade (MLU) Program consisting of 64 F/A-18C/D Fleet Retrofit Kits of the following systems: 64 Joint Helmet Mounted Cueing Systems, 64 Tactical Aircraft Moving Map Capability systems, 64 Digital Communications to Wingtips wiring systems, 144 AIM-9X Compatible Launchers and 36 AN/APX-111 Combined Interrogator Transponders systems. The proposed program support includes spare and repair parts, support and test equipment, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and other related elements of logistics and program management support.

(iv) **Military Department:** Navy (LBC)

(v) **Prior Related Cases, if any:** FMS case LBB - $63 million – 24Aug01

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached

(viii) **Date Report Delivered to Congress:** 24 SEP 2003

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Finland - F/A-18 Mid-Life Upgrade Program

The Government of Finland has requested a proposed sale for the second phase of the F/A-18 Mid-Life Upgrade (MLU) Program consisting of 64 F/A-18C/D Fleet Retrofit Kits of the following systems: 64 Joint Helmet Mounted Cueing Systems, 64 Tactical Aircraft Moving Map Capability systems, 64 Digital Communications to Wingtips wiring systems, 144 AIM-9X Compatible Launchers and 36 AN/APX-111 Combined Interrogator Transponders systems. The proposed program support includes spare and repair parts, support and test equipment, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and other related elements of logistics and program management support. The estimated cost is $130 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been, and continues to be, an important force for political stability and economic progress in Europe.

The Finnish Air Force (FAF) intends to purchase the MLU Program equipment to enhance survivability, communications connectivity, and extend the useful life of its F/A-18 fighter aircraft. It has extensive experience operating the F/A-18 aircraft and should have no difficulties incorporating the upgraded capabilities into its forces. The FAF needs this upgrade to keep pace with high tech advances in sensors, weaponry, and communications.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be The Boeing Company of St. Louis, Missouri. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any U.S. Government representatives in-country; however, it is estimated that approximately four months of contractor technical support will be required in Finland during the preparation, equipment installation, and equipment testing and checkout of the equipment.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 03-35

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The Joint Helmet Mounted Cueing System (JHMCS) provides an off-boresight visual targeting of sensors and weapons with a head-out display where the pilot is looking. The system improves situational awareness in visual combat while providing off-boresight visual cueing and threat identification. Also, when combined with a high off-boresight missile, aircraft weapon system lethality is improved for short-range air-to-air engagements.

2. The configuration requested is compatible for use in F/A-18 aircraft. The configuration consists of the following equipment: electronics unit, cockpit unit, magnetic transition unit, seat position sensor, mounting bracket, lower helmet vehicle interface, helmet display unit, visor day, visor night, visor high contrast, oxygen mask, helmet upper interface, JHMCS/ANVIS-9 Night Vision Goggles adapters, and JHMCS helmet bag. The JHMCS is classified as Confidential.

3. The Tactical Aircraft Moving Map Capability (TAMMAC) System includes Digital Map Computer with extension, Advanced Memory Unit and High Speed Interface Cable. The TAMMAC system is being developed to alleviate problems, including parts obsolescence issues, associated with the Digital Video Map Set (DVMS) and the Data Storage Set (DSS) currently installed on the F/A-18. The DVMS does not possess sufficient throughput or database storage capability to support future F/A-18 operational requirements. Additionally, the DVMS cannot use Compressed AC Digitized Raster Graphic the digital map database provided by the National Imagery and Mapping Agency (NIMA), without costly preprocessing. The DSS does not provide enough memory capacity to store the desired amount of data recorded by the aircraft during flight.

4. The configuration requested is compatible for use in F/A-18 aircraft. The configuration consists of the following equipment: advanced memory unit, MU-11129A/A memory unit, digital map set, and CP-2414A/A digital map computer. TAMMAC system is classified as Confidential.

5. The Digital Communications to Wingtips system provides a digital interface for employment of a new High Off Boresight missile. Digital Communications to Wingtips is Unclassified.

6. The Combined Interrogator Transponder (CIT) AN/APX-111(V) IFF system was specifically designed for the F/A-18. The Interrogator function provides the pilot with capability to identify cooperative or friendly aircraft. The transponder function self-identifies the aircraft to other off-board interrogators in the same way as the APX-100 transponder. CIT combines most of the interrogator, transponder, and crypto computer functions into one unit outline. The electronically scanned interrogator antenna function is performed by a five-blade array and Beam Forming Network (BFN).

7. The configuration requested is compatible for use in F/A-18 aircraft. The configuration consists of the following equipment: RT-1763A/APX-111(V), interrogator-transponder, C-12481/APX-111(V) beam forming network, (5X) AS-4440/APX-111(V) antenna blade elements, IT-to-BFN cable group, BFN-to-FMA cable group, receiver-transmitter radio, antenna position control, antenna set (upper), battery charge panel, external power monitor, ID light transformer/mount, mounting tray assembly BFN, 3L landing gear control unit bay, LGCU mounting tray assembly and relay panel no. 3. AN/APX-111 CIT is classified as Confidential.

8. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

9. A determination has been made that Finland can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 03–26863 Filed 10–23–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 04–01]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 04–01 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 17, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–P

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

2 OCT 2003
In reply refer to:
I-03/011327

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 04-01 **and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to the Czech Republic for defense articles and services estimated to cost $650 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.**

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale is described in the enclosed confidential attachment.

Sincerely,

Richard J. Millies
Deputy Director

Attachments

Separate Cover:
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 04-01

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Czech Republic

(ii) Total Estimated Value:

Major Defense Equipment*	$125 million
Other	$525 million
TOTAL	$650 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 12 F-16A Block 15 Air Defense Fighter aircraft, 2 F-16B Block 10 Operational Capabilities Upgrade (OCU) aircraft, 2 F-16A Block 10 OCU aircraft for cannibalization, 16 Pratt and Whitney F-100-PW-220 engines including 2 spare engines, and 35 LAU-129 launchers. This possible sale could include 20 AIM-120C Advanced Medium Range Air-to-Air Missiles (AMRAAM) and 4,000 rounds of 20mm cannon ammunition. Also provided will be F-16 associated support equipment, spare and repair parts, devices, simulators, ammunition, AMRAAM training missiles, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering and logistics personnel services and other related elements of logistics support to ensure full program supportability for up to 10 years of operational use.

(iv) Military Department: Air Force (SAK, NAA, NAB, and NAC)

(v) Prior Related Cases, if any: none

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 2 OCT 2003

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Czech Republic – F-16A/B Block 10/15 Aircraft

The Government of Czech Republic has requested a possible sale of 12 F-16A Block 15 Air Defense Fighter aircraft, 2 F-16B Block 10 Operational Capabilities Upgrade (OCU) aircraft, 2 F-16A Block 10 OCU aircraft for cannibalization, 16 Pratt and Whitney F-100-PW-220 engines including 2 spare engines, and 35 LAU-129 launchers. This possible sale could include 20 AIM-120C Advanced Medium Range Air-to-Air Missiles (AMRAAM) and 4,000 rounds of 20mm cannon ammunition. Also provided will be F-16 associated support equipment, spare and repair parts, devices, simulators, ammunition, AMRAAM training missiles, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering and logistics personnel services and other related elements of logistics support to ensure full program supportability for up to 10 years of operational use. The estimated cost is $650 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of the Czech Republic and further weapon system standardization and interoperability with U.S. forces.

The Czech Air Force currently operates MiG-21 aircraft. These former Warsaw Pact fighters are expensive to operate and maintain, lack essential NATO interoperability capabilities, and are nearing the end of their useful service lives. The Czech Republic will use the F-16 aircraft to perform its air defense mission and be a viable air defense provider for its National commitments. It will also enhance NATO interoperability and simultaneously provide operational capabilities. This proposed sale would not impact regional military balance of power.

The principal contractors will be Lockheed Martin Tactical Aircraft Systems of Fort Worth, Texas; Pratt and Whitney of East Hartford, Connecticut; Raytheon Corporation of Lexington, Massachusetts; and United Fastners of Bayshore, New York. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will require the assignment of 1 U.S. Government and 4 contractor representatives for up to 10 years to the Czech Republic.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 04-01

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The F-16A Block 15 Air Defense Fighter and F-16B Block 10 Operational Capability Upgrade aircraft and Pratt and Whitney F-100-PW-220 engine are all unclassified. The aircraft does not contain "cutting edge" technology.

2. The F-100 engine and the associated component parts used in F-16A/B aircraft are unclassified. However, several manufacturing processes, design practices, and metallurgical fabrication techniques used are advanced technology methods found only with the U.S. propulsion industry. The sale of F-100 engines to Czech Republic will not include the transfer of sensitive technology as the sale does not include sensitive manufacturing, design, or metallurgical processes or information.

3. The AIM-120C Advanced Medium Range Air-to-Air Missile (AMRAAM) is a new generation air-to-air missile. The AIM-120C AMRAAM hardware, including the missile guidance section, is classified Confidential. State-of-the-art technology is used in the missile to provide it with unique beyond-visual-range capability. Significant AIM-120C features include a target detection device with embedded electronic counter-countermeasures, an electronics unit within the guidance section that performs all radar signal processing, mid-course and terminal guidance, flight control, target detection and warhead burst point determination.

4. If a technologically advanced adversary were to obtain knowledge of the above systems, such knowledge could be used in an attempt to develop component countermeasures or systems with similar or advanced capabilities.

5. A determination has been made that Czech Republic can provide essentially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 03–26864 Filed 10–23–03; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 04–02]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 04–02 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 17, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M–

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

3 OCT 2003
In reply refer to:
I-03/011888

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 04-02, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $920 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Richard J. Millies
Deputy Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 04-02

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Egypt

(ii) **Total Estimated Value:**

Major Defense Equipment*	$724 million
Other	$196 million
TOTAL	$920 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** A coproduction including the sale of 125 M1A1 Abrams tank kits each with Commander's Independent Thermal Viewer, Firepower Enhancement Package and armor upgrades. Also included: 125 M256 Armament Systems, 125 M2 .50 caliber machine guns, 250 M204 7.62mm machine guns, spare and repair parts, special tool and test equipment, personnel training and equipment, publications, U.S. Government and contractor engineering and logistics personnel services, and other related elements of logistics support.

(iv) **Military Department:** Army (NFV, NFW, UWD, UWE, and UWM)

(v) **Prior Related Cases, if any:** numerous cases from 1988 through 2002

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached

(viii) **Date Report Delivered to Congress:** 3 OCT 2003

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Egypt – Co-production of M1A1 Tanks and Upgrade

The Government of Egypt has requested a coproduction program that would include the possible sale of 125 M1A1 Abrams tank kits each with Commander's Independent Thermal Viewer, Firepower Enhancement Package and armor upgrades. Also included: 125 M256 Armament Systems, 125 M2 .50 caliber machine guns, 250 M204 7.62mm machine guns, spare and repair parts, special tool and test equipment, personnel training and equipment, publications, U.S. Government and contractor engineering and logistics personnel services, and other related elements of logistics support. The estimated cost is $920 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been and continues to be an important force for political stability and economic progress in the Middle East.

Egypt is demilitarizing its Soviet fleet. This proposed sale will increase the quantity of the Abrams tank coproduction program, started in 1988, from the current level of 755 tanks, to 880 tanks. The additional M1A1 tanks will modernize Egypt's tank fleet. Egypt, which has already coproduced the M1A1 Abrams tanks, will have no difficulty absorbing the additional tanks.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be General Dynamics of Sterling Heights, Michigan. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of up to 40 U.S. contractor representatives for up to two years in Egypt. The 6 U.S. Government representatives already in country who currently manage the M1A1 and M88A2 HERCULES coproduction programs will also manage this program for production and fielding.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 04-02

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. Components considered to contain sensitive technology in the proposed coproduction program are special armor, 120mm gun and ammunition, gas turbine propulsion system, Night Vision Forward Looking Infra Red, and compartmentation.

a. The M1A1 Tank Special Armor and other special armors used in the hull and turret are classified at the Secret level. Major components of special armor are fabricated in sealed modules and in serialized removable subassemblies. Special armor components and associated vulnerability data for both chemical and kinetic energy rounds are classified Secret. The track skirts have been formally declassified but are still considered to be sensitive items and their dissemination is controlled.

b. The M1A1 Tank 120mm Gun and Ammunition system is composed of a smooth bore gun manufactured at Watervliet Arsenal.

c. The M1A1 Tank Gas Turbine Propulsion System in the Abrams tank is a unique application of armored vehicle power pack technology. Manufacturing processes associated with the production of turbine blades, recuperator, bearings, and shafts, and hydrostatic pump and motor, are proprietary and therefore commercially competition sensitive.

d. The Second Generation (GEN) Night Vision Forward Looking Infra Red (FLIR) can be used for target acquisition such as Infra Red missile target acquisitions or air defense. It is classified as Secret.

e. A major survivability feature of the Abrams Tank is the compartmentation of fuel and ammunition. Compartmentation is the positive separation of the crew and critical components from combustible materials. In the event that the fuel or ammunition is ignited or deteriorated by an incoming threat round, the crew is fully protected by the compartmentation. Sensitive information includes the performance of the ammunition compartments as well as the compartment design parameters.

f. The Commander's Independent Thermal View (CITV) Hunter/Killer Sight is a "second generation" thermal sight. This fully stabilized, Panoramic sight is capable of 360 degree rotation and independent sector scanning under automatic or manual control. The CITV interfaces with the fire control system and can be used for surveillance, automatic target hand-off to the tank gunner and as a back-up engagement sight for the commander. The CITV is currently designed to interface only with the M1A2 series tank and not the Egypt M1A1 series tank, which would require either modification to the sight itself or the addition of interface equipment in the tank. The CITV is classified Secret.

g. The United States Marine Corps (USMC) is currently developing an upgrade to its M1A1 fleet Firepower Enhancement Program Gunner's Primary Sight (GPS) that includes the addition of "second generation" thermal sight technology to the Thermal Imaging System portion of the GPS. The upgrade uses subsystems that are virtually identical to those used in the M1A1 CITV to improve sight resolution and performance over the current M1A1 Thermal Imaging System. As with the CITV, the highest level of classified information that could be disclosed is Secret.

h. The Advanced Non-DU Armor package replaces the base armor package in the turret front, providing significantly increased protection against Kinetic Energy and Chemical Energy threats. The Advanced Non-DU Armor is classified Secret.

i. The Improved Side Armor provides significantly improved crew turret side protection over armor currently in Egyptian M1A1 turrets. The design and protection levels are classified as Secret.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Egypt can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 03–26865 Filed 10–23–03; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 03–22]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604-6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 03–22 with attached transmittal and policy justification.

Dated: October 10, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

24 SEP 2003
In reply refer to:
I-03/008607

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith transmittal no. 03-22, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Pakistan for defense articles and services estimated to cost $110 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 03-22

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Pakistan

(ii) Total Estimated Value:

Major Defense Equipment*	$ 15 million
Other	$ 95 million
TOTAL	$110 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: Competition for Air Traffic Control (ATC) Systems each consisting of Air Surveillance Radars (ASR) and Precision Approach Radars (PAR). The proposed radar models include:

4 each Fixed ASR radars (Set I)
3 of either/or
- **ASR-9 (Northrop Grumman)**
- **ASR-11 (Raytheon)**

Plus

1 FPS-117 or TPS-77 (Lockheed Martin)

6 each Mobile ASR radars (Set II)
6 of either/or
- **AN/TPN-31 ATNAVICS (Raytheon)**
- **AN/MPN-25 GCA-2000 (ITTG)**
- **AN/TPS-79 ASPARCS (Lockheed Martin)**
- **AN/NPM-26 MACS (ITTG)**

10 each Fixed PAR radars (Set III)
10 of either/or
- **PAR-2000 (ITTG) (part of the GCA-2000 family)**
- **MACS PAR (ITTG) (derivative of PAR-2000)**
- **AN/TPN-32 ASPARCS PAR (Lockheed Martin)**

Also included will be related support equipment, spare/repair parts, publications/technical data, personnel training/equipment, and U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support.

*** as defined in Section 47(6) of the Arms Export Control Act.**

(iv) **Military Department: Air Force (DWO)**

(v) **Prior Related Cases, if any: none**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none**

(viii) **Date Report Delivered to Congress: 24 SEP 2003**

POLICY JUSTIFICATION

Pakistan – Air Traffic Control Radars

The Government of Pakistan has requested a possible sale for a competition involving Air Traffic Control (ATC) Systems each consisting of Air Surveillance Radars (ASR) and Precision Approach Radars (PAR). The proposed radar models include:

4 each Fixed ASR radars (Set I)
3 of either/or
- **ASR-9 (Northrop Grumman)**
- **ASR-11 (Raytheon)**

Plus

1 FPS-117 or TPS-77 (Lockheed Martin)

6 each Mobile ASR radars (Set II)
6 of either/or
- **AN/TPN-31 ATNAVICS (Raytheon)**
- **AN/MPN-25 GCA-2000 (ITTG)**
- **AN/TPS-79 ASPARCS (Lockheed Martin)**
- **AN/NPM-26 MACS (ITTG)**

10 each Fixed PAR radars (Set III)
10 of either/or
- **PAR-2000 (ITTG) (part of the GCA-2000 family)**
- **MACS PAR (ITTG) (derivative of PAR-2000)**
- **AN/TPN-32 ASPARCS PAR (Lockheed Martin)**

Also included will be related support equipment, spare/repair parts, publications/technical data, personnel training/equipment, and U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support. The estimated cost is $110 million.

This proposed sale will enhance the foreign policy and national security of the United States by providing the Pakistan Air Force (PAF) increased technological capacity to support the U.S. Government efforts in Operation Enduring Freedom.

The proposed sale of ATC radar will be used to manage, monitor, and control air traffic. This proposed sale will enable Pakistan to fulfill the surveillance requirements of the war on terrorism and improve safety of flight for coalition and PAF aircraft inside Pakistani airspace. This radar will contribute to the modernization of Pakistan's forces as well as allow modernization of obsolete radar.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The specific contractor will be determined through competitive competition. There are no offset agreements proposed in connection with this potential sale.

The number of U.S. Government and contractor representatives required in-country to support the program will be determined in joint negotiations as the program proceeds through the development, production and equipment installation phases.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 03–26858 Filed 10–23–03; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE; Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Fiscal Year 2004 Diagnosis-Related Group Updates

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of diagnosis-related group (DRG) revised rates.

SUMMARY: This notice describes the changes made to the TRICARE DRG-based payment system in order to conform to changes made to the Medicare Prospective Payment System (PPS).

It also provides the updated fixed loss cost outlier threshold, cost-to-charge ratios and the Internet address for accessing the updated adjusted standardized amounts and DRG relative weights to be used for FY 2004 under the TRICARE DRG-based payment system.

EFFECTIVE DATE: The rates, weights and Medicare PPS changes which affect the TRICARE DRG-based payment system contained in this notice are effective for admissions occurring on or after October 1, 2003.

ADDRESSES: TRICARE Management Activity (TMA), Medical Benefits and Reimbursement Systems, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

FOR FURTHER INFORMATION CONTACT: Marty Maxey, Medical Benefits and Reimbursement Systems, TMA, telephone (303) 676–3627.

Questions regarding payment of specific claims under the TRICARE DRG-based payment system should be addressed to the appropriate contractor.

SUPPLEMENTARY INFORMATION: The final rule published on September 1, 1987 (52 FR 32992) set forth the basic procedures used under the CHAMPUS DRG-based payment system. This was subsequently amended by final rules published August 31, 1988 (53 FR 33461), October 21, 1988 (53 FR 41331), December 16, 1988 (53 FR 50515), May 30, 1990 (55 FR 21863), October 22, 1990 (55 FR 42560), and September 10, 1998 (63 FR 48439).

An explicit tenet of these final rules, and one based on the statute authorizing the use of DRGs by TRICARE, is that the TRICARE DRG-based payment system is modeled on the Medicare PPS, and that, whenever practical, the TRICARE system will follow the same rules that apply to the Medicare PPS. The Centers for Medicare and Medicaid Services (CMS) publishes these changes annually in the **Federal Register** and discusses in detail the impact of the changes.

In addition, this notice updates the rates and weights in accordance with our previous final rules. The actual changes we are making, along with a description of their relationship to the Medicare PPS, are detailed below.

I. Medicare PPS Changes Which Affect the TRICARE DRG-Based Payment System

Following is a discussion of the changes CMS has made to the Medicare PPS that affect the TRICARE DRG-based payment system.

A. DRG Classifications

Under both the Medicare PPS and the TRICARE DRG-based payment system, cases are classified into the appropriate DRG by a Grouper program. The Grouper classifies each case into a DRG on the basis of the diagnosis and procedure codes and demographic information (that is, sex, age, and discharge status). The Grouper used for the TRICARE DRG-based payment system is the same as the current Medicare Grouper with two modifications. The TRICARE system has replaced Medicare DRG 435 with two age-based DRGs (00 and 901), and has implemented thirty-four (34) neonatal DRGs in place of Medicare DRGs 385 through 390. For admissions occurring on or after October 1, 2001, DRG 435 has been replaced by DRG 523. The TRICARE system has replaced DRG 523 with the two age-based DRGs (900 and 901). For admissions occurring on or after October 1, 1995, the CHAMPUS grouper hierarchy logic was changed so the age split (age <29 days) and assignments to MDS 15 occur before assignment of the PreMDC DRGs. This resulted in all neonate tracheostomies and organ transplants to be grouped to MDC 15 and not to DRGs 480–483 or 495. For admissions occurring on or after October 1, 1998, the CHAMPUS grouper hierarchy logic was changed to move DRG 103 to the PreMDC DRGs and to assign patients to PreMDC DRGs 480, 103 and 495 before assignment to MDC 15 DRGs and the neonatal DRGs. For admissions occurring on or after October 1, 2001, DRGs 512 and 513 were added to the PreMDC DRGs, between DRGs 480 and 103 in the TRICARE grouper hierarchy logic.

For FY 2004, SCMS will implement classification changes, including surgical hierarchy changes. The TRICARE Grouper will incorporate all changes made to the Medicare Grouper.

B. Wage Index and Medicare Geographic Classification Review Board Guidelines

TRICARE will continue to use the same wage index amounts used for the Medicare PPS. In addition, TRICARE will duplicate all changes with regard to the wage index for specific hospitals that are redesignated by the Medicare Geographic Classification Review Board.

C. Hospital Market Basket

TRICARE will update the adjusted standardized amounts according to the final updated hospital market basket used for the Medicare PPS according to CMS's August 1, 2003, final rule.

D. Outlier Payments

Since TRICARE does not include capital payments in our DRG-based payments, we will use the fixed loss cost outlier threshold calculated by CMS for paying cost outliers in the absence of capital prospective payments. For FY 2004, the fixed loss cost outlier the absence of capital prospective payments. For FY 2004, the fixed loss cost outlier threshold is based on the sum of the applicable DRG-based payment rate plus any amounts payable for IDME plus a fixed dollar amount. Thus, for FY 2004, in order for a case to qualify for cost outlier payments, the costs must exceed the TRICARE DRG base payment rate (wage adjusted) for the DRG plus the IDME payment plus $28,365 (wage adjusted). The marginal cost factor for cost outliers continues to be 80 percent.

E. Blood Clotting Factor

For FY 2004, the contractors shall price the blood clotting factors using the ''J'' code pricing file provided by TRICARE Management Activity. TRICARE uses the same ICD–9–CM diagnosis codes as CMS for add-on payment for blood clotting factors.

F. National Operating Standard Cost as a Share of Total Costs

The FY 2004 TRICARE National Operating Standard Cost as a Share of Total Costs used in calculating the cost outlier threshold is 0.915.

G. Expansion of the Post Acute Care Transfer Policy

For FY 2004 TRICARE is adopting CMS' expanded post acute care transfer policy according to CMS' final rule published August 1, 2003.

II. Cost to Charge Ratio

For FY 2004, the cost-to-charge ratio used for the TRICARE DRG-based payment system will be 0.4865, which is increased to 0.4935 to account for bad

debts. This shall be used to calculate the adjusted standardized amounts and to calculate cost outlier payments, except for children's hospitals. For children's hospital cost outlier, the cost-to-charge ratio used is 0.5388.

III. Updated Rates and Weights

The updated rates and weights are accessible through the Internet at *www.tricare.osd.mil* under the sequential heading TRICARE Provider Information, Rates and Reimbursements, and DRG Information. Table 1 provides the ASA rates and Table 2 provides the DRG weights to be used under the TRICARE DRG-based payment system during FY 2004 and which is a result of the changes described above. The implementing regulations for the TRICARE/CHAMPUS DRG-based payment system are in 32 CFR part 199.

Dated: October 16, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–26855 Filed 10–23–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Advisory Board Closed Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Advisory Board has been scheduled as follows:

DATES: 3–4 November 2003 (8:30 a.m. to 5 p.m).

ADDRESSES: The Defense Intelligence Agency, 200 MacDill Blvd., Washington, DC 20340.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence R. Carnegie, Program Manager/Executive Secretary, DIA Advisory Board, Washington, DC, 20340–1328, (703) 697–7898.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(I), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings and discuss several current critical intelligence issues in order to advise the Director, DIA.

Dated: October 16, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–26853 Filed 10–23–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting date change.

SUMMARY: On *Thursday, September 11, 2003 (68 FR 53597),* the Department of Defense announced closed meetings of the Defense Science Board (DSB) Task Force on Patriot Systems Performance. The October 29–30, 2003, meeting has been moved to October 28–29, 2003. The meeting location remains at SAIC, 4001 N. Fairfax Drive, Arlington, VA.

Dated: October 17, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–26854 Filed 10–23–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to section 10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS). The purpose of the Committee meeting is to finalize the annual report. The meeting is open to the public, subject to the availability of space.

DATES: October 27, 2003, 8:30 a.m.–6 p.m.; October 28, 2003, 8:30 a.m.–5 p.m.

ADDRESSES: Hilton in Crystal City at 2399 Jefferson Davis Hwy., Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Shannon Thaeler, USN, DACOWITS, 4000 Defense Pentagon, Room 3D769, Washington, DC 20301–4000. Telephone (703) 697–2122 or Fax (703) 614–6233.

SUPPLEMENTARY INFORMATION:

Interested persons may submit a written statement for consideration by the Committee and make an oral presentation of such. Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed above no later than noon, October 24, 2003. Oral presentations by members of the public will be permitted only on Monday, October 27, 2003, from 4:45 p.m. to 5 p.m. before the full Committee. Presentations will be limited to two minutes. Number of oral presentations to be made will depend on the number of requests received from members of the public. Each person desiring to make an oral presentation must provide the point of contact listed above with one (1) copy of the presentation by noon, October 24, 2003 and bring 35 copies of any material that is intended for distribution at the meeting. Persons submitting a written statement must submit one 35 copies of the statement to the DACOWITS staff by noon on October 24, 2003.

Meeting Agenda:

Monday, October 27, 2003

Welcome & Administrative Remarks
Committee Time—Finalizing Annual Report
Lunch (by invitation only)
Committee Time—Finalizing Annual Report
Public Forum (4:45 p.m.—5 p.m.)
Committee Time—Finalizing Annual Report

Tuesday, October 28, 2003

Committee Time—Finalizing Annual Report
Lunch (by invitation only)
Brief—Content Analysis of Site Visit Reports (1995–2001)
Committee Time—Topics for FY04
Senior Defense Officials

Dated: October 16, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–26850 Filed 10–23–03; 8:45 am]

BILLING CODE 5001–08–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 2003

Science and Technology Review. The purpose of the meeting is to allow the SAB and study leadership to assess the quality and long-term relevance for the 311th Human Systems Wing Advisory Committee. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: 5–6 November, 2003.

ADDRESSES: 311 HSWC/CVX, 2510 Kennedy Circle, Brooks AFB, TX 78235–5115

FOR FURTHER INFORMATION CONTACT: Major Dwight Pavek, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington, DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–26904 Filed 10–23–03; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for Update of the Fort Belvoir Real Property Master Plan

AGENCY: Department of the Army, DOD.

ACTION: Notice of intent.

SUMMARY: The Department of the Army intends to prepare an EIS pursuant to Section 102(2)(C) of the National Environmental Policy Act and regulations of the Council on Environmental Quality (40 CFR 1500–1508). The EIS will evaluate potential environmental, transportation, and socioeconomic effects associated with implementation of the Army's proposed revision and update of the Fort Belvoir Real Property Master Plan. In addition to evaluation of a no action alternative, the EIS will consider a range of alternatives based on various development scenarios to accommodate the installation's current and projected missions and requirements.

DATES: Comments concerning the scope of the EIS must be received within 30 days from the date of this Notice to be considered in the preparation of the draft EIS.

ADDRESSES: Please send written comments to: Mr. Patrick McLaughlin, Directorate of Public Works and Logistics, 9430 Jackson Loop, Suite 107, Fort Belvoir, VA 22060, or via e-mail to *environmental@belvoir.army.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. Patrick McLaughlin at (703) 806–4007 during normal working business hours, Monday through Friday 7:30 a.m. to 4 p.m., or via e-mail to *environmental@belvoir.army.mil.*

SUPPLEMENTARY INFORMATION: Fort Belvoir, comprising 8,419 acres (excluding the Engineer Proving Ground), is approximately 18 miles southwest of Washington, DC, and serves as a strategic sustaining base for America's Army. The post is home to one Army major command headquarters and elements of 10 others, 2 Direct Reporting Units, 19 agencies of the Department of Army, 8 elements of the U.S. Army Reserve and the Army National Guard, and numerous Department of Defense and other Federal agencies. Tenant organizations perform work vital to the success of the goals and objectives of the Nation's defense strategy. Fort Belvoir contributes to the Nation's defense by efficiently and effectively supporting the various Army and DoD elements in the performance of their missions.

A Real Property Master Plan is an installation's strategy for the orderly management and development of its real property assets, including land, facilities, resources, and infrastructure. The Real Property Master Plan forms the foundation for the development of an installation, provides the framework for analyzing resource allocations, and aids the management of peacetime and mobilization construction and development activities.

Army Regulation 210–20, Installation Master Planning, provides that an installation's Real Property Master Plan shall consist of four major components: Long-Range Component, Capital Investment Strategy, Short-Range Component, and Mobilization Mission Planning Component. Contributory plans support and accompany the four major components. The Long-Range Component provides the ''big picture'' and long-range real property management for an installation.

In 1993, Fort Belvoir prepared a comprehensive update to the Real Property Master Plan. Over the past decade, numerous developments have resulted in a need for Fort Belvoir to provide support to a growing number of Army and Department of Defense entities. Further expansion of Fort Belvoir's critical role in supporting the national defense is likely to occur.

Alternative potential development scenarios for EIS analysis are under development. Preference will be given to alternative development plan scenarios that afford operational efficiency, minimize environmental and community impacts, and provide flexibility to respond to changes in future installation mission requirements. The potential for alternatives to provide for sustainable, long-term use of resources will be central to their selection for evaluation in detail.

The Army solicits input in the scoping process to identify issues of concern, identify information sources bearing on evaluation of impacts, and to obtain public input on the range and reasonableness of alternatives.

The Army recognizes numerous resource areas and issues that will require consideration in the EIS. These include, but are not limited to: Air quality; surface water quality; cultural resources; transportation system; environmentally sensitive areas such as wildlife corridors, wetlands, floodplains, wildlife refuges, Chesapeake Bay Protection Areas; biological resources, to include, in particular, protected fauna and flora species; site topography and soils; socioeconomic conditions; land use; and community facilities and services. Additional resources and conditions may be identified as a result of the scoping process initiated by this Notice.

The general public, local governments, other Federal agencies, and state agencies are invited to submit written comments or suggestions concerning the scope of the analysis and issues and alternatives to be analyzed. The Army will host a scoping meeting to enable the submission of oral or written comments by interested parties. Comments, whether provided orally or in writing, will be considered in determining the scope of the EIS. The scoping meeting will be held near Fort Belvoir with the time and place of the scoping meeting being announced in local media not less than 15 days before the event.

In addition, the Army will provide direct notification of the time and location of the scoping meeting to individuals, community organizations, local government personnel, state agencies, Federally recognized Indian tribes, and other Federal agencies that so request it as a result of this Notice. Requests must be addressed to the individual and office shown in the **ADDRESSES** section above.

Dated: October 20, 2003.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA(I&E).

[FR Doc. 03–26834 Filed 10–23–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Thorium Nitrate Disposition

AGENCY: Defense National Stockpile Center, Defense Logistics Agency.

ACTION: Notice of availability of environmental assessment and a draft finding of no significant impact for the disposition of the National Defense Stockpile's thorium nitrate.

SUMMARY: The Defense Logistics Agency announces the availability of the Environmental Assessment (EA) and draft Finding of No Significant Impact (FONSI) for the disposition of thorium nitrate (ThN) currently held in the National Defense Stockpile of strategic and critical materials.

The Defense National Stockpile Center (DNSC) manages the inventory of approximately 7 million pounds of ThN stored in drums at two DNSC depots—Curtis Bay, Maryland, and Hammond, Indiana. because of the presence of throium, ThN is a radioactive material.

The ThN stockpile was acquired between 1957 and 1964 for the Atomic Energy Commission, a predecessor to the Department of Energy (DOE) and has been retained because of its potential as a nuclear fuel. However, a commercially viable, throium-based nuclear fuel cycle has failed to develop nor is one likely to be developed in the foreseeable future. For several years, DNSC offered ThN for purchase by commercial firms or for use by other Federal agencies in quantities as small as a single drum. However, no potential user has expressed interest in purchasing the ThN since 1990. Consequently, the ThN inventory is deemed excess to the requirements of the Department of Defense.

Following evaluation of a reasonable range of storage and disposal alternatives conducted by Oak Ridge National Laboratory on behalf of DNSC, DNSC proposes to transfer the ThN to DOE for disposal at DOE's Nevada Test Site. The ThN would be disposed of as a low-level radioactive waste in a manner that minimizes radiation exposure and potential for risk to workers, the public, and the environment. A Memorandum of Understanding is in place that would allow transfer of the DoD ThN stockpile to DOE.

DATES: Comments on the draft FONSI received by November 24, 2003, will be considered when preparing the final version of the FONSI.

The EA and draft FONSI are available for review on the Defense Logistics Agency Web site (*http://www.dla.mil*). Comments should be sent to Mr. Michael Pecullan, 8725 John J. Kingman Road, Suite 3229, Fort Belvoir, VA 22060–6221. Comments may also be faxed to Mr. Pecullan at (703) 767–7716.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Pecullan, Phone (703) 767–7620 or e-mail: *michael.pecullan@dla.mil.*

Dated: October 17, 2003.

Cornel A. Holder,

Administrator, Defense National Stockpile Center.

[FR Doc. 03–26760 Filed 10–23–03; 8:45 am]

BILLING CODE 3620–01–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Notice of a 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 advance notice of any proposed or revised computer matching program by the matching agency for public comment. The DoD, as the matching agency under the Privacy Act is hereby giving notice to the record subjects of a computer matching program between Veterans Affairs (VA) and DoD that their records are being matched by computer. The purpose of this agreement is to verify an individual's continuing eligibility for VA benefits by identifying VA disability benefit recipients who return to active duty and to ensure that benefits are terminated if appropriate.

DATES: This proposed action will become effective November 24, 2003 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 objections. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920, Arlington, VA 22202–4502.

FOR FURTHER INFORMATION CONTACT: Mr. Vahan Moushegian, Jr. at telephone (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DMDC and VA have concluded an agreement to conduct a computer matching program between the agencies. The purpose of this agreement is to verify an individual's continuing eligibility for VA benefits by identifying VA disability benefit recipients who return to active duty and to ensure that benefits are terminated if appropriate.

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 the VA to identify ineligible VA disability compensation recipients who have returned to active duty. This matching agreement will identify those veterans who have returned to active duty, but are still receiving disability compensation. If this identification is not accomplished by computer matching, but is done manually, the cost would be prohibitive and it is possible that not all individuals would be identified.

A copy of the computer matching agreement between VA and DMDC is available upon request to the public. Requests should be submitted to the address caption above or to the Department of Veterans Affairs, Veterans Benefit Administration, 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 in the **Federal Register** at 54 FR 25818 on June 19, 1989.

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 October 3, 2003, 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 (61 FR 6435).

Dated: October 16, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Notice of a Computer Matching Program Between the Department of Veterans Affairs and the Department of Defense for Verification of Disability Compensation

A. Participating Agencies

Participants in this computer matching program are the Department of Veterans Affairs (VA) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The VA is the source agency, *i.e.*, the activity disclosing the records for the purpose of the match. The DMDC is the specific recipient activity or matching agency, *i.e.*, the agency that actually performs the computer matching.

B. Purpose of the Match

The purpose of this agreement is to verify an individual's continuing eligibility for VA benefits by identifying VA disability benefit recipients who return to active duty and to ensure that benefits are terminated if appropriate. VA will provide identifying information on disability compensation recipients to DMDC to match against a file of active duty (including full-time National Guard and Reserve) personnel. The purpose is to identify those recipients who have returned to active duty and are ineligible to receive VA compensation so that benefits can be adjusted or terminated, if in order.

C. Authority for Conducting the Match

The legal authority for conducting the matching program for use in the administration of VA's Compensation and Pension Benefits Program is contained in 38 U.S.C. 5304(c), Prohibition Against Duplication of Benefits, which precludes pension, compensation, or retirement pay on account of any person's own service, for any period for which he receives active duty pay. The head of any Federal department or agency shall provide, pursuant to 38 U.S.C. 5106, such information as requested by VA for the purpose of determining eligibility for, or amount of benefits, or verifying other information which respect thereto.

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:

VA will use the system of records identified as ''VA Compensation, Pension and Education and Rehabilitation Records—VA (58 VA 21/22),'' first published at 41 FR 9294, March 3, 1976, and last amended at 66 FR 47727 (09/13/2001), with other amendments, as cited therein. Attachment 4 is a copy of the system notice with the appropriate routine use, *i.e.*, RU 46, annotated.

DoD will use the system of records identified as S322.10 DMDC, entitled, ''Defense Manpower Data Center Data Base,'' last published at 67 FR 78781, December 26, 2002. Attachment 5 is a copy of the system notice with the appropriate routine use, *i.e.*, RU 1(d)(1), annotated.

E. Description of Computer Matching Program

The Veterans Benefits Administration will provide DMDC with an electronic file which contains specified data elements of individual VA disability compensation recipients. Upon receipt of the electronic file, DMDC will perform a computer match using all nine digits of the SSNs in the VA file against a DMDC computer database. The DMDC database consists of personnel records of active duty (including full-time National Guard and Reserve) military members. Matching records, ''hits'' based on the SSN, will produce the member's name, branch of service, and unit designation, and other pertinent data elements. The hits will be furnished to the Veterans Benefits Administration which is responsible for verifying and determining that the data on the DMDC electronic reply file are consistent with the source file and for resolving any discrepancies or inconsistencies on an individual basis. The Veterans Benefits Administration will also be responsible for making final determinations as to positive identification, eligibility for benefits, and verifying any other information with respect thereto.

The electronic file provided by VA will contain information on approximately 2.4 million disability compensation recipients.

The DMDC computer database file contains approximately 1.5 million records of active duty military members, including full-time National Guard and Reserve.

F. Inclusive Dates of the Matching Program

This computer matching program is subject to public comment and review by Congress and the Office of Management and Budget. If the mandatory 30 day period for comment has expired and no comments are received and if no objections are raised by either Congress or the Office of Management and Budget within 40 days of being notified of the proposed match, the computer matching program becomes effective and the respective agencies may begin the exchange at a mutually agreeable time and thereafter on a quarterly basis. By agreement between VA 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, 1941 Jefferson Davis Highway, Suite 920, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 03–26857 Filed 10–23–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to Amend Systems of Records.

SUMMARY: The Defense Logistics Agency proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on November 24, 2003 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, Attn: DSS–B, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Defense Logistics Agency proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The amendment is not within the purview of subsection (r) of the Privacy Act of 1974

(5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: October 16, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S200.10 CAH

SYSTEM NAME:

Individual Military Personnel Records (July 19, 1999, 64 FR 38661).

CHANGES:

SYSTEM IDENTIFIER:

Delete from entry 'CAH'.

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Staff Director, Military Personnel and Administration, Human Resources, 8725 John J. Kingman Road, Stop 6231, Fort Belvoir, VA 22060–6221, and DLA field activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.'

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Add ''military'' between ''duty'' and ''personnel.''

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Add ''home e-mail address; photograph; security clearance data;'' after ''address of record.''

* * * * *

S200.10

SYSTEM NAME:

Individual Military Personnel Records.

SYSTEM LOCATION:

Staff Director, Military Personnel and Administration, Human Resources, 8725 John J. Kingman Road, Stop 6231, Fort Belvoir, VA 22060–6221, and DLA field activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty military personnel assigned to DLA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files include name; rank; Social Security Number; home and address of record; home e-mail address; photograph; security clearance data; general and special orders; evaluations; and details pertaining to classification, duties, assignment, promotion, proposed disciplinary actions, advancement, performance, training, education, qualifications, readiness, personal affairs, and benefits/entitlements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Part II, Personnel; 5 U.S.C. 302(b)(1), Delegation of authority; and E.O. 9397 (SSN).

PURPOSE(S):

The records are maintained as a local repository of documents generated during the service member's assignment at DLA. The files are used to manage, administer, and document the service member's assignment; to provide career advice to service members; and to advise local Commanders and the Director of incidents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper and computerized form.

RETRIEVABILITY:

Retrieved alphabetically by last name.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must access the records to perform their duties. The computerized files are password protected with access restricted to authorized users.

RETENTION AND DISPOSAL:

Upon reassignment from DLA, records are offered to the military service concerned.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Military Personnel and Administration, Human Resources, 8725 John J. Kingman Road, Stop 6231, Fort Belvoir, VA 22060–6221, and DLA field activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, Attn: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, or to the Privacy Act Officer of the DLA field activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, Attn: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, or to the Privacy Act Officer of the DLA field activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, Attn: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Information is provided by the individual, rating officials, and taken from orders, service records, in/out processing documents, and computer listings.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–26856 Filed 10–23–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available

for licensing by the Department of the Navy. Patent application 10/456,243: EXPENDABLE THERMAL TARGET.

ADDRESSES: Requests for copies of the invention cited should be directed to the Naval Surface Warfare Center, Crane Div, Code OCF, Bldg 64, 300 Highway 361, Crane, IN 47522–5001.

FOR FURTHER INFORMATION CONTACT: Mr. Darrell Boggess, Naval Surface Warfare Center, Crane Div, Code OCF, Bldg 64, 300 Highway 361, Crane, IN 47522–5001, telephone (812) 854–1130. To download an application for license, see: *http://www.crane.navy.mil/foia_pa/CranePatents.asp.*

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: October 15, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–26905 Filed 10–23–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–70–003]

Algonquin Gas Transmission Company; Notice of Negotiated Rate Filing

October 16, 2003.

Take notice that on October 10, 2003, Algonquin Gas Transmission Company (Algonquin) tendered for filing five firm transportation service agreements and the related negotiated rate agreements, proposed to be effective on November 1, 2003, or such later date as the facilities constructed for the HubLine Mainline are placed into service.

Algonquin states that the purpose of this filing is to implement these negotiated rate agreements for firm service to be rendered to customers on Algonquin's new HubLine Mainline facilities (Docket No. CP01–5). Algonquin states that the agreements reflect its negotiated rate transactions with: (1) Sithe Power Marketing, L.P.; (2) Providence Gas Company d/b/a New England Gas Company—Rhode Island; (3) TXU Energy Trading Company; (4) Bay State Gas Company; and (5) Boston Gas Company, d/b/a KeySpan Energy Delivery New England.

Algonquin states that copies of the filing were mailed to all affected customers and interested state commissions, as well as all parties on the official service list compiled by the Secretary of the Commission in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary''. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-filing'' link.

Comment Date: October 22, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00104 Filed 10–23–03; 8:45 AM]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–24–000]

Algonquin Gas Transmission Company; Notice of Tariff Filing

October 16, 2003.

Take notice that on October 9, 2003, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the revised tariff sheets listed in Appendix A of the filing, effective on October 10, 2003.

Algonquin states that the purpose of this filing is to implement a meter access charge applicable to deliveries at Algonquin's Manchester Street meter, M&R No. 00087 in Providence, Rhode Island, and at Algonquin's Brayton Point meter, M&R No. 00090 in Somerset, Massachusetts, thereby protecting its existing customers from the risk of non-payment by the defaulting shipper.

Algonquin states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-library''. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-filing'' link.

Comment Date: October 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00100 Filed 10–23–03; 8:45 a.m.]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. P–2232–407]

Catawba-Wateree; Notice of Meeting

October 16, 2003.

a. *Date and Time of Meeting:* October 30, 2003, 10 am.

b. *Place:* Federal Energy Regulatory Commission, teleconference, 888 First Street, NE., Washington, DC 20426.

c. *FERC Contact:* Michael Spencer at (202) 502–6093, *michael.spencer@ferc.gov*

d. *Purpose of the Meeting:* The Federal Energy Regulatory Commission, the U.S. Fish and Wildlife Service, and

applicant, intend to have an informal discussion regarding federally-listed and candidate species for the Catawba-Wateree amendment application Project No. 2232–407.

e. *Proposed Agenda:*

A. Introduction
Recognition of Participants
B. Technical discussion
C. Follow-up actions

f. All local, state, and Federal agencies, Indian Tribes, and interested parties, are hereby invited to attend this meeting as participants. If you want to participate by teleconference, please contact *Michael Spencer* at the number listed above no later than *October 28, 2003.*

Magalie R. Salas,

Secretary.

[FR Doc. E3–00103 Filed 10–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–625–000]

Chandeleur Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

October 16, 2003.

Take notice that on September 30, 2003, Chandeleur Pipe Line Company (Chandeleur) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Fourteenth Revised Sheet No. 5, to become effective on November 1, 2003.

Chandeleur states that the proposed changes would increase revenues from jurisdictional services by $3 million based on the 12-month period ending June 30, 2003 as adjusted.

Chandeleur further states that the principal reasons for the tariff change are: (1) Increased operations and maintenance expense, (2) increased cost of equity; and (3) interested transmission depreciation and net salvage rates.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the date as indicated below. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary''. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: October 22, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00106 Filed 10–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–379–002]

Dominion Cove Point LNG, LP; Notice of Compliance Filing

October 16, 2003.

Take notice that on October 9, 2003, Dominion Cove Point LNG, LP (Cove Point) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Second Substitute First Revised Sheet No. 279, with an effective date of July 1, 2003.

Cove Point states that the purpose of this filing is to comply with the Commission's Letter Order issued September 29, 2003, in Docket No. RP03–379–001 requiring that Cove Point correct the references and incorporation of North American Energy Standards Board's Wholesale Gas Quadrant (WGQ) standards governing partial day recalls. Cove Point states that it has made the changes requested by the Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-filing link.

Protest Date: October 21, 2003.

Magalie R. Salas.

Secretary.

[FR Doc. E3–00105 Filed 10–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2210–089]

Appalachian Power Company; Notice of Availability of Environmental Assessment

October 16, 2003.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Energy Projects' staff has prepared an Environmental Assessment (EA) for an application requesting Commission approval to permit J.W. Holdings, Inc. (permittee) to install and operate 3 stationary docks with a total of one hundred seventeen (117) covered stationary slips and nineteen (19) floating courtesy docks at the Bridge Club on Smith Mountain Lake. No dredging is planned as part of this proposal. The Smith Mountain Pumped Storage Project, FERC No. 2210, is located on the Roanoke and Blackwater Rivers in Bedford, Campbell, Pittsylvania, Franklin, and Roanoke Counties, Virginia.

The EA contains the staff's analysis of the potential environmental impacts of the proposal and concludes that approval of the proposal would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room, or it may be viewed on the Commission's Web site at *http://*

www.ferc.gov using the ''e-library'' link. Enter the docket number (prefaced by P-) and excluding the last three digits, in the docket number field to access the document. For assistance, call (202) 502–8371 or (202) 502–8659 (for TTY).

For further information, contact Heather Campbell at 202–502–6182.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00102 Filed 10–23–03;8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. P–2169]

Tapoco Hydroelectric; Notice of Site Visit

October 16, 2003.

a. *Date and Time of Site Visit:* November 3 and 4, 2003, 9 a.m. to 5:30 p.m.

b. *Place:* All participants should meet at the office of Alcoa Power Generating Inc., Tapoco Division Office at 300 North Hall Road, Alcoa, TN 37701–2516.

c. *FERC Contact:* Anyone having questions about the site visit should contact Lee Emery at (202) 502–8379 or e-mail at *lee.emery@ferc.gov*. Participants should contact Norman Pierson at (865) 977–3326 or by e-mail at *norm.pierson@alcoa.com* by October 29, 2003, to make arrangements for transportation from the Alcoa Office to the project development sites. All participants are responsible for their own transportation to the Alcoa Office.

d. *Purpose of site visit:* The Applicant (Alcoa Power Generating, Inc.) and FERC staff will conduct a site visit to examine environmental and engineering features proposed for the Tapoco Project. All interested individuals, organizations, Indian Tribes, and agencies are invited to attend.

e. This site visit is posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx*.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00101 Filed 10–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Hydro Licensing Status Workshop 2003

October 16, 2003.

In the matter of: AD04–1–000; 2069–003; 2306–008; 2205–006, 11475–000 and 11478–000; 176–018; 2964–006; 2474–004, 2539–003; 2283–005, 2612–005, and 2721–013; 2634–007; 1975–014, 2055–010, 2061–004, 2777–007, and 2778–005; 1927–008, 2342–005, and 2659–011; 2493–006; 11472–000 and 11566–003; 372–008 and 2017–011: Hydro Licensing Status Workshop 2003, Arizona Public Service Company, Citizens Utilities Company, Central Vermont Public Service Corporation, City of Escondido, California, City of Sturgis, Michigan, Erie Boulevard Hydropower, L.P., FPL Energy Maine, LLC, Great Lakes Hydro American, L.L.C., Idaho Power Company, PacifiCorp, Puget Sound Energy, Inc., Ridgewood Maine Hydro Partners, L.P., Southern California Edison Company

A one-day, Commissioner-led workshop will be held on Thursday, December 11, 2003, beginning at 10:00 a.m., in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC. The workshop will focus on the above-listed 26 pending license applications filed at the Commission. The workshop is open to the public and all interested persons are invited to attend and participate.

The goals of the workshop are to: (1) Review and discuss the pending license applications; (2) identify unresolved issues; (3) determine next steps; (4) agree on who will take the next step; and (5) focus on solutions. The workshop will concentrate on identifying the unresolved issues associated with each project, and determining the best course of action to resolve or remove obstacles to final action on each pending license application.

A transcript of the discussions will be placed in the public record for Docket No. AD04–1–000 and in the record for each of the pending license applications.

Filing Requirements for Paper and Electronic Filings

Comments, papers, or other documents related to this proceeding may be filed in paper format or electronically. Those filing electronically do not need to make a paper filing.

For paper filings, the original and 8 copies of the comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Paper filings should, at the top of the first page, refer to Docket No. AD04–1–000 and reference the specific project name(s) and project number(s) that the comments concern. The deadline to file comments is January 10, 2004.

Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *www.ferc.gov*, click on ''e-Filing'' and then follow the instructions on the screen. First-time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-mail address upon receipt of comments. User assistance for electronic filing is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to the e-mail address.

All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington DC 20426, during regular business hours. Additionally, all comments may be viewed on the Commission's Web site at *www.ferc.gov* using the ''eLibrary'' link. For assistance, call toll free 1–866–208–3676, or for TTY 202–502–8659, or by e-mail to *FERCONLINESUPPORT@ferc.gov*.

Opportunities for Listening, Participating, and Viewing the Workshop Offsite and Obtaining a Transcript

The workshop will be transcribed. Those interested in transcripts immediately for a fee should contact Ace-Federal Reporters, Inc. at 202–347–3700, or 1–800–336–6646. Transcripts will be available free to the public on the Commission's e-library system two weeks after the workshop.

The Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, by phone or via satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.org* and click on ''FERC''.

Anyone wishing to participate via teleconference should call or e-mail

Susan Tseng 202–502–6065 or *susan.tseng@ferc.gov*, by December 4, 2003, to receive the toll free telephone number to join the teleconference.

Anyone interested in participating in the workshop via video teleconference from one of the Commission's regional offices should call or e-mail the following staff, by December 4, 2003, to make arrangements. Seating capacity is limited.

Regional office	Staff contact	Telephone No.	E-mail address
Atlanta	Charles Wagner	770–452–3765	*charles.wagner@ferc.gov*
Chicago	John Hawk	312–596–4437	*john.hawk@ferc.gov*
New York	Chuck Goggins	212–273–5910	*charles.goggins@ferc.gov*
Portland	Pat Regan	503–552–2741	*patrick.regan@ferc.gov*
San Francisco	John Wiegel	415–369–3336	*john.wiegel@ferc.gov*

By December 1, 2003, an agenda for the workshop and information about the pending license applications will be posted on the Commission's web site under Hydro Licensing Status Workshop 2003. Anyone without access to the Commission's Web site, or who has questions should contact Mark Pawlowski at 202–502–6052, or e-mail *mark.pawlowski@ferc.gov* or Nick Jayjack at 202–502–6073, or e-mail *nicholas.jayjack@ferc.gov*. This meeting is 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. E3–00107 Filed 10–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southwestern Power Administration

Robert Douglas Willis Power Rate Schedule

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: Pursuant to Delegation Order No. 00–037.00 and 00–001–00A, effective December 6, 2001 and September 17, 2002, respectively, the Deputy Secretary of Energy has approved and placed into effect on an interim basis Rate Order No. SWPA–50 which increases the power rate for the Robert Douglas Willis Hydropower (Robert D. Willis) Project pursuant to the following Robert D. Willis Rate Schedule: Rate Schedule RDW–03, Wholesale Rates for Hydro Power and Energy Sold to Sam Rayburn Municipal Power Agency (Contract No. DE–PM75–85SW00117).

FOR FURTHER INFORMATION CONTACT: Mr. Forrest E. Reeves, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, Department of Energy, One West Third Street, Tulsa, OK 74103–3519, (918) 595–6696, *gene.reeves@swpa.gov*.

SUPPLEMENTARY INFORMATION: The existing hydroelectric power rate for the Robert D. Willis project is $353,700 per year. The Federal Energy Regulatory Commission approved this rate on a final basis on October 22, 2001, for the period ending September 30, 2005. The FY 2003 Robert D. Willis Power Repayment Studies indicates the need for an increase in the annual rate by $99,952 or 28.1 percent beginning November 1, 2003.

The Administrator of Southwestern Power Administration (Southwestern) has followed Title 10, Part 903 Subpart A, of the Code of Federal Regulations, ''Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions'' in connection with the proposed rate schedule. On June 24, 2003, Southwestern published notice in the **Federal Register**, 68 FR 37483, of a 60-day comment period, together with a Public Information Forum and a Public Comment Forum, to provide an opportunity for customers and other interested members of the public to review and comment on a proposed rate increase for the Robert D. Willis project. Both public forums were canceled when no one expressed an intention to participate. Written comments were accepted through August 25, 2003. The only comment received was from Gillis & Angley, Counsellors at Law, on behalf of Sam Rayburn Municipal Power Agency (SRMPA), which stated that SRMPA (the sole hydropower customer) had no objection to the proposed rate adjustment.

Information regarding this rate proposal, including studies and other supporting material, is available for public review and comment in the offices of Southwestern Power Administration, Suite 1400, One West Third Street, Tulsa, Oklahoma 74103.

Following review of Southwestern's proposal within the Department of Energy, I approved Rate Order No. SWPA–50, which increases the existing Robert D. Willis rate to $452,952 per year for the period November 1, 2003, through September 30, 2007.

Dated: October 10, 2003.

Kyle E. McSlarrow,

Deputy Secretary.

Department of Energy

Deputy Secretary of Energy

In the matter of: Southwestern Power Administration, Robert Douglas Willis Hydropower Project; Rate Order No. SWPA–50.

Order Confirming, Approving and Placing Increased Power Rate Schedule in Effect on an Interim Basis

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southwestern Power Administration (Southwestern) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 00–037.00 (December 6, 2001), the Secretary of Energy delegated to the Administrator of Southeastern the authority to develop power and transmission rates, and delegated to the Deputy Secretary of the Department of Energy the authority to confirm, approve, and place in effect such rates on an interim basis and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Administrator under the delegation. This rate order is issued by the Deputy Secretary pursuant to said delegation, and pursuant to Delegation Order No. 00–001–00A, effective September 17, 2002.

Background

Dam B (Town Bluff Dam), located on the Neches River in eastern Texas downstream from the Sam Rayburn Dam, was originally constructed in 1951 by the U.S. Army Corps of Engineers (Corps) and provides streamflow regulation of releases from the Sam

Rayburn Dam. The Lower Neches Valley Authority contributed funds toward construction of both projects and makes established annual payments for the right to withdraw up to 2000 cubic feet of water per second from Town Bluff Dam for its own use. Power was legislatively authorized at the project, but installation of hydroelectric facilities was deferred until justified by economic conditions. A determination of feasibility was made in a 1982 Corps study. In 1983, the Sam Rayburn Municipal Power Agency (SRMPA) proposed to sponsor and finance the development at Town Bluff Dam in return for the output of the project to be delivered to its member municipalities and participating member cooperatives of the Sam Rayburn Dam Electric Cooperative. Since the hydroelectric facilities at the Town Bluff Dam have been completed, the facilities have been renamed the Robert Douglas Willis Hydropower Project (Robert D. Willis).

The Robert D. Willis rate is unique in that it excludes the costs associated with the hydropower design and construction performed by the Corps, because all funds for these costs were provided by SRMPA. Under the Southwestern/SRMPA power sales Contract No. DE–PM75–85SW00117, SRMPA will continue to pay all annual operating and marketing costs, as well as expected capital replacement costs, through the rate paid to Southwestern, and will receive all power and energy produced at the project for a period of 50 years.

The existing rate for the Robert D. Willis project was approved by FERC on October 22, 2001, for the period October 1, 2001, through September 30, 2005.

Discussion

The 2003 current Robert D. Willis power repayment study (PRS) tests the adequacy of the existing rate, based on the latest cost evaluation period extending from FY 2003 through FY 2007, to cover annual expenses for marketing, operation and maintenance, and to amortize additions to plant and major replacements of the generating facilities. The current PRS for the Robert D. Willis project, using the existing annual rate of $353,700, indicates that the legal requirements to repay all costs will not be met without additional revenue. This shortfall is primarily a result of increased operations and maintenance expenses estimated by the Corps. The revised PRS shows that an additional $99,252 (28.1 percent) annually is needed to satisfy repayment criteria. Accordingly, Southwestern developed a rate schedule with a proposed annual rate of $452,952 that would satisfy repayment criteria.

Pursuant to Title 10, Part 903, Subpart A of the Code of Federal Regulations (10 CFR 903.21), ''Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions,'' 50 FR 37837, the Administrator, published notice in the **Federal Register** on June 24, 2003, 68 FR 37483, announcing a 60-day period for public review and comment concerning the proposed minor rate adjustment increase. Southwestern provided notice of the **Federal Register**, together with supporting data, to the customer and interested parties for review and comment during the formal period of public participation. In addition, prior to the formal 60-day public participation process, Southwestern met with the customer representative to discuss with them preliminary information on the proposed rate adjustment. Subsequent to discussions with the customer regarding the initial PRS findings, Southwestern again questioned the Corps regarding the large increase in the operations and maintenance expense estimates. This questioning led to the Corps revising their expense estimates downward, and thereby changing the preliminary results from the initial 35 percent rate increase as stated in the **Federal Register** to a 28.1 percent rate increase. As no requests were received to convene either of the public forums, neither was held. Only one formal comment was received during the public process. That comment, on behalf of the sole customer SRMPA, expressed no objection to the final proposed rate.

Upon conclusion of the comment period, Southwestern finalized the PRS and rate schedule for the proposed annual rate of $452,952 which is the lowest possible rate needed to satisfy repayment criteria. This rate represents an increase of 28.1 percent over the existing rate.

Information regarding this rate increase, including studies and other supporting material, is available for public review and comment in the offices of Southwestern Power Administration, One West Third Street, Tulsa, Oklahoma 74103–3519.

Comments and Responses

Southwestern received one written comment in which the customer representative expressed no objection to the proposed rate adjustment.

Other Issues

There were no other issues raised during the informal meeting or during the formal public participation period.

Administrator's Certification

The FY 2003 revised Robert D. Willis PRS indicates that the annual power rate of $452,952 will repay all costs of the project, including amortization of additions to plant and major replacements of the generating facilities consistent with provisions of the Department of Energy (DOE) Order No. RA 6120.2. In accordance with Delegation Order No. 00–037.00, December 6, 2001, and Section 5 of the Flood Control Act of 1944, the Administrator has determined that the proposed Robert D. Willis power rate is consistent with applicable law and the lowest possible rate consistent with sound business principles.

Environment

The environmental impact of the rate increase proposal was evaluated in consideration of DOE's guidelines for implementing the procedural provisions of the National Environmental Policy Act, 10 CFR 1021, and was determined to fall within the class of actions that are categorically excluded from the requirements of preparing either an Environmental Impact Statement or an Environmental Assessment.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm, approve and place in effect on an interim basis, for the period November 1, 2003, through September 30, 2007, the annual Robert D. Willis rate of $452,952 for the sale of power and energy from Robert D. Willis project to the Sam Rayburn Municipal Power Agency, under Contract No. DE–PM75–85SW00117, as amended. This rate shall remain in effect on an interim basis through September 30, 2007, or until the FERC confirms and approves the rate on a final basis.

Dated: October 10, 2003.

Kyle E. McSlarrow,

Deputy Secretary.

[FR Doc. 03–26897 Filed 10–23–03; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0004; FRL–7330–7]

Access to Confidential Business Information by Abt Associates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its prime contractor Abt Associates (Abt) of Cambridge, MA and its subcontractors Eastern Research Group, of Lexington, MA, and Syracuse Research Corporation, of Arlington, VA, access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

FOR FURTHER INFORMATION CONTACT: Barbara A. Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@.epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under TSCA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Documents?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0004. 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 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 EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

Under Contract Number 68–W02–077, Abt Associates, of 55 Wheeler St, Cambridge, MA and 4800 Montgomery Lane, Suite 400, Bethesda, MD; Eastern Research Group of 110 Hartwell Avenue, Lexington, MA and Avion Lakeside Drive D, 14555 Avion Parkway, Chantilly, VA; and Syracuse Research Corporation, of SRC Arlington, Crystal Gateway 3, Suite 405, 1215 Jefferson Davis Highway, Arlington, VA, will assist EPA in economic and regulatory impact analysis to support all aspects of EPA decision-making. These analyses will largely be of the costs, economic impacts, benefits, and regulatory impacts of actual or potential EPA actions taken under TSCA.

In accordance with 40 CFR 2.306(j), EPA has determined that under Contract Number 68–W02–077, Abt, ERG, and SRC will require access to CBI submitted to EPA under all sections of TSCA, to perform successfully the duties specified under the contract.

Abt, ERG, and SRC personnel were given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA, that the Agency may provide Abt, ERG, and SRC access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and Abt's sites located at 55 Wheeler Street, Cambridge, MA and 4800 Montgomery Lane, Suite 400, Bethesda, MD; ERG's sites located at 110 Hartwell Avenue, Lexington, MA and Avion Lakeside Drive D, 14555 Avion Parkway, Chantilly, VA; and SRC's site located at SRC Arlington, Crystal Gateway 3, Suite 405, 1215 Jefferson Davis Highway, Arlington, VA.

Abt, ERG, and SRC personnel will adhere to all provisions of EPA's *TSCA Confidential Business Information Security Manual.*

Clearance for access to TSCA CBI under Contract Number 68–W02–077 may continue until September 30, 2007.

Abt, ERG, and SRC personnel were required to sign nondisclosure agreements and were briefed on appropriate security procedures before they were permitted access to TSCA CBI.

List of Subjects

Environmental protection, Confidential business information.

Dated: October 9, 2003.

Brian Cook,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 03–26757 Filed 10–23–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6644–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 04, 2003 (68 FR 16511).

Draft EISs

ERP No. D–AFS–J61104–CO Rating EC2, Copper Mountain Resort Trails and Facilities Improvements, Implementation, Special Use Permit, White River National Forest, Dillon Ranger District, Summit County, CO.

Summary: EPA expressed environmental concerns regarding potential adverse impacts to water quality, stream function, wetlands and wildlife habitats. EPA requested additional information on snowmaking source water quality and on-mountain receiving water quality.

ERP No. D–COE–L59000–AK Rating EC2, King Cove Access Project, Provision of a Transportation System between the City of King Cove and the Cold Bay Airport, U.S. Army COE Section 10 and 404 Permits Issuance, Aleutians East Borough (AEB), Alaska Peninsula, AK.

Summary: EPA raised environmental concerns that all of the action alternatives would result in significant environmental impacts due to the dredging and filling of wetlands and the installation of bridges and culverts in anadromous fish streams. EPA also raised concerns that one of the proposed action alternatives would result in significant impacts on sanctuaries, refuges and wilderness areas.

ERP No. D–FHW–H40176–MO Rating EC2, US 40/61 Bridge Location Study Over the Missouri River, Improvement of the Transportation System, Section 9 of the Rivers and Harbor Act Permit, and U.S. Army COE Section 10 and 404 Permits, Missouri River, St. Charles and St. Louis Counties, MO.

Summary: EPA expressed environmental concerns regarding the design year level of service (LOS) rating of D for all build alternatives. EPA further commented on insufficient information regarding the roadway approaches to the bridge and impacts to the floodplain.

ERP No. D–FRC–B05193–CT Rating EC2, Housatonic River Hydroelectric Project, Application to Relicense Existing Licenses for Housatonic Project No. 2576–022 and the Falls Village Project No. 2597–019, Housatonic River Basin, Fairfield, New Haven and Litchfield Counties, CT.

Summary: EPA raised environmental concerns about the conditions associated with the FERC staff recommended alternative, flow and operational recommendations, and the mix of alternatives considered in the Draft EIS.

ERP No. D–FRC–E03011–FL Rating EC2, Tractebel Calypso Pipeline Project, Natural Gas Transportation Service for 832,000 dekatherms/day (Dth/day) to South Florida, Right-of-Way Grant and U.S. Army COE Section 10 and 404 Permits Issuance, Exclusive Economic Zone (EEZ) with the Bahamas, Fort Lauderdale, Broward County, FL.

Summary: EPA expressed environmental concerns about potential impacts to Florida nearshore corals/hardbottoms and seagrasses and the uncertainty of successful Horizontal Directional Drilling crossings. EPA requested an improved impact assessment for marine resources, a Marine Mitigation Plan, and agency coordination regarding expected use conflicts with the Port Everglades Ocean Dredged Material Disposal Site currently being designated by EPA.

ERP No. D–IBR–K39080–CA Rating EC2, Mendota Pool 10-Year Exchange Agreements, Water Provision to Irrigable Lands, Central Valley Project Improvement Act (CVPIA), Fresno and Madera Counties, CA.

Summary: EPA has environmental concerns with project contributions to groundwater and surface water quality degradation, groundwater overdraft, and subsidence; effects on actions to resolve agricultural drainage problems, and effects on efforts to provide a sustainable and reliable irrigation supply. EPA requested additional information regarding potential project impacts on the above issues. EPA urged consideration of limited land fallowing and other measures to improve irrigation water productivity to address the need for a more reliable irrigation supply.

ERP No. D–IBR–K64023–CA Rating LO, Battle Creek Salmon and Steelhead Restoration Project, Habitat Restoration in Battle Creek and Tributaries, License Amendment Issuance, Implementation, Tehama and Shasta Counties, CA.

Summary: EPA supports the restoration of fisheries habitat and has no objections to this project, provided mitigation measures and monitoring programs, as described in the draft EIS are implemented.

ERP No. D–IBR–K64024–CA Rating LO, Lower Santa Ynez River Fish Management Plan and Cachuma Project, Biological Opinion for Southern Steelhead Trout and Endangered Southern Steelhead Habitat Conditions Improvements, Santa Barbara County, CA.

Summary: EPA supports the restoration of fisheries habitat and has no objection to this project, provided mitigation measures and monitoring programs, as described in the draft EIS, are implemented.

ERP No. DS–FTA–C54007–NJ Rating EC2, Newark-Elizabeth Rail Link-Elizabeth Segment to Document the Social, Economic and Transportation Impact of the 5.8 mile Light Rail Transit (LRT) Alignment, Minimal Operable Segment 3 (MOS–3), City of Elizabeth, Union County, NJ.

Summary: EPA expressed environmental concerns due to wetlands impacts/mitigation and air quality impacts. EPA requested that the final EIS contain additional analysis for these issues and appropriate mitigation for the impacts.

ERP No. D1–FHW–F40361–MI Rating EC2, MI–59 Livingston County Widening Project between I–96 and U.S. 23, Practical Alternatives and a No Build Alternative for Consideration in the Right-of-Way Preservation Corridor, Funding, NPDES and U.S. Army COE Section 404 Permits Issuance, Livingston County, MI.

Summary: EPA expressed environmental concerns with the proposed project regarding wetland impacts, stormwater runoff, and invasive species control. EPA also commented on alternatives evaluation.

Final EISs

ERP No. F–AFS–L61218–ID, Frank Church—River of No Return Wilderness (FC–RONRW) Future Management of Land and Water Resources, Implementation, Bitterroot, Boise and Nez Perce, Payette and Salmon-Challis National Forests, ID.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–L65376–OR, Silvies Canyon Watershed Restoration Project, Additional Information concerning Ecosystem Health Improvements in the Watershed, Grant and Harney Counties, OR.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–L65414–ID, Middle Little Salmon Vegetation Management Project, Timber Stands Current Condition Improvements, Payette National Forest, New Meadows Ranger District, Adam County, ID.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–FHW–D40295–WV, New River Parkway Project, Design, Construction and Management, between I–64 Interchanges to Hinton, Funding, Raleigh and Summers Counties, WV.

Summary: EPA has environmental concerns with the preferred alternative regarding the significant potential for secondary and cumulative impacts to the New River.

ERP No. F–FHW–J40160–ND, Liberty Memorial Bridge Replacement Project, Poor and Deteriorating Structural Rehabilitation or Reconstruction, U.S. Coast Guard and U.S. Army COE Section 10 and 404 Permits Issuance, Missouri River, Bismarck and Mandan, ND.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–FTA–K40241–HI, Oahu Primary Corridor Transportation Project,

Improvements from Kapolei in the west to the University of Hawaii-Manoa and Waikiki in the east, Funding, City and County of Honolulu.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–JUS–K99007–CA 14–Mile Border Infrastructure System Completion along the United States and Mexico Border, Areas I, V and VI, Pacific Ocean to just east of Tin Can Hill, San Diego County, CA.

Summary: EPA raised continuing environmental objections with the proposed project because it could result in significant environmental degradation to waters of the United States. EPA continues to believe that additional opportunities may exist to avoid and reduce the project's adverse impacts to aquatic resources protected under the Clean Water Act Section 404 (CWA); and intends to work with the Department of Homeland Security and U.S. Army Corps of Engineers to identify such opportunities during the CWA Section 404 permit process.

ERP No. F–NOA–L91011–AK, Cook Inlet Beluga Whale Stock, Federal Actions Associated with the Management and Recovery, Implementation, Cook Inlet, AK.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. FB–AFS–J65287–UT, Long Deer Vegetation Management Project, South Spruce Ecosystem Rehabilitation Project, Implementation, Dixie National Forest, Cedar City Ranger District, Iron and Kane Counties, UT.

Summary: EPA continues to express environmental concerns with the range of alternatives, ecosystem characterization and fuel loading, roads and habitat fragmentation. EPA recommended that the interactions between and goals of (1) reforestation, (2) fuel reduction and (3) aspen regeneration be considered.

Dated: October 21, 2003.

Ken Mittelholtz,

Environmental Protection Specialist, NEPA Compliance Division.

[FR Doc. 03–26932 Filed 10–23–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6644–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa.*

Weekly receipt of Environmental Impact Statements

Filed October 13, 2003 Through October 17, 2003

Pursuant to 40 CFR 1506.9.

EIS No. 030477, Final EIS, COE, MS, Royal D'Iberville Hotel and Casino Development Project, Construction and Operation, U.S. Army COE Section 10 and 404 and NPDES Permits Issuance, City of D'Iberville on the Back Bay, Mississippi Gulf Coast, Harrison County, MS, Wait Period Ends: November 24, 2003, Contact: Susan Ivester Rees, Ph.D (251) 694–4141.

EIS No. 030478, Final EIS, BOP, CA, Lompoc United States Penitentiary (UPS) Construction and Operation of a New High-Security Facility and Ancillary Structures on One of Three Sites located in the City of Lopmoc, Funding, Santa Barbara County, CA, Wait Period Ends: November 24, 2003, Contact: David J. Dorworth (202) 514–6470.

EIS No. 030479, Final EIS, AFS, CA, South Tahoe Public Utility District (STPUD) B-Line Phase III Wastewater Export Pipeline Replacement Project, Luther Pass Pump Station to U.S. Forest Service Luther Pass Overflow Campground Access Road, Special Use Permit, U.S. Army COE Section 404 and US Fish and Wildlife Service Permits Issuance and EPA Grant, El Dorado and Alpine Counties, CA, Wait Period Ends: November 24, 2003, Contact: Gary Weigel (530) 543–2665.

EIS No. 030480, Draft EIS, AFS, OR, Easy Fire Recovery Project and Proposed Non-significant Forest Plan Amendments, Timber Salvage, Future Fuel Reduction, Road Reconstruction and Maintenance, Road Closure, Tree Planting and Two Non-significant Forest Plan Amendments, Implementation, Malheur National Forest, Prairie City Ranger District, Grant County, OR, Comment Period Ends: December 8, 2003, Contact: Brooks Smith (541) 820–3800.

This document is available on the Internet at: *http://www.fs.fed.us/R6/malheur.*

EIS No. 030481, Final Supplemental, AFS, CA, WA, OR, Northern Spotted Owl Management Plan in the National Forests, Implementation, CA, OR and WA, Wait Period Ends: November 24, 2003, Contact: Joyce Casey (503) 326–2430.

The U.S. Department of Agriculture's Forest Service and U.S. Department of the Interior's Bureau of Land Management are Joint Lead Agencies for the above project.

EIS No. 030482, Draft EIS, AFS, MT, Basin Creek and Blacktail Hazardous Watershed Fuels Reduction Project, Implementation, Highland Mountains, Butte Ranger District, Beaverhead-Deerlodge National Forest, Butte-Silver Bow County, MT, Comment Period Ends: December 8, 2003, Contact: Amy Waring (406) 683–3948.

EIS No. 030483, Final EIS, FTA, CO, West Corridor Project, Transportation Improvements in the Cities of Denver, Lakewood and Golden, Light Rail Transit (LRT), Jefferson County, CO, Wait Period Ends: November 24, 2003, Contact: David Hollis (303) 638–9000.

EIS No. 030484, Draft EIS, NOA, WA, CA, OR, 2004 Pacific Coast Groundfish Fishery Management Fishery, Proposed Acceptable Biological Catch and Optimum Yield Specifications and Management Measures, Magnuson-Stevens Act, Exclusive Economic Zone, WA, OR and CA, Comment Period Ends: December 8, 2003, Contact: D. Robert Lohn (206) 526–6150.

Amended Notices

EIS No. 030407, Draft EIS, EPA, CT, NY, Central and Western Long Island Sound Dredged Material Disposal Sites, Designation, CT and NY, Comment Period Ends: November 17, 2003, Contact: Ann Rodney (617) 918–1538.

Revision of FR Notice Published on 9/12/03: CEQ Comment Period Ending 10/27/2003 has been extended to 11/27/2003.

EIS No. 030446, Draft Supplemental, FTA, OR, WA, OR, South Corridor Downtown Amendment Project, Evaluation of Downtown Portland Mall Light Rail Transit (LRT) Alignment to the I–205 Light Rail Transit Alternative, Funding, Clackamas and Multnomah Counties, OR, Comment Period Ends: November 17, 2003, Contact: Sharon Kelly (503) 797–1756.

Revision of FR Notice Published on 10/3/2003: Correction to the STATE from NC to OR.

EIS No. 030453, Draft EIS, BLM, CA, Desert Southwest Transmission Line Project, New Substation/Switching Station, Construction, Operation and Maintenance, Right-of-Way Grant and US Army COE Section 10 and 404 Permits Issuance, North Palm Springs and Blythe, CA, Comment Period Ends: November 24, 2003, Contact: John Kalish (760) 251–4849.

Revision of FR Notice Published on 10/10/2003: Correction to the Internet

Address should be: *http://www.ca.blm.gov/palmsprings.*

Dated: October 21, 2003.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 03–26933 Filed 10–23–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0338; FRL–7332–1]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review the proposed OPPTS science policy on evaluating PPAR-alpha agonist induced rodent liver tumors.

DATES: The meeting will be held from December 9–10, 2003, from 8:30 a.m. to approximately 5 p.m.

Comments: Deadlines for submission of requests to present oral comments and the submission of written comments, see Unit I.E. of the **SUPPLEMENTARY INFORMATION.**

Nominations: Nominations of scientific experts to serve as ad hoc members of the FIFRA SAP for this meeting should be provided on or before November 3, 2003.

Special seating: Requests for special seating arrangements should be made at least 5 business days prior to the meeting.

ADDRESSES: The meeting will be held at the Holiday Inn National Airport, 2650 Jefferson Davis Highway, Arlington, VA telephone number is: (703) 684–7200.

Comments: Written comments may be submitted electronically (preferred), by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

Nominations, requests to present oral comments, and special seating: To submit nominations to serve as an ad hoc member of the FIFRA SAP for this meeting, or requests for special seating arrangements, or requests to present oral comments, notify the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT.** To ensure proper receipt by EPA, your request must identify docket identification (ID) number OPP–2003–0338 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Steven M. Knott, DFO, Office of Science Coordination and Policy 7201M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8450; fax number: (202) 564–8382; e-mail address: *knott.steven@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act (FQPA) of 1996. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2003–0338. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

EPA's position paper, charge/questions to FIFRA SAP, FIFRA SAP composition (i.e., members and consultants for this meeting) and the meeting agenda will be available as soon as possible, but no later than late November 2003. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at *http://www.epa.gov/scipoly/sap*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA's Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic pulic docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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

copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are delivered to the docket will be transferred to EPA's electronic public docket. Public comments in hard copy that are delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0338. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0338. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you deliver as described in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0338. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

3. *By mail*. Due to potential delays in EPA's receipt and processing of mail, respondents are strongly encouraged to submit comments either electronically or by hand delivery or courier. We cannot guarantee that comments sent via mail will be received prior to the close of the comment period. If mailed, please send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0338. For questions about delivery options, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. Provide specific examples to illustrate your concerns.

5. Make sure to submit your comments by the deadline in this document.

6. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

E. How May I Participate in this Meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2003–0338 in the subject line on the first page of your request.

1. *Oral comments*. Oral comments presented at the meetings should not be repetitive of previously submitted oral or written comments. Each individual or group wishing to make brief oral comments to FIFRA SAP is strongly advised to submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, eastern time, December 1, 2003, in order to be included on the meeting agenda. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before the FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. To the extent that time permits, interested persons may be permitted by the Chair of FIFRA SAP to present oral comments at the meeting. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to FIFRA SAP at the meeting.

2. *Written comments*. Although submission of written comments are accepted until the date of the meeting (unless otherwise stated), the Agency encourages that written comments be submitted, using the instructions in Unit I., no later than noon, eastern time, November 24, 2003, to provide the FIFRA SAP the time necessary to consider and review the written comments. There is no limit on the extent of written comments for consideration by FIFRA SAP. Persons wishing to submit written comments at

the meeting should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies.

3. *Seating at the meeting*. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact the DFO at least 5 business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT** so that appropriate arrangements can be made.

4. *Request for nominations to serve as ad hoc members of the FIFRA SAP for this meeting*. The FIFRA SAP staff routinely solicit the stakeholder community for nominations to serve as ad hoc members of the FIFRA SAP for each meeting. Any interested person or organization may nominate qualified individuals to serve on the FIFRA SAP for a specific meeting. No interested person shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency (except EPA). Individuals nominated should have expertise in one or more of the following areas: Toxicology, especially the data/criteria necessary to establish the PPAR-alpha agonist mode of action; the human relevance of the PPAR-alpha agonist mode of action; and interpretation of the PPAR-alpha agonist mode of action with respect to the sensitivity of the young. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before November 3, 2003.

The criteria for selecting scientists to serve on the FIFRA SAP are that these persons be recognized scientists—experts in their fields; that they be as impartial and objective as possible; that they represent an array of backgrounds and perspectives (within their disciplines); have no financial conflict of interest; have not previously been involved with the scientific peer review of the issue(s) presented; and that they be available to participate fully in the review, which will be conducted over a relatively short-time frame. Nominees will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. Finally, they will be asked to review and to help finalize the meeting minutes.

If a FIFRA SAP nominee is considered to assist in a review by the FIFRA SAP for a particular session, the nominee is subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. As such, the FIFRA SAP nominee is required to submit a Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at EPA (EPA Form 3110–48 [5–02]) which shall fully disclose, among other financial interests, the nominee's employment, stocks, and bonds, and where applicable, sources of research support. EPA will evaluate the nominee's financial disclosure form to assess that there are no formal conflicts of interest before the nominee is considered to serve on the FIFRA SAP. Selected FIFRA SAP members will be hired as a Special Government Employee. The Agency will review all nominations. FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

II. Background

A. Purpose of the FIFRA SAP

Amendments to FIFRA enacted November 28, 1975 (7 U.S.C. 136w(d)), include a requirement under section 25(d) that notices of intent to cancel or reclassify pesticide regulations pursuant to section 6(b)(2) of FIFRA, as well as proposed and final forms of rulemaking pursuant to section 25(a) of FIFRA, be submitted to a SAP prior to being made public or issued to a registrant. In accordance with section 25(d) of FIFRA, the FIFRA SAP is to have an opportunity to comment on the health and environmental impact of such actions. The FIFRA SAP also shall make comments, evaluations, and recommendations for operating guidelines to improve the effectiveness and quality of analyses made by Agency scientists. Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) of FIFRA. The Deputy Administrator appoints seven individuals to serve on the FIFRA SAP for staggered terms of 4 years, based on recommendations from the National Institutes of Health and the National Science Foundation.

Section 104 of FQPA (Public Law 104–170) established the FQPA Science Review Board (SRB). These scientists shall be available to the FIFRA SAP on an ad hoc basis to assist in reviews conducted by the FIFRA SAP.

B. Public Meeting

The FIFRA SAP will meet to consider and review the proposed OPPTS science policy on evaluating PPAR-alpha agonist induced rodent liver tumors. Recent developments in the area of research on peroxisome proliferating chemicals have led to a reevaluation of the state of the science to characterize the mode(s) of action (i.e., PPAR-alpha-agonism) and human relevance of rodent tumors induced by peroxisome proliferating agents. To that end, ILSI Risk Science Institute (ILSI RSI) convened a workgroup in 2001 (ILSI document, in press) to evaluate new information on the association between PPAR-alpha agonism and the induction of tumors by peroxisome proliferating chemicals. The ILSI report provides a detailed and comprehensive analysis of the relationship between peroxisome proliferators and liver tumorigenesis, data on PPAR-alpha-null mice, data on the human PPAR-alpha, and epidemiological studies evaluating the impact of prolonged exposure to known PPAR-alpha agonists on human liver tumorigenesis. The ILSI report also provides an evaluation of the potential role of PPAR alpha agonism in the development of pancreatic and Leydig cell tumors. This report provided background information which was used by OPPTS to develop a proposed science policy regarding the data necessary to establish PPAR-alpha induction as the MOA for PPAR agonist-induced rodent liver tumors and the relevance of this MOA in humans including children. The Agency will request guidance from the panel on the scientific soundness of the proposed OPPTS science policy.

C. FIFRA SAP Meeting Minutes

The FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency in approximately 60 days after the meeting. The meeting minutes will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 16, 2003.

Joseph J. Merenda,

Director, Office of Science Coordination and Policy.

[FR Doc. 03–26758 Filed 10–23–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL—7578–4]

Meeting of the Mobile Sources Technical Review Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Act, Public Law 92–463, notice is hereby given that the Mobile Sources Technical Review Subcommittee (MSTRS) will meet in December 2003. This is an open meeting. The meeting will focus on diesel and school bus retrofits and will include presentations from industry, states, and EPA representatives. The preliminary agenda for this meeting will be available on the Subcommittee's Web site. Draft minutes from the previous meetings are available on the Subcommittee's Web site now at: *http://www.epa.gov/air/caaac/mobile_sources.html.* MSTRS listserver subscribers will receive notification when the agenda is available on the Subcommittee Web site. To subscribe to the MSTRS listserver, go to *https://lists.epa.gov/cgi-bin/lyris.pl?enter=mstrs.* The site contains instructions and prompts for subscribing to the listserver service.

DATES: Wednesday, December 3, 2003 from 9 am. to 4 pm. Registration begins at 8:30 am.

ADDRESSES: The meeting will be held at Westin Detroit Metropolitan Airport, 2501 WorldGateway Place, Detroit, Michigan 48242; (734) 942–6500. (The airport is located at the Detroit Metro Airport.) Cut-off date to make reservations for discounted rooms associated with this meeting is November 10, 2003.

FOR FURTHER INFORMATION CONTACT: *For technical information:* Mr. Barry Garelick, Technical Staff Contact, Transportation and Regional Programs Division, MC: 6406J, U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460;, Ph: (202) 564–9028; FAX: (202) 565–2085, e-mail; *garelick.barry@epa.gov.*

For logistical and administrative information: Ms .Kim Derksen, FACA Management Officer, U.S. EPA, 2000 Traverwood Drive, Ann Arbor, Michigan, Ph: 734–214–4272; FAX 734–214–4906, e-mail: *derksen.kimberly@epa.gov.*

Background on the work of the Subcommittee is available at: *http://transaq.ce.gatech.edu/epatac.*

For more current information: *http://epa.gov/air/caaac/mobile_sources.html.*

Individuals or organizations wishing to provide comments to the Subcommittee should submit them to Mr. Garelick at the address above by November 15, 2003. The Mobile Sources Technical Review Subcommittee expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

SUPPLEMENTARY INFORMATION: During this meeting, the Subcommittee may also hear progress reports from some of its workgroups as well as updates and announcements on activities of general interest to attendees.

Dated: October 17, 2003.

Margo Tsirigotis Oge,

Director, Office of Transportation and Air Quality.

[FR Doc. 03–26925 Filed 10–23–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0330; FRL–7330–6]

N-Propyl-S-Lactate; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2003–0330, must be received on or before November 24, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Princess Campbell, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8033; e-mail address: *campbell.princess@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2003–0330. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment

system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA's Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0330. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2003–0330. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0330.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0330. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does

not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 10, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

PURAC America, Inc.

PP OF6180

EPA has received a pesticide petition (OF6180) from PURAC America, Inc., 111 Barclay Blvd., Lincolnshire Corporate Center, Lincolnshire, IL 60069 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance exemption for n-propyl-*S*-lactate, also known as n-propyl-*L*-lactate, under 40 CFR 180.950, when used in accordance with good agricultural or manufacturing practice. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Toxicological Profile

1. *Acute toxicity*. No mortality in either male or female rats occurred during the 14–day observation period, setting the oral lethal dose $(LD)_{50}$ greater than 2,000 milligrams/kilogram (mg/kg) for n-propyl lactate. In the acute oral study, five rats per sex per group were used. The test substance was undiluted and given by gastric lavage at a dose of 2 milliliter/kilogram (mL/kg) body weight (bwt). Clinical observations, mortality, body weights, and gross pathological changes were recorded during a 14–day observation period. All animals gained weight. There were no gross pathological changes at the end of the study.

Lactate esters generally have an inhalation lethal concentration $(LC)_{50}$ above 5,000 milligrams/meters^3 (mg/m^3).

2. *Genotoxicity*. Ames testing of a similar lactate, ethyl-*L*-lactate did not show any activity.

3. *Reproductive and developmental toxicity*. No evidence of teratogenicity or maternal toxicity was observed in an inhalation study of a related lactate, 2-ethylhexyl-*L*-lactate or in a dermal study of ethyl-*L*-lactate.

4. *Subchronic toxicity*. Subacute inhalation studies have been conducted at concentrations up to 600 mg/m^3 or higher on four lactate esters (ethyl, n-butyl, isobutyl, and 2-ethylhexyl-*L*-lactate). Degenerative and regenerative changes in the nasal cavity were noted in all studies. The no observed adverse effect level (NOAEL) in ethyl, n-butyl, and isobutyl-*L*-lactate vapor studies was 200 mg/m^3. Lactates do not appear to cause systemic toxicity, except at very high concentration (1,800 mg/m^3 or higher). These systemic effects may be secondary to severe irritation seen at high doses.

5. *Animal metabolism*. The *in vitro* hydrolysis of lactate esters (methyl, ethyl, butyl, pentyl, isoamyl, isopropyl, isobutyl, 2-ethylhexyl) in rat olfactory epithelium homogenate has been evaluated. In general, of the eight lactates evaluated, the rat nasal epithelium showed increased capacity to hydrolyze the lactates and increased affinity with increasing molecular weight (increase in alcohol chain length). Based on the similarity of effects and kinetic parameters, it appears that lactic acid is most likely the cause of the lactate toxicity.

6. *Metabolite toxicology*. n-Propyl-*L*-lactate is rapidly hydrolyzed in the body and environment to lactic acid and n-propanol (both are listed as exempt from requirements for a tolerance under 40 CFR 180.1001). Lactic acid is a metabolic break down product of all lactates. It is a normal metabolite in humans and is found in or added to foods (21 CFR 172.515). Endogenous production of *L*(+) lactate in a resting human is 100–124 grams per day. Lactic acid oral LD_{50} in rats is 3,730 mg/kg. It is not active in mutagenic tests. It will produce skin and eye irritation at high concentrations. The n-propanol has an exemption from the requirement of a tolerance under 40 CFR 180.1001 with no limit on use as a solvent for all pesticides applied to growing crops or to raw agricultural commodities after harvest.

B. Aggregate Exposure

Non-dietary exposure. n-Propyl-*L*-lactate will be used at an application rate of between 0.4 and 1.7 lb/acre as part of the emulsion concentrate or as a solvent for herbicides, fungicides, insecticides, and other pesticide formulations. The low vapor pressure would tend to keep airborne exposure low.

[FR Doc. 03–26759 Filed 10–23–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7578–2]

Agreement for Recovery of Past Response Costs and Covenant Not To Sue Under the Comprehensive Environmental Response, Compensation, and Liability Act Regarding the Universal Oil Products Superfund Site, East Rutherford, NJ

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9601 *et seq.*, the U.S. Environmental Protection Agency (''EPA'') announces a proposed administrative settlement to resolve claims under CERCLA. This settlement is intended to resolve the liability of responsible parties for certain past response costs incurred by EPA at the Universal Oil Products (Chemical Division) Superfund Site, East Rutherford, New Jersey (''Site''). The proposed administrative settlement is contained in an Agreement for Recovery of Past Response Costs (''Agreement'') between Honeywell International Inc., Honeywell Specialty Materials, LLC (''the Settling Parties'') and EPA. By this Notice, EPA is informing the public of the proposed settlement and of the opportunity to comment.

The soil and groundwater at the approximately 75-acre Site became contaminated with hazardous substances from the operations of a former chemical manufacturing facility. The New Jersey Department of Environmental Protection (NJDEP) is the lead agency responsible for cleanup of the Site, and EPA serves as the support agency. With EPA's concurrence, NJDEP issued a Record of Decision selecting interim soil and groundwater remedies for the Site. The interim soil and groundwater remedies were completed in 2001. Further studies will be required to select a final remedy for the Site.

Section 122(h) of CERCLA authorizes EPA to consider, compromise and settle certain claims incurred by the United States. Under the terms of the Agreement, the Settling Parties will pay a total of $219,491.64 to reimburse EPA for certain response costs incurred at the Site. In exchange, EPA will grant a covenant not to sue or take administrative action against the Settling for reimbursement of past-response costs pursuant to Section 107(a) of CERCLA.

EPA will consider any comments received during the comment period and may withdraw or withhold consent to the proposed settlement if comments disclose facts or considerations that indicate the proposed settlement is inappropriate, improper, or inadequate. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, New York 10007–1866. Telephone: (212) 637–3111.

DATES: Comments must be provided by November 24, 2003.

ADDRESSES: Comments should be sent to the U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, NY 10007–1866 and should refer to: Universal Oil Products (Chemical Division) Superfund Site, U.S. EPA Index No. CERCLA–02–2003–2019.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, New York 10007–1866. Telephone: (212) 637–3111.

SUPPLEMENTARY INFORMATION: A copy of the proposed administrative settlement may be obtained in person or by mail from John Prince, U.S. Environmental Protection Agency, 290 Broadway—19th Floor, New York, NY 10007–1866. Telephone: (212) 637–4380.

Dated: October 2, 2003.

George Pavlou,

Director, Emergency and Remedial Response Division, Region 2.

[FR Doc. 03–26924 Filed 10–23–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

October 8, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before December 23, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554; or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0968.

Title: Slamming Complaint Form.

Form Number: FCC 501.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit entites; and Not-for-profit institutions.

Number of Respondents: 3,600.

Estimated Time Per Response: 15 minutes.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 900 hours.

Total Annual Cost: None.

Needs and Use: FCC Form 501, Slamming Complaint Form, is designed to assist consumers in filing slamming complaints with the Commission. The form is devised to ensure complete and efficient submission of necessary information to process slamming complaints. The form remains available to consumers electronically and in hard copy. The Commission will use this information to provide redress to consumers and to act against companies engaged in this illegal practice as soon as possible.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–26843 Filed 10–23–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

October 8, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before December 23, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, 445 12th Street, SW., Room 1–A804, Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0551.

Title: Sections 76.1002 and 76.1004, Specific Unfair Practices Prohibited.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit entities.

Number of Respondents: 20.

Estimated Time Per Response: 1–25 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 260 hours.

Total Annual Cost: $50,000.

Needs and Uses: The Commission staff will use this information to determine on a case-by-case basis whether particular exclusive contracts for cable television programming comply with the statutory public interest standard of section 19 of the 1992 Cable Television Consumer Protection and Competition Act and section 628 of the Communications Act of 1934, as amended. Section 301(j) of the 1996 Telecommunications Act amends the restrictions of section 628 to include common carriers and their affiliates that provide video programming.

OMB Control Number: 3060–0607.

Title: Section 76.922, Rates for Basic Service Tiers.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; and State, local or tribal government.

Number of Respondents: 25.

Estimated Time Per Response: 12 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 300 hours.

Total Annual Cost: None.

Needs and Use: The Commission uses the information in this collection to ensure that qualified small systems have additional incentives to add channels and that small systems are able to recover costs for headend upgrades when doing so.

OMB Control Number: 3060–0414.

Title: Terrain Shielding Policy.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; and State, local or tribal government.

Number of Respondents: 750.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 750 hours.

Total Annual Costs: $1,012,500.

Needs and Uses: The terrain shielding policy requires respondents to submit either a detailed terrain study, or to submit letters of assent from all potentially affected parties and graphic depiction of the terrain when intervening terrain prevents a low power television applicant from interfering with other low power television or full-power television stations. FCC staff use the data to determine if terrain shielding can provide adequate interference protection and if a waiver of 47 CFR 74.705 and 74.707 of the rules is warranted.

OMB Control Number: 3060–0565.

Title: Commission Review of Franchising Authority Decisions on Rates for the Basic Service Tier and Associated Equipment, Section 76.944.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entity; and State, Local or Tribal Government.

Number of Respondents: 32.

Estimated Time per Response: 20–30 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 546 hours.

Total Annual Costs: $72,000.

Needs and Uses: The information collected is reviewed by the FCC to ensure that franchising authority decisions regarding cable rates are consistent with the provisions of the Cable Television Consumer Protection

and Competition Act of 1992 and the Commission's rules regarding cable rate regulation. Commission review of appeals is necessary to ensure uniformity of interpretation of Federal guidelines.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–26844 Filed 10–23–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

October 7, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 24, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments regarding this Paperwork Reduction Act submission to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554; or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0719.

Title: Quarterly Report of IntraLATA Carriers Listing Payphone Automatic Number Identifications (ANIs).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 400 respondents; 1,600 responses.

Estimated Time Per Response: 3.5 hours.

Frequency of Response: Recordkeeping requirement, third party disclosure requirements, and quarterly reporting requirements.

Total Annual Burden: 5,600 hours.

Total Annual Cost: N/A.

Needs and Uses: IntraLATA carriers must submit a quarterly list of payphone ANIs to the interexchange carriers. This will facilitate resolution of disputed ANIs in the par-call compensation context. The report allows IXCs to determine which dial-around calls are made from payphones. The data which must be maintained for at least 18 months after the close of a compensation period will facilitate verification of disputed ANIs.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–26845 Filed 10–23–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

October 14, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Pub. L. No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before December 23, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0953.

Title: Wireless Medical Telemetry Service, ET Docket No. 99–255.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for profit entities; Not-for-profit institutions.

Number of Respondents: 1.

Estimated Time per Response: 1 to 4 hours; 2,500 responses/annum.

Frequency of Response: Recordkeeping; On occasion reporting requirement; and Third party disclosure requirement.

Total Annual Burden: 10,000 hours.

Total Annual Cost: N/A.

Needs and Uses: The Commission allocated spectrum and established rules for a ''Wireless Medical Telemetry Service'' that allows potentially life critical equipment to operate in an interference-protected basis. Medical telemetry equipment is used in hospitals and health care facilities to transmit patient measurement data such as pulse and respiration rate to a nearby

receiver, permitting greater patient mobility and increase comfort.

OMB Control Number: 3060–0771.

Title: Procedure for Obtaining a Special Temporary Authorization in the Experimental Radio Service, Section 5.61.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for profit entities; State, Local or Tribal Government.

Number of Respondents: 500.

Estimated Time per Response: 1 hour.

Frequency of Response: Recordkeeping; On occasion reporting requirement.

Total Annual Burden: 500 hours.

Total Annual Cost: N/A.

Needs and Uses: The FCC may issue a special temporary authority (STA) under Part 5 of the Commission's rules in cases where a need is shown for operation of an authorized station for a limited time only, in a manner other than that specified in the existing authorization, but does not conflict with FCC rules. A request for STA may be filed as an informal application.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–26846 Filed 10–23–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

October 14, 2003.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104–13. 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.

FOR FURTHER INFORMATION CONTACT: Paul J. Laurenzano, Federal Communications Commission, 445 12th Street, SW., Washington DC, 20554, (202) 418–1359 or via the Internet at *plaurenz@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0410.

OMB Approval Date: 08/25/2003.

Expiration Date: 08/31/2006.

Title: Forecast of Investment Usage Report and Actual Usage of Investment Report.

Form No.: FCC Reports 495A and FCC 495B.

Estimated Annual Burden: 166 responses; 6,640 total annual hours; 40 hours per respondent.

Needs and Uses: The Forecast of Investment Usage and Actural Usage of Investment Reports are needed to detect and correct forcast errors that could lead to significant misallocation of network plant between regulated and nonregulated activities. FCC's purpose is to protect the regulated ratepayer from subsidizing the nonregulated activities of rate regulated telephone companies. Sixty local exchange carriers file the annual reports based on study arears.

OMB Control No.: 3060–1044.

OMB Approval Date: 09/05/2003.

Expiration Date: 02/29/2004.

Title: Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers CCDckt # 01–338, 96–98, 98–147, Report and Order and Order on Remand and Further NPRM.

Form No.: N/A.

Estimated Annual Burden: 2,369 responses; 74,120 total annual hours; approximately 32 hours per respondent.

Needs and Uses: In the Report and Order on Remand and Further Notice of Proposed Rulemaking, issued in CC Dockets 01–338, 96–98, 98–147, the Commission adopts new rules to govern the availability of unbundled network elements to competitive local exchange carriers from incumbent local exchange carriers. The Commission amends its standard for determining which network elements must be provided on an unbundled basis and determines which network elements meet this standard. The Commission establishes eligibility criteria for certain combinations of unbundled network elements. The Commission allows state regulatory commissions to initiate proceedings to make additional determinations consistent with specific Commission guidance.

OMB Control No.: 3060–0168.

OMB Approval Date: 09/16/2003.

Expiration Date: 09/30/2006.

Title: Reports of Proposed Changes in Depreciation Rates—Section 43.43.

Form No.: N/A.

Estimated Annual Burden: 10 responses; 60,000 total annual hours; 6,000 hours per respondent.

Needs and Uses: Section 43.43 of the Commission's Rules requires certain carriers to file specified information before making any change in the depreciation rates applicable to their operating plants.

OMB Control No.: 3060–0726.

OMB Approval Date: 09/26/2003.

Expiration Date: 09/30/2006.

Title: Quarterly Report of Interexchange Carriers Listing the Number of Dial-Around Calls for Which Compensation is Being Paid to Payphone Owners.

Form No.: N/A.

Estimated Annual Burden: 1,044 responses; 522 total annual hours; 0.5 hours per respondent.

Needs and Uses: Interechange carriers responsible for paying per-call compensation to payphone providers must submit a quarterly list of dial-around calls to those payphone providers. The payphone providers need the list to calculate the compensation to be paid by the interexchange carriers.

OMB Control No.: 3060–0233.

OMB Approval Date: 09/26/2003.

Expiration Date: 09/30/2006.

Title: Part 36—Separations.

Form No.: N/A.

Estimated Annual Burden: 5,433 responses; 57,459 total annual hours; Approximately 11 hours per respondent.

Needs and Uses: In order to allow determination of the study areas that are entitled to an expense adjustment, and the wire centers that are entitled to high-cost universal service support, each incumbent local exchange carrier must provide certain data to the National Exchange Carrier Association annually and/or quarterly. Local telephone companies who want to participate in the federal universal service support program must make certain informational showings to demonstrate eligibility.

OMB Control No.: 3060–0725.

OMB Approval Date: 09/26/2003.

Expiration Date: 09/30/2006.

Title: Quarterly Filing of Nondiscrimination Reports (on Quality of Service, Installation and Maintenance) by Bell Operating Companies.

Form No.: N/A.

Estimated Annual Burden: 16 responses; 800 total annual hours; 50 hours per respondent.

Needs and Uses: Bell Operating Companies (BOCs) must submit non-discrimination report with regard to payphones. This will prevent BOCs from discriminating in favor of their own payphones.

OMB Control No.: 3060–0817.

OMB Approval Date: 09/26/2003.

Expiration Date: 09/30/2006.

Title: Computer III Further Remand Proceedings: BOC Provision of Enhanced Services (ONA Requirements), CC Docket No. 95–20.

Form No.: N/A.

Estimated Annual Burden: 10 responses; 270 total annual hours; 27 hours per respondent.

Needs and Uses: BOCs are required to post their CEI plans and amendments on their publicly accessible Internet sites. The requirement extends CEI plans for new or modified telemessaging or alarm monitoring services and for new or amended payphone services. If the BOC receives a good faith request for a plan from someone who does not have internet access, the BOC must notify that person where a paper copy of the plan is available for public inspection. The CEI plans will be used to ensure that BOCs comply with Commission policies and regulations safeguarding against potential anticompetive behavior by the BOCs in the provision of information sevices.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–26847 Filed 10–23–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 7, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. William C. Lemoine and Polly R. Lemoine, Saint Francisville, Louisiana, to acquire additional voting shares of Saint Francisville Bancshares, Inc., Saint Francisville, Louisiana, and thereby indirectly acquire additional voting shares of Bank of Saint Francisville, Saint Francisville, Louisiana.

Board of Governors of the Federal Reserve System, October 20, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–26912 Filed 10–23–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 17, 2003.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Boston Private Financial Holdings, Inc., Boston, Massachusetts; to acquire 100 percent of the voting shares of, and thereby merge with First State Bancorp, Granada Hills, California, and thereby indirectly acquire voting shares of First State Bank of California, Granada Hills, California.

B. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. ColoEast Bankshares, Inc., Lamar, Colorado; to acquire 100 percent of the voting shares of First National Bank of Tribune, Tribune, Kansas.

Board of Governors of the Federal Reserve System, October 20, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–26914 Filed 10–23–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. 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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 7, 2003.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. City Bancorp, Springfield, Missouri; to acquire 25 percent of the voting shares of Mobius Technology Consulting, LLC, Springfield, Missouri, and thereby engage in management consulting activities, pursuant to section 225.28(b)(9)(i)(A) of Regulation Y.

Board of Governors of the Federal Reserve System, October 20, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.03–26913 Filed 10–23–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Notice of Grant Award to Promote Reverse Mortgages for Long-Term Care

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

ACTION: Notice of grant award.

SUMMARY: The Centers for Medicare & Medicaid Services has awarded a grant entitled ''A Public-Private Partnership to Promote Reverse Mortgages for Long-Term Care'' to the National Council on the Aging (NCOA), 300 D Street SW., Suite 801, Washington, DC 20024, in response to an unsolicited application. The NCOA proposes to work with leaders from the private sector and government to develop a national blueprint for increasing the use of reverse mortgages for long-term care. The total amount of the award is $295,000 for the period September 30, 2003 through May 30, 2004. The encouragement of reverse mortgages as a means of private sector financing of long-term care expenses for the elderly is a priority issue for DHHS, CMS. Funding of this unsolicited proposal will result in a desirable public benefit based on NCOA's extensive specialized expertise in evaluating long-term care services and financing. The NCOA has a professional staff that is dedicated to understanding the myriad of state and Federal regulations that affect long-term care. NCOA also has many years of experience in defining and developing long-term care issues.

FOR FURTHER INFORMATION CONTACT: Tom Kornfield, Project Officer, Department of Health and Human Services, Centers for Medicare & Medicaid Services, DHSR/ORDI, C3–20–17, 7500 Security Boulevard, Baltimore, Maryland, 21244, (410) 786–8263, or Judith Norris, Grants Officer, Department of Health and Human Services, OICS/AGG/CMS, C2–21–15, 7500 Security Boulevard, Baltimore, Maryland, 21244, (410) 786–5130.

Authority: (Catalog of Federal Domestic Assistance Program No. 93.779, Center for Medicare & Medicaid Services, Research, Demonstrations and Evaluations) Section 110 of the Social Security Act.

Dated: October 2, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–26458 Filed 10–23–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8016–N]

RIN 0938–AM31

Medicare Program; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for 2004

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

ACTION: Notice.

SUMMARY: This notice announces the inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services furnished in calendar year 2004 under Medicare's Hospital Insurance program (Medicare Part A). The Medicare statute specifies the formulae used to determine these amounts.

The inpatient hospital deductible will be $876. The daily coinsurance amounts will be: (a) $219 for the 61st through 90th day of hospitalization in a benefit period; (b) $438 for lifetime reserve days; and (c) $109.50 for the 21st through 100th day of extended care services in a skilled nursing facility in a benefit period.

EFFECTIVE DATE: This notice is effective on January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Clare McFarland, (410) 786–6390. For case-mix analysis only: Gregory J. Savord, (410) 786–1521.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1813 of the Social Security Act (the Act) provides for an inpatient hospital deductible to be subtracted from the amount payable by Medicare for inpatient hospital services furnished to a beneficiary. It also provides for certain coinsurance amounts to be subtracted from the amounts payable by Medicare for inpatient hospital and extended care services. Section 1813(b)(2) of the Act requires us to determine and publish, between September 1 and September 15 of each year, the amount of the inpatient hospital deductible and the hospital and extended care services coinsurance amounts applicable for services furnished in the following calendar year.

II. Computing the Inpatient Hospital Deductible for 2004

Section 1813(b) of the Act prescribes the method for computing the amount of the inpatient hospital deductible. The inpatient hospital deductible is an amount equal to the inpatient hospital deductible for the preceding calendar year, changed by our best estimate of the payment-weighted average of the applicable percentage increases (as defined in section 1886(b)(3)(B) of the Act) used for updating the payment rates to hospitals for discharges in the fiscal year that begins on October 1 of the same preceding calendar year, and adjusted to reflect real case mix. The adjustment to reflect real case mix is determined on the basis of the most recent case mix data available. The amount determined under this formula is rounded to the nearest multiple of $4 (or, if midway between two multiples of $4, to the next higher multiple of $4).

Under section 1886(b)(3)(B)(i) of the Act, the percentage increase used to update the payment rates for fiscal year 2004 for hospitals paid under the prospective payment system is the market basket percentage increase.

Under section 1886(b)(3)(B)(ii) of the Act, the percentage increase used to update the payment rates for fiscal year 2004 for hospitals excluded from the prospective payment system is the market basket percentage increase, defined according to section 1886(b)(3)(B)(iii) of the Act.

The market basket percentage increase for fiscal year 2004 is 3.4 percent, as announced in the final rule titled ''Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2004 Rates,'' published in the **Federal Register** on August 1, 2003 (68 FR 45346). Therefore, the percentage increase for hospitals paid under the prospective payment system is 3.4 percent. The average payment percentage increase for hospitals excluded from the prospective payment system is 3.4 percent. Weighting these percentages in accordance with payment volume, our best estimate of the payment-weighted average of the increases in the payment rates for fiscal year 2004 is 3.4 percent.

To develop the adjustment for real case mix, we first calculated for each hospital an average case mix that reflects the relative costliness of that hospital's mix of cases compared to those of other hospitals. We then

computed the change in average case mix for hospitals paid under the Medicare prospective payment system in fiscal year 2003 compared to fiscal year 2002. (We excluded from this calculation hospitals excluded from the prospective payment system because their payments are based on reasonable costs. We used bills from prospective payment hospitals received in CMS as of July 2003. These bills represent a total of about 9.0 million discharges for fiscal year 2003 and provide the most recent case mix data available at this time. Based on these bills, the change in average case mix in fiscal year 2003 is 0.87 percent. Based on past experience, we expect the overall case mix change to be 1 percent as the year progresses and more fiscal year 2003 data become available.

Section 1813 of the Act requires that the inpatient hospital deductible be adjusted only by that portion of the case mix change that is determined to be real. We estimate that the change in real case mix for fiscal year 2003 is 1 percent.

Thus, the estimate of the payment-weighted average of the applicable percentage increases used for updating the payment rates is 3.4 percent, and the real case mix adjustment factor for the deductible is 1 percent. Therefore, under the statutory formula, the inpatient hospital deductible for services furnished in calendar year 2004 is $876. This deductible amount is determined by multiplying $840 (the inpatient hospital deductible for 2003) by the payment-weighted average increase in the payment rates of 1.034 multiplied by the increase in real case mix of 1.01, which equals $877 and is rounded to $876.

III. Computing the Inpatient Hospital and Extended Care Services Coinsurance Amounts for 2004

The coinsurance amounts provided for in section 1813 of the Act are defined as fixed percentages of the inpatient hospital deductible for services furnished in the same calendar year. Thus, the increase in the deductible generates increases in the coinsurance amounts. For inpatient hospital and extended care services furnished in 2004, in accordance with the fixed percentages defined in the law, the daily coinsurance for the 61st through 90th day of hospitalization in a benefit period will be $219 (one-fourth of the inpatient hospital deductible); the daily coinsurance for lifetime reserve days will be $438 (one-half of the inpatient hospital deductible); and the daily coinsurance for the 21st through 100th day of extended care services in a skilled nursing facility in a benefit period will be $109.50 (one-eighth of the inpatient hospital deductible).

IV. Cost to Beneficiaries

Table 1 summarizes the deductible and coinsurance amounts for 2003 and 2004, as well as the number of each that is estimated to be paid.

TABLE 1.—PART A DEDUCTIBLE AND COINSURANCE AMOUNTS FOR CALENDAR YEARS 2003 AND 2004

Type of Cost Sharing	Value		Number paid (in millions)	
	2003	2004	2003	2004
Inpatient hospital deductible	$840	$876	9.22	9.40
Daily coinsurance for 61st–90th Day	210	219	2.46	2.50
Daily coinsurance for lifetime reserve days	420	438	1.14	1.16
SNF coinsurance	105.00	109.50	27.73	28.18

The estimated total increase in cost to beneficiaries is about $720 million (rounded to the nearest $10 million), due to (1) the increase in the deductible and coinsurance amounts and (2) the change in the number of deductibles and daily coinsurance amounts paid.

V. Waiver of Proposed Notice and Comment Period

The Medicare statute, as discussed previously, requires publication of the Medicare Part A inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services for each calendar year. The amounts are determined according to the statute. As has been our custom, we use general notices, rather than notice and comment rulemaking procedures, to make the announcements. In doing so, we acknowledge that, under the Administrative Procedure Act, interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice are excepted from the requirements of notice and comment rulemaking.

We considered publishing a proposed notice to provide a period for public comment. However, we may waive that procedure if we find good cause that prior notice and comment are impracticable, unnecessary, or contrary to the public interest. We find that the procedure for notice and comment is unnecessary because the formulae used to calculate the inpatient hospital deductible and hospital and extended care services coinsurance amounts are statutorily directed, and we can exercise no discretion in following those formulae. Moreover, the statute establishes the time period for which the deductible and coinsurance amounts will apply and delaying publication would be contrary to the public interest. Therefore, we find good cause to waive publication of a proposed notice and solicitation of public comments.

VI. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). As stated in Section IV, we estimate that the total increase in costs to beneficiaries associated with this notice is about $720 million due to (1) the increase in the deductible and coinsurance amounts and (2) the change in the number of deductibles and daily coinsurance amounts paid. Therefore, this notice is a major rule as defined in Title 5, United States Code, section 804(2) and is an economically significant rule under Executive Order 12866.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses,

nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. For purposes of the RFA, States and individuals are not considered small entities. We have determined that this notice will not have a significant economic impact on a substantial number of small entities. Therefore, we are not preparing an analysis for the RFA.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a notice may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this notice will not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing an analysis for section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This notice has no consequential effect on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This notice has no consequential effect on State or local governments.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

Authority: Sections 1813(b)(2) of the Social Security Act (42 U.S.C. 1395e–2(b)(2)).

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

Dated: September 12, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: October 3, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–26455 Filed 10–16–03; 10:06 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8017–N]

RIN 0938–AM91

Medicare Program; Monthly Actuarial Rates and Monthly Supplementary Medical Insurance Premium Beginning January 1, 2004

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

ACTION: Notice.

SUMMARY: In accordance with section 1839 of the Social Security Act (the Act), this notice announces the monthly actuarial rates for aged (age 65 and over) and disabled (under age 65) enrollees in the Medicare Supplementary Medical Insurance (SMI) (Medicare Part B) program for 2004. It also announces the monthly SMI premium to be paid by all enrollees during 2004. The monthly actuarial rates for 2004 are $133.20 for aged enrollees and $175.50 for disabled enrollees. The monthly SMI premium for 2004 is $66.60. (The 2003 premium was $58.70.) The 2004 Part B premium is equal to 50 percent of the monthly actuarial rate. Included in the monthly premium is $3.02 for home health services transferred into Part B.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Carter S. Warfield, (410) 786–6396.

SUPPLEMENTARY INFORMATION:

I. Background

The Medicare Supplementary Medical Insurance (SMI) (Medicare Part B) program is the voluntary program that pays all or part of the costs for physicians' services, outpatient hospital services, home health services, services furnished by rural health clinics, ambulatory surgical centers, comprehensive outpatient rehabilitation facilities, and certain other medical and health services not covered by hospital insurance (HI) (Medicare Part A). The SMI program is available to individuals who are entitled to HI and to U.S. residents who have attained age 65 and are citizens, or aliens who were lawfully admitted for permanent residence and have resided in the United States for 5 consecutive years. This program requires enrollment and payment of monthly premiums, as provided in 42 CFR part 407, subpart B, and part 408, respectively. The difference between the premiums paid by all enrollees and total incurred costs is met from the general revenues of the Federal Government.

The Secretary of the Department of Health and Human Services (the Secretary) is required by section 1839 of the Social Security Act (the Act) to issue two annual notices relating to the SMI program.

One notice announces two amounts that, according to actuarial estimates, will equal respectively, one-half the expected average monthly cost of SMI for each aged enrollee (age 65 or over) and one-half the expected average monthly cost of SMI for each disabled enrollee (under age 65) during the year beginning the following January. These amounts are called ''monthly actuarial rates.''

The second notice announces the monthly SMI premium to be paid by aged and disabled enrollees for the year beginning the following January. (Although the costs to the program per disabled enrollee are different than for the aged, the law provides that they pay the same premium amount.) Beginning with the passage of section 203 of the Social Security Amendments of 1972 (Pub. L. 92–603), the premium, which was determined on a fiscal year basis, was limited to the lesser of the actuarial rate for aged enrollees, or the current monthly premium increased by the same percentage as the most recent general increase in monthly Title II social security benefits.

However, the passage of section 124 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97–248) suspended this premium determination process. Section 124 of TEFRA changed the premium basis to 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees). Section 606 of the Social Security Amendments of 1983 (Pub. L. 98–21), section 2302 of the Deficit Reduction Act of 1984 (DEFRA '84) (Pub. L. 98–369), section 9313 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA '85) (Pub. L. 99–272), section 4080 of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) (Pub. L. 100–203), and section 6301 of the Omnibus Budget Reconciliation Act of 1989 (OBRA '89) (Pub. L. 101–239) extended the

provision that the premium be based on 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees). This extension expired at the end of 1990.

The premium for 1991 through 1995 was legislated by section 1839(e)(1)(B) of the Act, as added by section 4301 of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90) (Pub. L. 101–508). In January 1996, the premium determination basis would have reverted to the method established by the 1972 Social Security Act Amendments. However, section 13571 of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) (Pub. L. 103–66) changed the premium basis to 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees) for 1996 through 1998.

Section 4571 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) permanently extended the provision that the premium be based on 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees).

The BBA included a further provision affecting the calculation of the SMI actuarial rates and premiums for 1998 through 2003. Section 4611 of the BBA modified the home health benefit payable under the HI program for individuals enrolled in the SMI program. Under this section, expenditures for home health services not considered ''post-institutional'' are payable under the SMI program rather than the HI program, beginning in 1998. However, section 4611(e)(1) of the BBA required that there be a transition from 1998 through 2002 for the aggregate amount of the expenditures transferred from the HI program to the SMI program. Section 4611(e)(2) of the BBA also provided a specific yearly proportion for the transferred funds. The proportions were 1/6 for 1998, 1/3 for 1999, 1/2 for 2000, 2/3 for 2001, and 5/6 for 2002. For purposes of determining the correct amount of financing from general revenues of the Federal Government, it was necessary to include only these transitional amounts in the monthly actuarial rates for both aged and disabled enrollees, rather than the total cost of the home health services being transferred.

Section 4611(e)(3) of the BBA also specified, for the purposes of determining the premium, that the monthly actuarial rate for enrollees age 65 and over shall be computed as though the transition would occur for 1998 through 2003 and that 1/7 of the cost would be transferred in 1998, 2/7 in 1999, 3/7 in 2000, 4/7 in 2001, 5/7 in 2002, and 6/7 in 2003. Therefore, the transition period for incorporating this home health transfer into the premium was 7 years, while the transition period for including these services in the actuarial rate was 6 years. As a result, the premiums for 1998–2003 were less than 50 percent of the actuarial rate for aged enrollees.

New section 1933(c) of the Act, as added by section 4732(c) of the BBA, required the Secretary to allocate money from the SMI trust fund to the State Medicaid programs for the purpose of providing Medicare Part B premium assistance from 1998 through 2002 for the section 1933 qualifying low-income Medicaid beneficiaries. This allocation, while not a benefit expenditure, was an expenditure of the trust fund and was included in calculating the SMI actuarial rates through 2002. Section 403 of the Consolidated Appropriations Resolution, 2003 (CAR) (Pub. L. 108–7) extended the authorization for this allocation to September 30, 2003.

As determined according to section 1839(a)(3) of the Act and section 4611(e)(3) of the BBA, the premium for 2004 is $66.60. Included in the premium is $3.02 for home health services transferred into Part B.

A further provision affecting the calculation of the SMI premium is section 1839(f) of the Act, as amended by section 211 of the Medicare Catastrophic Coverage Act of 1988 (MCCA 1988) (Pub. L. 100–360). (The Medicare Catastrophic Coverage Repeal Act of 1989 (Pub. L. 101–234) did not repeal the revisions to section 1839(f) made by MCCA 1988.) Section 1839(f) of the Act, referred to as the hold-harmless provision, provides that if an individual is entitled to benefits under section 202 or 223 of the Act (the Old-Age and Survivors Insurance Benefit and the Disability Insurance Benefit, respectively) and has SMI premiums deducted from these benefit payments, the premium increase will be reduced to avoid causing a decrease in the individual's net monthly payment. This decrease in payment occurs if the increase in the individual's social security benefit due to the cost-of-living adjustment under section 215(i) of the Act is less than the increase in the premium. Specifically, the reduction in the premium amount applies if the individual is entitled to benefits under section 202 or 223 of the Act for November and December of a particular year and the individual's SMI premiums for December and the following January are deducted from the respective month's section 202 or 223 benefits.

A check for benefits under section 202 or 223 of the Act is received in the month following the month for which the benefits are due. The SMI premium that is deducted from a particular check is the SMI payment for the month in which the check is received. Therefore, a benefit check for November is not received until December, but has the December's SMI premium deducted from it.

Generally, if a beneficiary qualifies for hold-harmless protection (that is, if the beneficiary was in current payment status for November and December of the previous year) the reduced premium for the individual for that January and each of the succeeding 11 months for which he or she is entitled to benefits, under section 202 or 203 of the Act, is the greater of the following:

(1) The monthly premium for January reduced as necessary to make the December monthly benefits, after the deduction of the SMI premium for January, at least equal to the preceding November's monthly benefits, after the deduction of the SMI premium for December; or

(2) The monthly premium for that individual for that December.

In determining the premium limitations under section 1839(f) of the Act, the monthly benefits to which an individual is entitled under section 202 or 223 of the Act do not include retroactive adjustments or payments and deductions on account of work. Also, once the monthly premium amount has been established under section 1839(f) of the Act, it will not be changed during the year even if there are retroactive adjustments or payments and deductions on account of work that apply to the individual's monthly benefits.

Individuals who have enrolled in the SMI program late or have reenrolled after the termination of a coverage period are subject to an increased premium under section 1839(b) of the Act. The increase is a percentage of the premium and is based on the new premium before any reductions under section 1839(f) are made.

II. Notice of Monthly Actuarial Rates and Monthly Premium

The monthly actuarial rates applicable for 2004 are $133.20 for enrollees age 65 and over, and $175.50 for disabled enrollees under age 65. Section III of this notice gives the actuarial assumptions and bases from which these rates are derived. The monthly premium will be $66.60 during 2004. Included in the monthly premium is $3.02 for home health services transferred into Part B.

III. Statement of Actuarial Assumptions and Bases Employed in Determining the Monthly Actuarial Rates and the Monthly Premium for the Supplementary Medical Insurance Program Beginning January 2004

A. Actuarial Status of the Supplementary Medical Insurance Trust Fund

Under the law, the starting point for determining the monthly premium is the amount that would be necessary to finance the SMI program on an incurred basis. This is the amount of income that would be sufficient to pay for services furnished during that year (including associated administrative costs) even though payment for some of these services will not be made until after the close of the year. The portion of income required to cover benefits not paid until after the close of the year is added to the trust fund and used when needed.

The rates are established prospectively and are, therefore, subject to projection error. Additionally, legislation enacted after the financing has been established, but effective for the period in which the financing has been set, may affect program costs. As a result, the income to the program may not equal incurred costs. Therefore, trust fund assets should be maintained at a level that is adequate to cover a moderate degree of variation between actual and projected costs, and the amount of incurred, but unpaid expenses. An appropriate level for assets to cover a moderate degree of variation between actual and projected costs depends on numerous factors. The most important of these factors are: (1) The difference from prior years between the actual performance of the program and estimates made at the time financing was established; and (2) the expected relationship between incurred and cash expenditures. Ongoing analysis is made of both factors as the trends vary over time.

Table 1 summarizes the estimated actuarial status of the trust fund as of the end of the financing period for 2002 and 2003.

TABLE 1.—ESTIMATED ACTUARIAL STATUS OF THE SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND AS OF THE END OF THE FINANCING PERIOD

[In millions of dollars]

Financing period ending	Assets	Liabilities	Assets less liabilities
Dec. 31, 2002	$34,301	$9,053	$25,248
Dec. 31, 2003	25,537	8,037	17,500

B. Monthly Actuarial Rate for Enrollees Age 65 and Older

The monthly actuarial rate for enrollees age 65 and older is one-half of the monthly projected cost of benefits, the Medicaid transfer (for 1998 through 2003), and administrative expenses for each enrollee age 65 and older, adjusted to allow for interest earnings on assets in the trust fund and a contingency margin. The contingency margin is an amount appropriate to provide for a moderate degree of variation between actual and projected costs and to amortize any surplus or unfunded liabilities.

The monthly actuarial rate for enrollees age 65 and older for 2004 is determined by first establishing per-enrollee cost by type of service from program data through 2002 and then projecting these costs for subsequent years. The projection factors used are shown in Table 2. The projected values for financing periods from January 1, 2001 through December 31, 2004, are shown in Table 3.

The projected monthly rate required to pay for one-half of the total of benefits and administrative costs for enrollees age 65 and over for 2004 is $135.65. The monthly actuarial rate of $133.20 also provides an adjustment of −$2.49 for interest earnings and $0.04 for a contingency margin. Based on current estimates, it appears a positive contingency margin is needed to increase assets toward a level that is sufficient to cover the amount of incurred, but unpaid expenses and to provide for a moderate degree of variation between actual and projected costs.

C. Monthly Actuarial Rate for Disabled Enrollees

Disabled enrollees are those persons enrolled in SMI because of entitlement (before age 65) to disability benefits for more than 24 months or because of entitlement to Medicare under the end-stage renal disease (ESRD) program. Projected monthly costs for disabled enrollees (other than those with ESRD) are prepared in a fashion parallel to the projection for the aged using appropriate actuarial assumptions (see Table 2). Costs for the ESRD program are projected differently because of the different nature of services offered by the program. The combined results for all disabled enrollees are shown in Table 4.

The projected monthly rate required to pay for one-half of the total of benefits and administrative costs for disabled enrollees for 2004 is $154.33. The monthly actuarial rate of $175.50 also provides an adjustment of −$1.33 for interest earnings and $22.50 for a contingency margin. Based on current estimates, it appears that a positive contingency margin is needed to increase assets to a level that is sufficent to cover the amount of incurred, but unpaid expenses and provide for a moderate degree of variation between actual and projected costs.

D. Sensitivity Testing

Several factors contribute to uncertainty about future trends in medical care costs. It is appropriate to test the adequacy of the rates using alternative assumptions. The results of those assumptions are shown in Table 5. One set represents increases that are lower and, therefore, more optimistic than the current estimate. The other set represents increases that are higher and, therefore, more pessimistic than the current estimate. The values for the alternative assumptions were determined from a statistical analysis of the historical variation in the respective increase factors.

Table 5 indicates that, under the assumptions used in preparing this report, the monthly actuarial rates would result in an excess of assets over liabilities of $21,636 million by the end of December 2004. This amounts to 15.8 percent of the estimated total incurred expenditures for the following year. Assumptions that are somewhat more pessimistic (and therefore, test the adequacy of the assets to accommodate projection errors) produce a surplus of $10,426 million by the end of December 2004, which amounts to 6.8 percent of the estimated total incurred expenditures for the following year. Under fairly optimistic assumptions, the monthly actuarial rates would result in

a surplus of $33,450 million by the end of December 2004, which amounts to 27.6 percent of the estimated total incurred expenditures for the following year.

E. Premiums Determined by Section 1839(a)(3) of the Act and Section 4611(e)(3) of the BBA, the Monthly Premium for 2004, for Both Aged and Disabled Enrollees, is $66.60

TABLE 2.—PROJECTION FACTORS [1] 12-MONTH PERIODS ENDING DECEMBER 31 OF 2001–2004

[In percent]

Physicians' services			Durable medical equipment	Carrier lab [4]	Other carrier services [5]	Outpatient hospital	Home health agency	Hospital lab [6]	Other intermediary services [7]	Managed care
Calendar year	Fees [2]	Residual [3]								
Aged:										
2001	5.2	4.2	12.8	7.0	16.1	12.2	−11.6	3.9	18.8	4.9
2002	−4.0	6.1	14.4	8.1	17.3	5.1	10.1	16.0	13.1	11.5
2003	1.4	3.4	9.7	6.1	17.0	5.0	−1.9	5.7	−1.3	3.2
2004	−4.4	4.7	8.1	6.2	14.1	4.0	6.4	6.2	−4.6	2.6
Disabled:										
2001	−5.2	5.0	15.6	8.7	19.6	12.3	−18.3	10.9	1.0	4.3
2002	−4.0	6.9	19.6	10.4	20.4	9.9	10.1	12.0	15.1	4.5
2003	1.4	3.5	10.8	6.1	17.2	5.2	−4.0	6.6	1.5	−1.3
2004	−4.4	4.7	8.1	6.2	13.0	4.0	6.0	6.2	−0.5	2.8

[1] All values for services other than managed care are per fee-for-service enrollee. Managed care values are per managed care enrollee.
[2] As recognized for payment under the program.
[3] Increase in the number of services received per enrollee and greater relative use of more expensive services.
[4] Includes services paid under the lab fee schedule furnished in the physician's office or an independent lab.
[5] Includes physician administered drugs, ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.
[6] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.
[7] Includes services furnished in dialysis facilities, rural health clinics, federally qualified health centers, rehabilitation and psychiatric hospitals, etc.

TABLE 3.—DERIVATION OF MONTHLY ACTUARIAL RATE FOR ENROLLEES AGE 65 AND OVER

[Financing periods ending December 31, 2001 through December 31, 2004]

	Financing periods			
	CY 2001	CY 2002	CY 2003	CY 2004
Covered services (at level recognized):				
Physician fee schedule	62.27	64.96	68.77	69.01
Durable medical equipment	7.32	8.57	9.49	10.29
Carrier lab [1]	2.70	2.99	3.20	3.41
Other carrier services [2]	12.55	15.07	17.80	20.36
Outpatient hospital	21.60	23.24	24.63	25.69
Home health	[5] 5.32	[5] 5.99	5.94	6.33
Hospital lab [3]	2.05	2.44	2.60	2.77
Other intermediary services [4]	7.78	9.01	8.98	8.59
Managed care	[6] 20.89	[6] 20.73	20.27	20.49
Total services	[7] 142.48	[7] 153.01	[7] 161.69	166.94
Cost-sharing:				
Deductible	−3.80	−3.81	−3.87	−3.81
.				
Coinsurance	−26.02	−27.61	−29.41	−29.94
Total benefits	112.67	121.59	128.41	133.19
Administrative expenses	2.18	2.36	2.40	2.45
Incurred expenditures	114.85	123.95	130.81	135.65
Value of interest	−3.57	−3.20	−2.35	−2.49
Adjustment for home health agency services transferred from HI	[8] −2.04	[8] −1.13	.....	.....
Contingency margin for projection error and to amortize the surplus or deficit	−8.24	−10.31	−9.76	0.04
Monthly actual rate	$101.00	$109.30	$118.70	$133.20

[1] Includes services paid under the lab fee schedule furnished in the physician's office or an independent lab.
[2] Includes physician administered drugs, ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.
[3] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.
[4] Includes services furnished in dialysis facilities, rural health clinics, federally qualified health centers, rehabilitation and psychiatric hospitals, etc.
[5] This amount includes the full cost of the fee-for-service home health services being transferred from the HI program as a result of the BBA as if the transition did not apply, as well as the cost of furnishing all home health services to those individuals enrolled in SMI only.
[6] This amount includes the full cost of the managed care home health services being transferred from the HI program as a result of the BBA as if the transition did not apply, as well as the cost of furnishing all other SMI services to individuals enrolled in managed care.

[7] Includes transfers to Medicaid. Section 1933(c)(2) of the Act, as added by section 4732(c) of the BBA and extended by section 403 of the CAR, allocates an amount to be transferred from the SMI trust fund to the state Medicaid programs. This transfer is for the purpose of paying the SMI premiums for certain low-income beneficiaries. It is not a benefit expenditure but is used in determining the SMI actuarial rates since it is an expenditure of the trust fund.

[8] Section 4611 of the BBA specifies that expenditures for home health services not considered ''post-institutional'' will be payable under the SMI program rather than the HI program beginning in 1998. However, section 4611(e)(1) requires there be a transition from 1998 through 2002 for the aggregate amount of the expenditures transferred from the HI program to the SMI program. For 1998, the amount transferred is ⅙ of the full cost for such services, for 1999, ⅓, for 2000, ½, for 2001, ⅔, and for 2002, ⅚. Therefore, the adjustment for 2001 represents ⅓ of the full cost, and for 2002, ⅙. This amount adjusts the actuarial rate to reflect the correct amount attributable to home health services.

TABLE 4.—DERIVATION OF MONTHLY ACTUARIAL RATE FOR DISABLED ENROLLEES

[Financing periods ending December 31, 2001 through December 31, 2004]

	Financing periods			
	CY 2001	CY 2002	CY 2003	CY 2004
Covered services (at level recognized):				
Physician fee schedule	63.71	65.65	68.97	68.95
Durable medical equipment	11.92	14.30	15.88	17.16
Carrier lab [1]	3.07	3.53	3.78	4.01
Other carrier services [2]	13.65	16.22	18.99	21.51
Outpatient hospital	27.33	30.27	31.91	33.13
Home health	[5] 3.59	[5] 3.99	3.84	4.07
Hospital lab [3]	3.11	3.51	3.72	3.95
Other intermediary services [4]	31.79	33.64	33.84	33.79
Managed care	[6] 9.80	[6] 9.28	8.93	9.26
Total services	[7] 167.98	[7] 180.40	[7] 189.87	195.81
Cost-sharing:				
Deductible	−3.67	−3.68	−3.70	−3.71
Coinsurance	−36.38	−38.24	−40.33	−40.56
Total benefits	127.93	138.47	145.84	151.54
Administrative expenses	2.48	2.69	2.73	2.79
Incurred expenditures	130.41	141.16	148.57	154.33
Value of interest	−2.26	−2.12	−1.40	−1.33
Adjustment for home health agency services transferred from HI	[8] −1.38	[8] −0.76		
Contingency margin for projection error and to amortize the surplus or deficit	5.43	−15.18	−6.17	22.50
Monthly actuarial rate	$132.20	$123.10	$141.00	$175.50

[1] Includes services paid under the lab fee schedule furnished in the physician's office or an independent lab.

[2] Includes physician administered drugs, ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.

[3] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.

[4] Includes services furnished in dialysis facilities, rural health clinics, federally qualified health centers, rehabilitation and psychiatric hospitals, etc.

[5] This amount includes the full cost of the fee-for-service home health services being transferred from the HI program as a result of the BBA as if the transition did not apply, as well as the cost of furnishing all home health services to those individuals enrolled in SMI only.

[6] This amount includes the full cost of the managed care home health services being transferred from the HI program as a result of the BBA as if the transition did not apply, as well as the cost of furnishing all other SMI services to individuals enrolled in managed care.

[7] Includes transfers to Medicaid. Section 1933(c)(2) of the Act, as added by section 4732(c) of the BBA and extended by section 403 of the CAR, allocates an amount to be transferred from the SMI trust fund to the state Medicaid programs. This transfer is for the purpose of paying the SMI premiums for certain low-income beneficiaries. It is not a benefit expenditure but is used in determining the SMI actuarial rates since it is an expenditure of the trust fund.

[8] Section 4611 of the BBA specifies that expenditures for home health services not considered ''post-institutional'' will be payable under the SMI program rather than the HI program beginning in 1998. However, section 4611(e)(1) requires there be a transition from 1998 through 2002 for the aggregate amount of the expenditures transferred from the HI program to the SMI program. For 1998, the amount transferred is 1/6 of the full cost for such services, for 1999, ⅓, for 2000, ½, for 2001, ⅔, and for 2002, ⅚. Therefore, the adjustment for 2001 represents ⅓ of the full cost, and for 2002, ⅙. This amount adjusts the actuarial rate to reflect the correct amount attributable to home health services.

TABLE 5.—ACTUARIAL STATUS OF THE SMI TRUST FUND UNDER THREE SETS OF ASSUMPTIONS FOR FINANCING PERIODS THROUGH DECEMBER 31, 2004

As of December 31,	2002	2003	2004
This projection: Actuarial status (in millions):			
Assets	34,301	25,537	30,566
Liabilities	9,053	8,037	8,929
Assets less liabilities	25,248	17,500	21,636
Ratio (in percent) [1]	20.5	13.5	15.8
Low cost projection: Actuarial status (in millions):			
Assets	34,301	25,537	41,943
Liabilities	9,053	7,264	8,493
Assets less liabilities	25,248	18,273	33,450

TABLE 5.—ACTUARIAL STATUS OF THE SMI TRUST FUND UNDER THREE SETS OF ASSUMPTIONS FOR FINANCING PERIODS THROUGH DECEMBER 31, 2004—Continued

As of December 31,	2002	2003	2004
Ratio (in percent) [1]	21.8	15.6	27.6
High cost projection: Actuarial status (in millions):			
Assets	34,301	25,537	19,783
Liabilities	9,053	8,798	9,356
Assets less liabilities	25,248	16,739	10,426
Ratio (in percent) [1]	19.3	11.8	6.8

[1] Ratio of assets less liabilities at the end of the year to the total incurred expenditures during the following year, expressed as a percent.

IV. Regulatory Impact Analysis

We have examined the impact of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) September 19, 1980 (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 to $29 million in any 1 year (65 FR 69432). For purposes of the RFA, States and individuals are not considered to be small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this notice will not have a significant effect on a substantial number of small entities nor on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This notice has no consequential effect on State, local, or tribal governments. We believe the private sector costs of this notice fall below this threshold as well.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have determined that this notice does not significantly affect the rights, roles, and responsibilities of States.

This notice announces that the monthly actuarial rates applicable for 2004 are $133.20 for enrollees age 65 and over, and $175.50 for disabled enrollees under age 65. It also announces that the monthly SMI premium for calendar year 2004 is $66.60. The SMI premium of $66.60 is 13.5 percent higher than the $58.70 premium for 2003. We estimate that the cost of this increase from the current premium to the approximately 39 million SMI enrollees will be about $3.7 billion for 2004. Therefore, this notice is a major rule as defined in Title 5, United States Code, section 804(2) and is an economically significant rule under Executive Order 12866.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

V. Waiver of Proposed Notice

The Medicare statute requires the publication of the monthly actuarial rates and the Part B premium amounts in September. We ordinarily use general notices, rather than notice and comment rulemaking procedures, to make such announcements. In doing so, we note that under the Administrative Procedure Act interpretive rules; general statements of policy; and rules of agency organization, procedure, or practice are excepted from the requirements of notice and comment rulemaking.

We considered publishing a proposed notice to provide a period for public comment. However, we may waive that procedure if we find, for good cause, that prior notice and comment are impracticable, unnecessary, or contrary to the public interest. We find that the procedure for notice and comment is unnecessary because the formula used to calculate the SMI premium is statutorily directed, and we can exercise no discretion in applying that formula. Moreover, the statute establishes the time period for which the premium will apply, and delaying publication of the SMI premium such that it would not be published before that time would be contrary to the public interest. Therefore, we find good cause to waive publication of a proposed notice and solicitation of public comments.

(Section 1839 of the Social Security Act; 42 U.S.C. 1395r)

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: September 12, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: October 3, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–26456 Filed 10–16–03; 10:06 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8018–N]

RIN 0938–AM33

Medicare Program; Part A Premium for 2004 for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement

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

ACTION: Notice.

SUMMARY: This notice announces the Hospital Insurance premium for calendar year 2004 under Medicare's Hospital Insurance program (Part A) for the uninsured, not otherwise eligible aged (hereafter known as the ''uninsured aged'') and for certain disabled individuals who have exhausted other entitlement. The monthly Medicare Part A premium for the 12 months beginning January 1, 2004 for these individuals is $343. The reduced premium for certain other individuals as described in this notice is $189. Section 1818(d) of the Social Security Act specifies the method to be used to determine these amounts.

EFFECTIVE DATE: This notice is effective January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Clare McFarland, (410) 786–6390.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1818 of the Social Security Act (the Act) provides for voluntary enrollment in the Medicare Hospital Insurance program (Medicare Part A), subject to payment of a monthly premium, of certain persons aged 65 and older who are uninsured under the Old-Age, Survivors and Disability Insurance (OASDI) program or the Railroad Retirement Act and do not otherwise meet the requirements for entitlement to Medicare Part A. (Persons insured under the OASDI program or the Railroad Retirement Act and certain others do not have to pay premiums for hospital insurance.)

Section 1818(d) of the Act requires us to estimate, on an average per capita basis, the amount to be paid from the Federal Hospital Insurance Trust Fund for services performed and related administrative costs incurred in the following calendar year with respect to individuals aged 65 and over who will be entitled to benefits under Medicare Part A. We must then determine, during September of each year, the monthly actuarial rate for the following year (the per capita amount estimated above divided by 12) and publish the dollar amount for the monthly premium in the succeeding calendar year. If the premium is not a multiple of $1, the premium is rounded to the nearest multiple of $1 (or, if it is a multiple of 50 cents but not of $1, it is rounded to the next highest $1). The 2003 premium under this method was $316 and was effective January 1, 2003. (See 67 FR 64649, October 21, 2002.)

Section 1818A of the Act provides for voluntary enrollment in Medicare Part A, subject to payment of a monthly premium, of certain disabled individuals who have exhausted other entitlement. These are individuals who are not currently entitled to Part A coverage, but who were entitled to coverage due to a disabling impairment under section 226(b) of the Act, and who would still be entitled to Part A coverage if their earnings had not exceeded the statutorily defined substantial gainful activity amount (section 223(d)(4) of the Act).

Section 1818A(d)(2) of the Act specifies that the provisions relating to premiums under section 1818(d) through (f) of the Act for the aged will also apply to certain disabled individuals as described above.

Section 13508 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66) amended section 1818(d) of the Act to provide for a reduction in the premium amount for certain voluntary (section 1818 and 1818A) enrollees. The reduction applies to an individual who is eligible to buy into the Medicare Part A program and who, as of the last day of the previous month—

- Had at least 30 quarters of coverage under title II of the Act;
- Was married, and had been married for the previous 1-year period, to a person who had at least 30 quarters of coverage;
- Had been married to a person for at least 1 year at the time of the person's death if, at the time of death, the person had at least 30 quarters of coverage; or
- Is divorced from a person and had been married to the person for at least 10 years at the time of the divorce if, at the time of the divorce, the person had at least 30 quarters of coverage.

Section 1818(d)(4)(A) of the Act specifies that the premium that these individuals will pay for calendar year 2004 will be equal to the premium for uninsured aged enrollees reduced by 45 percent.

II. Monthly Premium Amount for 2004

The monthly premium for the uninsured aged and certain disabled individuals who have exhausted other entitlement, for the 12 months beginning January 1, 2004, is $343.

The monthly premium for those individuals subject to the 45-percent reduction in the monthly premium is $189.

III. Monthly Premium Rate Calculation

As discussed in section I of this notice, the monthly Medicare Part A premium is equal to the estimated monthly actuarial rate for 2004 rounded to the nearest multiple of $1 and equals one-twelfth of the average per capita amount, which is determined by projecting the number of individuals aged 65 and over entitled to Hospital Insurance and the benefits and administrative costs that will be incurred on their behalf.

The steps involved in projecting these future costs to the Federal Hospital Insurance Trust Fund are:

- Establishing the present cost of services furnished to beneficiaries, by type of service, to serve as a projection base;
- Projecting increases in payment amounts for each of the service types; and
- Projecting increases in administrative costs.

We base our projections for 2004 on (a) current historical data, and (b) projection assumptions derived from current law and the Mid-Session Review of the President's Fiscal Year 2004 Budget.

We estimate that in calendar year 2004, 34.476 million people aged 65 and over will be entitled to benefits (without premium payment) and that they will incur $141.849 billion of benefits and related administrative costs. Thus, the estimated monthly average per capita amount is $342.87 and the monthly premium is $343. The full monthly premium reduced by 45 percent is $189.

IV. Costs to Beneficiaries

The 2004 premium of $343 is about 9 percent higher than the 2003 premium of $316.

We estimate that approximately 425,000 enrollees will voluntarily enroll in Medicare Part A by paying the full premium. We estimate an additional 1,000 enrollees will pay the reduced premium. We estimate that the aggregate cost to enrollees paying these premiums will be about $138 million in 2004 over 2003.

V. Waiver of Notice of Proposed Rulemaking

We are not using notice and comment rulemaking in this notification of Part A premiums for 2004, as that procedure is unnecessary because of the lack of discretion in the statutory formula that is used to calculate the premium and the solely ministerial function that this notice serves. The Administrative Procedure Act permits agencies to waive notice and comment rulemaking when this notice and public comment thereon are unnecessary. On this basis, we waive publication of a proposed notice and a solicitation of public comments.

VI. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order

12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). As stated in Section IV of this notice, we estimate that the overall effect of these changes in the premium will be a cost to voluntary (section 1818 and 1818A) enrollees of about $138 million. Therefore, this notice is a major rule as defined in Title 5, United States Code, section 804(2) and is an economically significant rule under Executive Order 12866.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. Individuals and States are not considered to be small entities. We have determined that this notice will not have a significant economic impact on a substantial number of small entities. Therefore, we are not preparing an analysis for the RFA.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this notice will not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing an analysis for section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditures in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This notice has no consequential effect on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This notice will not have a substantial effect on State or local governments.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

Authority: Sections 1818(d)(2) and 1818A(d)(2) of the Social Security Act (42 U.S.C. 1395i–2(d)(2) and 1395i–2a(d)(2)).

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

Dated: September 12, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: October 3, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–26457 Filed 10–16–03; 10:06 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4061–N]

Medicare Program: Meeting of the Advisory Panel on Medicare Education—November 20, 2003

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

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C.

Appendix 2, section 10(a) (Pub. L. 92–463), this notice announces a meeting of the Advisory Panel on Medicare Education (the Panel) on November 20, 2003. The Panel advises and makes recommendations to the Secretary of the Department of Health and Human Services and the Administrator of the Centers for Medicare & Medicaid Services on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program. This meeting is open to the public. This meeting replaces the September 18, 2003 meeting that was canceled due to inclement weather.

DATES: The meeting is scheduled for November 20, 2003 from 9:15 a.m. to 4 p.m. EST.

Deadline for Presentations and Comments: November 13, 2003, 12 noon EST.

ADDRESSES: The meeting will be held at the Wyndham Washington Hotel, 1400 M Street, NW., Washington, DC 20005, (202) 429–1700.

FOR FURTHER INFORMATION CONTACT: Lynne Johnson, Health Insurance Specialist, Division of Partnership Development, Center for Beneficiary Choices, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, mail stop S2–23–05, Baltimore, MD 21244–1850, (410) 786–0090. Please refer to the CMS Advisory Committees' Information Line (1–877–449–5659 toll free)/(410–786–9379 local) or the Internet (*http://www.cms.hhs.gov/faca/apme/default.asp*) for additional information and updates on committee activities, or contact Ms. Johnson via e-mail at ljohnson3@cms.hhs.gov. Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION: Section 222 of the Public Health Service Act (42 U.S.C. 217a), as amended, grants to the Secretary of the Department of Health and Human Services (the Secretary) the authority to establish an advisory panel if the Secretary finds the panel necessary and in the public interest. The Secretary signed the charter establishing this Panel on January 21, 1999 (64 FR 7849) and approved the renewal of the charter on January 21, 2003. The Panel advises and makes recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program.

The goals of the Panel are as follows:

- To develop and implement a national Medicare education program that describes the options for selecting a health plan under Medicare.
- To enhance the Federal government's effectiveness in informing the Medicare consumer, including the appropriate use of public-private partnerships.
- To expand outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of a national Medicare education program.
- To assemble an information base of best practices for helping consumers evaluate health plan options and build a community infrastructure for information, counseling, and assistance.

The current members of the Panel are: James L. Bildner, Chairman and Chief Executive Officer, Tier Technologies; Dr. Jane Delgado, Chief Executive Officer, National Alliance for Hispanic Health; Joyce Dubow, Senior Policy Advisor, Public Policy Institute, American Association of Retired Persons (AARP); Clayton Fong, President and Chief Executive Officer, National Asian Pacific Center on Aging; Timothy Fuller, Executive Director, National Gray Panthers; John Graham IV, President and Chief Executive Officer, American Society of Association Executives; Dr. William Haggett, Senior Vice President, Government Programs, Independence Blue Cross; Thomas Hall, Chairman and Chief Executive Officer, Cardio-Kinetics, Inc.; David Knutson, Director, Health System Studies, Park Nicollet Institute for Research and Education; Brian Lindberg, Executive Director, Consumer Coalition for Quality Health Care; Katherine Metzger, Director, Medicare and Medicaid Programs, Fallon Community Health Plan; Dr. Laurie Powers, Co-Director, Center on Self-Determination, Oregon Health Sciences University; Dr. Marlon Priest, Professor of Emergency Medicine, University of Alabama at Birmingham; Dr. Susan Reinhard, Co-Director, Center for State Health Policy, Rutgers University and Chairperson of the Advisory Panel on Medicare Education; Dr. Everard Rutledge, Vice President of Community Health, Bon Secours Health Systems, Inc.; Jay Sackman, Executive Vice President, 1199 Service Employees International Union; Dallas Salisbury, President and Chief Executive Officer, Employee Benefit Research Institute; Rosemarie Sweeney, Vice President, Socioeconomic Affairs and Policy Analysis, American Academy of Family Physicians; and Bruce Taylor, Director, Employee Benefit Policy and Plans, Verizon Communications.

The agenda for the November 20, 2003 meeting will include the following:

- Recap of the previous (May 21, 2003) meeting.
- Centers for Medicare & Medicaid Services Update and Center for Beneficiary Choices Update.
- Medicare Reform Update.
- Quality Initiatives Update.
- Website Update.
- CMS Demonstrations.
- Research and Evaluation: Sharing Research with Stakeholders.
- Public Comment.
- Listening Session with CMS Leadership.
- Next Steps.

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic must submit a written copy of the oral presentation to Lynne Johnson, Health Insurance Specialist, Division of Partnership Development, Center for Beneficiary Choices, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail stop S2–23–05, Baltimore, MD 21244–1850 or by email at ljohnson3@cms.hhs.gov no later than 12 noon EST, November 13, 2003. The number of oral presentations may be limited by the time available. Individuals not wishing to make a presentation may submit written comments to Ms. Johnson by 12 noon EST, November 13, 2003. The meeting is open to the public, but attendance is limited to the space available.

Special Accommodation: Individuals requiring sign language interpretation or other special accommodations should contact Ms. Johnson at least 15 days before the meeting.

Authority: Sec. 222 of the Public Health Service Act (42 U.S.C. 217a) and sec. 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, sec. 10(a) and 41 CFR 102–3).

(Catalog of Federal Domestic Assistance Program No. 93.733, Medicare—Hospital Insurance Program; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 17, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–26825 Filed 10–23–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1253–N]

Medicare Program; November 17, 2003, Meeting of the Practicing Physicians Advisory Council

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

ACTION: Notice.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Practicing Physicians Advisory Council (the Council). The Council will be meeting to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary of the Department of Health and Human Services (the Secretary). These meetings are open to the public.

DATES: The meeting is scheduled for November 17, 2003, from 8:30 a.m. until 5 p.m. EST.

ADDRESSES: The meeting will be held in Room 800, 8th floor, at the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

MEETING REGISTRATION: Persons wishing to attend this meeting must contact Diana Motsiopoulos, The Council Administrative Coordinator, by email at dmotsiopoulos@cms.hhs.gov or by telephone (410) 786–3379, at least 72 hours in advance to register. Persons not registered in advance will not be permitted into the Humphrey Building and will not be permitted to attend the meeting. Persons attending the meeting will be required to show a photographic identification, preferably a valid driver's license, before entering the building.

FOR FURTHER INFORMATION CONTACT: Kenneth Simon, M.D., Executive Director, Practicing Physicians Advisory Council, 7500 Security Blvd., Mail Stop C4–11–27, Baltimore, MD 21244–1850, 410–786–3379. News media representatives should contact the CMS Press Office, (202) 690–6145. Please refer to the CMS Advisory Committees Information Line (1–877–449–5659 toll free)/(410–786–9379 local) or the Internet at *http://www.cms.hhs.gov/faca/ppac/default.asp* for additional information and updates on committee activities.

SUPPLEMENTARY INFORMATION: The Secretary of the Department of Health and Human Services (the Secretary) is mandated by section 1868 of the Social Security Act (the Act) to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation must occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services not later than December 31 of each year.

The Council consists of 15 physicians, each of whom must have submitted at least 250 claims for physicians' services under Medicare in the previous year. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 members of the Council must be physicians as described in section

1861(r)(1) of the Act; that is, State-licensed doctors of medicine or osteopathy. The remaining 4 members may include dentists, podiatrists, optometrists and chiropractors. Members serve for overlapping 4-year terms; terms of more than 2 years are contingent upon the renewal of the Council by appropriate action prior to its termination. Section 1868(a) of the Act provides that nominations to the Secretary for Council membership must be made by medical organizations representing physicians.

The Council held its first meeting on May 11, 1992. The current members are: James Bergeron, M.D.; Ronald Castallanos, M.D.; Rebecca Gaughan, M.D.; Carlos R. Hamilton, M.D.; Joseph Heyman, M.D.; Dennis K. Iglar, M.D.; Joe Johnson, D.C.; Christopher Leggett, M.D.; Barbara McAneny, M.D.; Angelyn L. Moultrie-Lizana, D.O.; Laura B. Powers, M.D.; Michael T. Rapp, M.D.; Amilu Rothhammer, M.D.; Robert L. Urata, M.D.; and Douglas L. Wood, M.D.

The meeting will commence with a Council update on the status of prior recommendations, followed by discussion and comment on the following agenda topics:

- Physician's Regulatory Issues Team (PRIT).
- Power Operated Vehicles.
- Current Status on Physicians Providing Professional Courtesy.
- Provider Communications (GAO Report 02–249: Communications with Physicians can be Improved; February 2002).
- Outpatient Prospective Payment System for CY 2004 and Physician Fee Schedule Final Rules for CY 2004.
- Update on Current Procedural Terminology/Evaluation and Management Coding Guidelines.
- Update on Prescription Drug Card Benefit.
- End Stage Renal Disease (ESRD) Quality Initiative.
- IG Statutory Authority and FY 2004 Work Plan.

For additional information and clarification on these topics, contact the Executive Director, listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Individual physicians or medical organizations that represent physicians wishing to make a 5-minute oral presentation on agenda issues should contact the Executive Director by 12 noon, October 31, 2003, to be scheduled. Testimony is limited to agenda topics only. The number of oral presentations may be limited by the time available. A written copy of the presenter's oral remarks must be submitted to Diana Motsiopoulos, Administrative Coordinator, no later than 12 noon, November 7, 2003, for distribution to Council members for review prior to the meeting. Physicians and medical organizations not scheduled to speak may also submit written comments to the Administrative Coordinator for distribution. The meeting is open to the public, but attendance is limited to the space available. *Special Accommodations:* Individuals requiring sign language interpretation or other special accommodation should contact Diana Motsiopoulos by e-mail at *dmotsiopoulos@cms.hhs.gov* or by telephone at (410) 786–3379 at least 10 days before the meeting.

Authority: Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Public Law 92–463 (5 U.S.C. App. 2, section 10(a).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 17, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–26824 Filed 10–23–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1999N–1168]

Relative Risk to Public Health From Foodborne Listeria Monocytogenes Among Selected Categories of Ready-to-Eat-Foods; Risk Assessment; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) of the Department of Health and Human Services (HHS), in cooperation with the Food Safety and Inspection Service (FSIS) of the U.S. Department of Agriculture, and the Centers for Disease Control and Prevention (CDC) of HHS, are announcing the availability of a quantitative risk assessment on the relationship between foodborne *Listeria monocytogenes* and human health that considers 23 ready-to-eat food categories.

ADDRESSES: Submit written requests for single copies of the risk assessment document and CD-ROM of the model, to Sherri Dennis, Center for Food Safety and Applied Nutrition (CFSAN) (see **FOR FURTHER INFORMATION CONTACT**). The document is entitled ''Quantitative Assessment of Relative Risk to Public Health From Foodborne *Listeria monocytogenes* Among Selected Categories of Ready-to-Eat-Foods.'' Send one self-adhesive label with your address to assist that office in processing your request. You also may request a copy of the risk assessment document by faxing your name and mailing address with the name of the document you are requesting to the CFSAN Outreach and Information Center at 1–877–366–3322. See the **SUPPLEMENTARY INFORMATION** section for electronic access to this document.

A copy of the risk assessment document may be reviewed at the FDA Division of Dockets Management (HFA–305)(Docket No. 99N–1168) at 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday, and at the FSIS Docket Clerk's Office (Docket No. 00–048N), U.S. Department of Agriculture, rm. 102, Cotton Annex, 300 12th St. SW., Washington, DC 20250, between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Sherri B. Dennis, Risk Assessment Coordinator, Center for Food Safety and Applied Nutrition (HFS–006), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD, 20740, 301–436–1914.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 19, 2001 (67 FR 5515), FDA and FSIS announced the availability of a draft risk assessment on the relationship between foodborne *Listeria monocytogenes* and human health that considers categories of ready-to-eat food. FDA, FSIS, and CDC held a public meeting on March 19, 2001 (66 FR 13544), to receive comments on the technical aspects of the draft risk assessment. Interested persons were given until March 20, 2001, with extensions to May 21, 2001, and to July 18, 2001, to comment on the document. The risk assessment has been revised in response to the public comments, newly available data, and updated modeling techniques.

II. Risk Assessment

The purpose of the quantitative risk assessment is to examine systematically available scientific data and information to estimate the relative risks of serious illness and death associated with consumption of different types of ready-to-eat foods that may be contaminated with *L. monocytogenes*. This

examination of the current science and the models developed from it are among the tools available to FDA and FSIS to evaluate the effectiveness of current and future policies, programs, guidance, and regulatory practices to minimize the public health impact of this pathogen. Quantitative risk assessment of microbial pathogens is a structured process of collecting and evaluating data and information to assess the risks to human health from consumption of pathogenic microorganisms. The risk assessment evaluates the available data on food consumption, contamination by *L. monocytogenes* of various foods within 23 ready-to-eat food product categories, growth of the pathogen in such foods, and the infectious dose. The risk assessment follows the framework recommended both by the National Academy of Sciences and the Codex Alimentatius Commission. This structured framework involves the following steps:

(1) *Hazard Identification*. The collection and critical review of data and information on health effects associated with consumption of *L. monocytogenes*.

(2) *Exposure Assessment*. The determination of exposure to *L. monocytogenes* from consumption of various foods using prevalence and food consumption data.

(3) *Hazard Characterization/ Dose-response*. The description of the relationship between *L. monocytogenes* exposure level and frequency of severe illness or mortality using epidemiological investigations and data from animal studies.

(4) *Risk Characterization*. The integration of the exposure and dose-response data to estimate both the risk to the public heath and the uncertainty associated with this estimate.

The risk assessment provides estimates of the number of cases of listeriosis associated with consumption of 23 ready-to-eat food categories on both a per serving and per annum basis and provides, though the assignment of predicted relative risk rankings, a means of comparing the relative risks among the different food categories and different population groups. The results of the risk assessment reinforce past epidemiological conclusions that foodborne listeriosis is a moderately rare but severe disease and that certain foods are more likely to be vehicles for *L. monocytogenes* and associated with outbreaks and sporadic illnesses. Consumer exposure to *L. monocytogenes* at the time of consumption is affected by these five factors: (1) Amounts and frequency of consumption of a ready-to-eat food, (2) frequency and levels of *L. monocytogenes* in a ready-to-eat food, (3) potential of the food to support growth of *L. monocytogenes* during refrigeration, (4) refrigerated storage temperature; and (5) duration of refrigerated storage before consumption. In interpreting the results of the risk assessment, the food categories were divided into five overall risk designations based on different approaches needed to control foodborne listeriosis.

III. Electronic Access

The risk assessment document is available electronically at www.cfsan.fda.gov, www.fsis.usda.gov, www.foodsafety.gov, and *www.foodriskclearinghouse.umd.edu.*

Dated: October 10, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–26566 Filed 10–21–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

U.S. Customs and Border Protection Trade Symposium 2003

AGENCY: U.S. Customs and Border Protection, Homeland Security.

ACTION: Notice of trade symposium.

SUMMARY: This document announces that U.S. Customs and Border Protection (CBP) will convene a major trade symposium that will feature joint discussions by Department of Homeland Security and CBP personnel, members of the trade community, and other public and private sector representatives on the agency's role in the new Department, international trade security initiatives and the unification of functions at the border. Commissioner Robert C. Bonner will be the keynote speaker. Members of the international trade and transportation communities and other interested parties are encouraged to attend, and those attending are requested to register early.

DATES: Check-in and a reception will be held on Wednesday, November 19, 2003, from 6 p.m. until 8 p.m. The symposium will be held on Thursday, November 20, 2003, from 8:30 a.m. until 6 p.m. and on Friday, November 21, 2003, from 8 a.m. until 12 p.m. All registrations must be made on-line and confirmed with payment on a space-available basis by November 14th.

ADDRESSES: The Trade Symposium of 2003 will be held in Washington, DC, at the Ronald Reagan Building and International Trade Center, at 1300 Pennsylvania Avenue, NW. Check-in and a reception will be held in the Pavilion Room on Wednesday, November 19th. The symposium will be held in the Amphitheater on Thursday, November 20th, and in the Atrium Ballroom on Friday, November 21st.

FOR FURTHER INFORMATION CONTACT: ACS Client Representatives; CBP Account Managers; Regulatory Audit Trade Liaisons; or the Office of Trade Relations at (202) 927–1440 or at *traderelations@dhs.gov.* To obtain the latest information on the program or to register on-line, visit the CBP Web site at *http://www.cbp.gov.* Requests for special needs should be sent to the Office of Trade Relations at *traderelations@dhs.gov.*

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) will be convening a major trade symposium (U.S. Customs and Border Protection Trade Symposium 2003) on Thursday, November 20, 2003, from 8:30 a.m. until 6 p.m. and on Friday, November 21, 2003, from 8 a.m. until 12 p.m. at the Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC. The symposium will feature joint discussions by Department of Homeland Security and CBP personnel, members of the trade community, and other public and private sector representatives on the agency's role in the new Department, international trade security initiatives and the unification of functions at the border. Commissioner Robert C. Bonner will be the keynote speaker. Members of the international trade and transportation communities and other interested parties are encouraged to attend.

The cost is $150 per individual and includes all symposium activities. Interested parties are requested to register early, as space is limited. All registrations must be made on-line at the CBP Web site (*http://www.cbp.gov*). Registrations will be accepted on a space-available basis and must be confirmed with payment by November 14, 2003. The Renaissance Washington DC Hotel, 999 9th Street, NW., has reserved a block of rooms for Wednesday, November 19th and Thursday, November 20th at a rate of US$189 per night. Reservations must be confirmed with the hotel by October 31st. Call 202–898–9000 or 1–800–228–9290 and reference the ''CBP Trade Symposium.''

Dated: October 21, 2003.

Eula D. Walden,

Acting Director, Office of Trade Relations.

[FR Doc. 03–26946 Filed 10–23–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–41]

Notice of Proposed Information Collection: Comment Request; Inspection Checklist—Additions/ Modifications to Manufactured Homes

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 23, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 25, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Inspection Checklist—Additions/Modifications to Manufactured Homes.

OMB Control Number, if applicable: 2502–New Collection.

Description of the need for the information and proposed use: Add-ons, alterations, or modifications to a manufactured home may cause the unit to be in noncompliance with Federal manufactured home construction and safety standards. If the add-on, alteration, or modification causes the basic manufactured home to fail to conform to the standards; any sale or offer for sale of the home is prohibited until the home is brought into conformance with the standards. A manufactured home that has had any additions, alterations, or modifications must be subjected to an inspection in order to be considered for FHA mortgage insurance. The inspection will ensure that the manufactured home is in compliance with the construction and safety standards.

Agency form numbers, if applicable: HUD–54875.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 5,000 generating approximately 5,000 annual responses; the frequency of responses is on occasion; the estimated time needed to prepare the responses is 30 minutes; and the estimated total number of burden hours is 2,500.

Status of the proposed information collection: New Collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 25, as amended.

Dated: October 16, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 03–26901 Filed 10–23–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–42]

Notice of Proposed Information Collection: Comment Request; Request for Construction Change

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: December 23, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Michael McCullough, Director, Office of Multifamily Housing Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–1142, (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information

technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Request for Construction Change.

OMB Control Number, if applicable: 2502–0011.

Description of the need for the information and proposed use: Contractors, mortgagors, and mortgagees use forms HUD–92437, HUD–92441, HUD–92442, HUD–92442A, HUD–92442–CA, HUD–92442–A–CA to obtain approval of changes in contract drawings and specifications from the FHA Commissioner. The information collections are needed by HUD to make sure the respondents are in compliance with the provisions set forth in Article 1.E of the construction contract, which states ''Changes in Drawings and Specifications or any terms of the Contract Documents, or orders for extra work, or changes by altering or adding to the work, or which will change the design concept, may be effected only with the prior approval of the Owner's Lender (more particularly identified below and hereinafter referred to a the ''Lender''), and the Commission under such conditions as either the Lender or the Commissioner may establish.''

Agency form numbers, if applicable: HUD–92437, HUD–92441, HUD–92442, HUD–92442A, HUD–92442–CA, HUD–92442A–CA.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of burden hours needed to prepare the information collection is 20,300; the number of respondents is 2,200 generating approximately 4,000 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the responses varies from 1 hour to 16 hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 16, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 03–26902 Filed 10–23–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–43]

Notice of Proposed Information Collection: Comment Request; Financial Statement of Corporate Applicant for Cooperative Housing Mortgage

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* December 23, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410 or *Wayne_Eddins@hud.gov*.

FOR FURTHER INFORMATION CONTACT: Michael McCullough, Director, Office of Multifamily Housing Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–1142, (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Financial Statement of Corporate Applicant for Cooperative Housing Mortgage.

OMB Control Number, if applicable: 2502–0058.

Description of the need for the information and proposed use: Sections 213 and 221(d)(3) of the National Housing Act, as amended, authorizes the Secretary of the Department of Housing and Urban Development to insure mortgages covering property held by a non-profit cooperative ownership-housing corporation. The Act states: ''any mortgages insured under this Section shall provide for complete authorization by periodic payments within such terms as the Secretary may prescribe, but not to exceed forty years from the beginning of amortization of the mortgage * * *'' In order to determine the capacity of the borrower corporation and the individual members to meet the statutory requirement for repayment, the Department is required to examine the credit reports of individual members and their personal financial statements to determine the members' credit standing, ability to pay, and stability of employment. This analysis assists the Department in accurately assessing the credit risk regarding the loan amount and amortization period.

Agency form numbers, if applicable: HUD–93232–A.

Estimated of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: An estimation of the total burden hours needed to prepare the information collection is 25. The number of respondents is 100 generating approximately 100 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response is 15 minutes.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 16, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 03–26903 Filed 10–23–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–43]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: October 24, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: October 16, 2003.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 03–26703 Filed 10–23–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Blackstone River Valley National Heritage Corridor Commission: Notice of Meeting

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the John H. Chafee Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, December 4, 2003.

The Commission was established pursuant to Pub. L. 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene on December 04, 2003 at 9 a.m. at Brigham Hill Community Farm located at 37 Wheeler Road, North Grafton, MA for the following reasons:

1. Approval of Minutes.
2. Chairman's Report.
3. Executive Director's Report.
4. Financial Budget.
5. Public Input.

It is anticipated that about twenty-five people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Michael Creasey, Executive Director, John H. Chafee, Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895, Tel: (401) 762–0250.

Further information concerning this meeting may be obtained from Michael Creasey, Executive Director of the Commission at the aforementioned address.

Elizabeth McConnell,

Chief of Administration BRVNHCC.

[FR Doc. 03–26985 Filed 10–22–03; 10:25 am]

BILLING CODE 4310–RK–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for endangered species and marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*), the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

Permit no.	Applicant	Receipt of application Federal Register notice	Permit issuance date
Endangered Species			
005821, 073403, and 073404	Ferdinand Fercos and Anton Fercos Hantig.	68 FR 44807; July 30, 2003	September 29, 2003.
Marine Mammals			
072865	Donald Graham	68 FR 40291; July 7, 2003	September 24, 2003.
072820	Joe P. Murphy	68 FR 41167; July 10, 2003	September 30, 2003.
073125	Christopher K. Fannin	68 FR 39961; July 3, 2003	September 30, 2003.

Dated: October 10, 2003.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–26821 Filed 10–23–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species.

DATES: Written data, comments or requests must be received by November 24, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: James W. Bailey, Greenwood, South Carolina, PRT–077730.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: John W. Miller, Collierville, TN, PRT–078155.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Dr. Duane Rumbaugh, Decatur, GA, PRT–077372.

The applicant requests a permit to export the carcass of one captive born female pygmy chimpanzee (*Pan paniscus*) to the Primate Research Institute of Kyoto University, Japan, for the purpose of scientific research.

Applicant: George Carden Circus International, Springfield, MO, PRT–016016.

The applicant requests a permit to export one Asian elephant (*Elephas maximus*) born in captivity to worldwide locations for the purpose of enhancement of the species through conservation education. This notification covers activities to be conducted by the applicant over a three-year period and the import of any potential progeny born while overseas.

Dated: October 10, 2003.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–26822 Filed 10–23–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–070–1150–PG]

Notice of Public Meeting, Upper Snake River Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Upper Snake River Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held November 19 and 20, 2003 at the BLM Pocatello Field Office, 4350 Cliffs Drive, in Idaho Falls, Idaho. The meeting will start November 19 at 10 a.m., with the public comment period beginning at approximately 1 p.m. The meeting will adjourn on November 20 at or before 5 p.m.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the BLM Upper Snake River District (USRD), which covers south-central and southeast Idaho. At this meeting, topics we plan to discuss include:

Orientation for new members of the RAC.

Election of new RAC Officers for the 2003–2004 term.

The RAC's work plan for the coming year.

Updates on major planning projects in the USRD, including coordination of subgroups.

Updates on the Director's Sustaining Working Landscapes Initiative, and the RAC's feedback to the BLM State Director.

An update on the Idaho BLM's proposed organizational refinements.

Brief overviews on other BLM programs: Wild Horse and Burros, and Abandoned Mine Lands.

Other items of interest raised by the Council.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time 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. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

The meetings for 2004 will also be set at this meeting, and the dates and times will be announced in a future **Federal Register** Notice and through local media.

FOR FURTHER INFORMATION CONTACT: David Howell, RAC Coordinator, Upper Snake River District, 1405 Hollipark Dr., Idaho Falls, ID 83401. Telephone (208) 524–7559.

Dated: October 20, 2003.

David O. Howell,

Public Affairs Specialist.

[FR Doc. 03–26838 Filed 10–23–03; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Gulf of Mexico, Outer Continental Shelf, Central Planning Area, Oil and Gas Lease Sale 190 (2004) Environmental Assessment

AGENCY: Minerals Management Service.

ACTION: Notice of availability of an environmental assessment.

SUMMARY: The Minerals Management Service (MMS) has prepared an environmental assessment (EA) for proposed Gulf of Mexico Outer Continental Shelf (OCS) Central Planning Area (CPA) Lease Sale 190. In this EA, MMS reexamined the potential environmental effects of the proposed action and its alternatives based on any new information regarding potential impacts and issues that were not available at the time the Gulf of Mexico OCS Oil and Gas Lease Sales: 2003–2007, Central Planning Area Sales 185, 190, 194, 198, and 201, and Western Planning Area Sales 187, 192, 196, and 200, Final Environmental Impact Statement, Volumes I and II (Multisale EIS) was completed in November 2002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Mr. Joseph Christopher, telephone (504) 736–2774.

SUPPLEMENTARY INFORMATION: The Multisale EIS analyzed the effects of a typical lease sale by presenting a set of ranges for resource estimates, project exploration and development activities, and impact-producing factors for any of the proposed CPA lease sales. The level of activities projected for proposed Lease Sale 190 falls within these ranges. No new significant impacts were identified for proposed Lease Sale 190 that were not already assessed in the Multisale EIS. Proposed CPA Lease Sale 190 is the second CPA lease sale scheduled in the Outer Continental Shelf Oil and Gas Leasing Program: 2002–2007 (5-Year Program). As a result, MMS determined that a supplemental EIS is not required and prepared a Finding of No New Significant Impact.

EA Availability: To obtain a copy of the EA, you may contact the Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394 (1–800–200–GULF). You may also view the EA on the MMS Web site at *http://www.gomr.mms.gov.*

Dated: September 4, 2003.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 03–26915 Filed 10–23–03; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1056 (Preliminary)]

Certain Aluminum Plate From South Africa

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–1056 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from South Africa of certain aluminum plate, provided for in subheading 7606.12.30 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by December 1, 2003. The Commission's views are due at Commerce within five business days thereafter, or by December 8, 2003.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: October 16, 20003.

FOR FURTHER INFORMATION CONTACT: Christopher J. Cassise (202–708–5408), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on October 16, 2003, by Alcoa, Inc., Pittsburgh, PA.

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on November 6, 2003, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Christopher J. Cassise (202–708–5408) not later than November 4, 2003, to arrange for their appearance. Parties

in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before November 12, 2003, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: October 20, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–26881 Filed 10–23–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–421–4]

Certain Ductile Iron Waterworks Fittings From China

Determination

On the basis of information developed in the critical circumstances phase of the subject investigation, the United States International Trade Commission determines, pursuant to section 421(i) of the Trade Act of 1974,[1] that critical circumstances do not exist with respect to imports of certain ductile iron waterworks fittings from China. Specifically, the Commission makes a negative determination under section 421(i)(1)(A) with respect to whether delay in taking action under this section would cause damage to the relevant domestic industry which would be difficult to repair.[2]

Background

Following receipt of a petition filed on September 5, 2003, on behalf of McWane, Inc.,[3] Birmingham, AL, the Commission instituted investigation No. TA–421–4, *Certain Ductile Iron Waterworks Fittings from China,* under section 421(b) of the Act to determine whether certain ductile iron waterworks fittings[4] from China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products. The petition also alleged under section 421(i) of the Act that critical circumstances exist with respect to the subject products and requested that provisional relief be provided.

Notice of the institution of the Commission's investigation and of the scheduling of a staff conference during the critical circumstances phase and a subsequent public hearing to be held in the investigation was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 15, 2003 (68 F.R. 54010). The staff conference in connection with the critical circumstances phase of the investigation was held on September 26, 2003 in Washington, DC; all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in the critical circumstances phase of this investigation to the President on October 20, 2003. The views of the Commission are contained in USITC Publication 3642 (October 2003), entitled *Certain Ductile Iron Waterworks Fittings from China: Investigation No. TA–421–4* (Critical Circumstances Phase).

Issued: October 20, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–26813 Filed 10–23–03; 8:45 am]

BILLING CODE 7020–02–P

[1] 19 U.S.C. 2451(i).

[2] Commissioner Lane makes an affirmative determination under section 421(i)(1)(A), and therefore dissents. Commissioner Pearson did not participate in this determination.

[3] McWane operates three subsidiaries that produce the subject products including: Clow Water Systems Co., Coshocton, OH; Tyler Pipe Co., Tyler, TX; and Union Foundry Co., Anniston, AL.

[4] The products subject to this investigation are cast pipe or tube fittings of ductile iron (containing 2.5 percent carbon and over 0.02 percent magnesium or magnesium and cerium, by weight) with mechanical, push-on (rubber compression) or flanged joints attached. Included within this definition are fittings of all nominal diameters and of both full-bodied and compact designs. The imported products are provided for in statistical reporting number 7307.19.3070 of the Harmonized Tariff Schedule of the United States (HTS).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 13, 2003, Chemic Laboratories, Inc., 480 Neponset Street, Building 7C, Canton, Massachusetts 02021, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of Cocaine (9041), a basic class of a Schedule II controlled substance.

The firm plans to manufacture small quantities of a cocaine derivative for distribution to a customer.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than December 23, 2003.

Dated: September 2, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–26908 Filed 10–23–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 16, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or E-Mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316/this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used:
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Employment Standards Administration.

Type of Review: Extension of a currently approved collection.

Title: Uniform Billing Form.

OMB Number: 1215–0176.

Affected Public: Business or other for-profit; Not-for-profit institutions; and Individuals or households.

Frequency: As needed.

Number of Respondents: 57,679.

Number of Annual Responses: 230,716.

Estimated Time Per Response: 7 minutes.

Total Burden Hours: 26,925.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA) 5 U.S.C. 8101 *et seq.,* the Black Lung Benefits Act (BLBA) 30 U.S.C. 901 *et seq.,* and the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384 *et seq.* These Acts provide, in addition to compensation for employment-related injury and/or disability, payments to provider institutions for certain non-professional medical treatment and services related to the injury or disability. The Uniform Billing Form (OWCP–92) consists of the industry standard billing form (UB–92), which has been approved by the American Hospital Association, the Centers for Medicare and Medicaid Services, and the Civilian Health and Medical Program of the Uniformed Services, by various other government health care programs, and the private sector, for the purpose of payment to institutional providers of medical services. The OWCP–92 also includes detailed instructions developed by OWCP that provide the information necessary to providers who file bills for services that may be payable under FECA, BLBA and the EEOICPA.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–26885 Filed 10–23–03; 8:45 am]

BILLING CODE 4510 CH–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 16, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316/this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Revision of a currently approved collection.

Title: Occupational Code Assignment (OCA).

OMB Number: 1205–0137.

Affected Public: State, local, or tribal government; Individuals or households; Business or other for-profit; Not-for-profit institutions; and Federal Government

Type of Response: Reporting.

Frequency: On occasion.

Number of Respondents: 177.

Annual Responses: 177.

Average Response Time: 30 minutes.

Annual Burden Hours: 89.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Occupational Analysis program developed the Occupational Code Request (OCR) form as a public service to the users of the revised Dictionary of Occupational Titles (DOT) in an effort to help them in obtaining occupational codes and titles for jobs that they were unable to locate

in the DOT. With the development and release of the Occupational Information Network (O*NET) system, some modifications were needed to make the OCR form correlate more closely to the information in the O*NET system. The OCR form, with these modifications, has been renamed the Occupational Code Assignment (OCA) form.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–26886 Filed 10–23–03; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Submitted for Public Comment and Recommendations: Quick Turnaround Surveys of WIA

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed 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 the collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before December 23, 2003.

ADDRESSES: Send comments to Charlotte Schifferes, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5637, Washington, DC 20210; (202) 693–3655 (this is not a toll-free number); e-mail: *schifferes.charlotte@dol.gov*; fax: (202) 693–2766 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Charlotte Schifferes, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5637, Washington, DC 20210; (202) 693–3655 (this is not a toll-free number); e-mail: *schifferes.charlotte@dol.gov*; fax: (202) 693–2766 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Employment and Training Administration (ETA) is soliciting comments regarding an extension of a current Office of Management and Budget (OMB) clearance for a series of quick turnaround surveys in which data will be collected from state workforce agencies and local workforce investment areas. The surveys will focus on issues relating to the governance, administration, funding, service design, and delivery structure of workforce programs authorized by the Workforce Investment Act (WIA). Enacted in 1998, WIA sought to redesign the workforce development system by linking over a dozen separately funded Federal programs and streamlining services, and establishing new accountability requirements. WIA is set to expire in September 2003 and Congress is now considering reauthorizing and amending the legislation.

ETA is currently is the process of developing a quick turnaround survey on services and outreach to businesses, under the current OMB clearance. Other surveys are also under consideration at this time.

The agency has a continuing need for information on WIA operations and is seeking an extension of the clearance for conducting a series of eight (8) to twenty (20) separate surveys over the next three years. Each survey will be relatively short (10–30 questions) and, depending on the nature of the survey, may be administered to state workforce agencies, local workforce boards, One-Stop Centers, employment service offices, or other local-area WIA partners. Each survey will be designed on an ad hoc basis and will focus on emerging topics of pressing policy interest. Each survey will either cover the universe of respondents (for state level information) or a properly drawn random sample (for local level information). Examples of broad topic areas include:

- Local management information system developments
- New processes and procedures
- Services to different target groups
- Integration and coordination with other programs
- Local workforce investment board membership and training

Quick turnaround surveys are needed for a number of reasons. The most pressing concerns the need to understand key operational issues in light of challenges deriving from the Administration's policy priorities and from the coming reauthorization of WIA and of other partner programs. Timely information, that identifies the scope and magnitude of various practices or problems, is needed for ETA to fulfill its obligations to develop high quality policy, administrative guidance, regulations, and technical assistance.

The data that will be requested in the quick turnaround surveys is not otherwise available. Other research and evaluation efforts, including case studies or long-range evaluations, either cover only a limited number of sites or take many years for data to be gathered and analyzed. Administrative information and data are too limited: The five-year Workforce Investment Plans, developed by states and local areas, are too general in nature to meet ETA's specific informational needs and are updated infrequently. Quarterly or annual data reporting by states and local areas do not provide information on key operational practices and issues. Thus, ETA has no alternative mechanism for collecting information that both identifies the scope and magnitude of emerging WIA implementation issues and provides the information on a quick turnaround basis.

ETA will make every effort to coordinate the quick turnaround surveys with other research it is conducting, in order to ease the burden on local and state respondents, to avoid duplication, and to explore fully how interim data and information from each study can be used to inform the other studies. Information from the quick response surveys will complement but not duplicate other ETA reporting requirements or evaluation studies.

II. Desired Focus of Comments

Currently, ETA is soliciting comments, concerning the proposed extension of the Quick Turnaround Surveys of WIA, that:

(a) 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;

(b) 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;

(c) enhance the quality, utility and clarity of the information to be collected; and

(d) 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.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed above in the addressee section of this notice.

III. Current Actions

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Quick Turnaround Surveys of WIA.

OMB Number: 1205–0436.

Affected Public: State and local workforce agencies and workforce investment boards, and WIA partner program agencies at the state and local levels.

Total Respondents: Varies by survey, from 54 to 250 respondents per survey, for up to 20 surveys. See Summary Burden chart below:

	Sample size	Number of questions	Average time per question	Aggregate burden hours per survey	Estimated number of surveys	Total annual burden hours
Lower-Bound	54	10	1 minutes	9 hours	8	72
Upper-Bound	250	30	3 minutes	375 hours	20	7,500

Total Burden Cost for capital and startup: $0.

Total Burden Cost for operation and maintenance: $0.

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

Dated: October 20, 2003.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 03–26888 Filed 10–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Certification by School Official (CM–981). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before December 23, 2003.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave. NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, e-mail *bell.hazel@dol.gov.* Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

In order to be a dependent that is eligible for black lung benefits, a child aged 18 to 23 must be a full-time student as described in the Black Lung Benefits Act, 30 U.S.C. 901 et. seq. and attending regulations 20 CFR 725.209. The CM–981 is partially completed by the registrar's office and is used to verify the full-time status of the student. This information collection is currently approved for use through April 30, 2004.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval for the extension of this information collection in order to determine the continued eligibility of the student.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Certification by School Official.

OMB Number: 1215–0061.

Agency Number: CM–981.

Affected Public: Not-for-profit institutions, State, Local or Tribal Government.

Total Respondents: 500.

Total Responses: 500.

Time per Response: 10 minutes.

Frequency: Annually.

Estimated Total Burden Hours: 84.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

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

Dated: October 20, 2003.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 03–26887 Filed 10–23–03; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

None

Volume II:

None

Volume III:

None

Volume IV:

None

Volume V:

None

Volume VI:

None

Volume VII:

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedword.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help Desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 16th Day of October 2003.

Carl Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–26516 Filed 10–23–03; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–132)]

NASA Advisory Council, Space Science Advisory Committee Sun-Earth Connection Advisory Subcommittee Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration announces a

forthcoming meeting of the NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Sun-Earth Connection Advisory Subcommittee (SECAS).

DATES: Tuesday, November 4, 2003, 8:30 a.m. to 5 p.m.; Wednesday, November 5, 2003, 8:30 a.m. to 5 p.m.; and Thursday, November 6, 2003, 8:30 a.m. to noon.

ADDRESSES: Capitol Hill Club, Governor's Room, 300 First Street, SE., Washington, DC 20003.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Code SB, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4452.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—SEC Overview
—Bahcall Report on Hubble Space Telescope
—Solar Terrestrial Probe Program Update
—Living with a Star Program Update
—Reports from MOWG's
—SEC Instrument Development Program

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–26810 Filed 10–23–03; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–133)]

NASA Earth Science Technology Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration announces a meeting of the Earth Science Technology Subcommittee.

DATES: Wednesday, November 5, 2003, 8:30 a.m. to 5:30 p.m.

ADDRESSES: Holiday Inn on the Hill, 415 New Jersey Avenue, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Mr. Granville Paules, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0706.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Welcome/Opening Comments
—Chairman's Introduction and Goals for Meeting
—Why Lasers in Earth Science?—Overview of Requirements
—Active Optical Measurements in Near-term Missions: ICESat (Ice Cover), Calipso (Clouds), Vegetation Canopy Lidar
—Laser Risk Reduction Program
—Code R Optical Sensing Technologies
—Current Earth Science Technology Office (ESTO) Investments
—Optical Sensing Technologies in Space Technology Alliance (STA)
—Optical Sensing Technologies in Industry
—Summary

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–26944 Filed 10–23–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; National Council on the Arts 150th Meeting

Pursuant to section 10 (a) (2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on November 13, 2003 from 9 a.m.-1 p.m. (ending time is tentative) in Room M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting will be open to the public on a space available basis. Following opening remarks and announcements, there will budget and Governmental Affairs updates followed by Application Review (Creativity, Services to Arts Organizations and Artists, Literature Prose Fellowships, and Leadership Initiatives) and review of Guidelines (Grants for Arts Projects). There will also be discipline directors' presentations in Dance (Raising the Barre), Literature (Operation Homecoming), Media Arts (Classical Music on Radio), and Partnership (State Arts Agencies update).

If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c) (6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews that are open to the public. 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, TTY–TDD 202/682–5429, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from the Office of Communications, National Endowment for the Arts, Washington, DC 20506, at 202/682–5570.

Dated: October 20, 2003.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. 03–26898 Filed 10–23–03; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Proposal Review Panel for Materials Research (DMR) #1203.

Dates & Times:

November 5, 2003; 8 a.m.–8 p.m. (open 9–12:30, 1:30–3:45, 7:30–8).

November 6, 2003; 8 a.m.–4 p.m. (closed 8–4).

Place: University of Virginia, Charlottesville, VA.

Type of Meeting: Part open.

Contact Person: Dr. Thomas Rieker, Program Director, Materials Research Science and Engineering Centers, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4914.

Purpose of Meeting: To provide advice and recommendations concerning progress of Materials Research Science and Engineering Center.

Agenda:

November 5, 2003—Open for Director's overview of Materials Research Science and Engineering Center and presentations.

Agenda:

November 6, 2003—Closed to review and evaluate progress of Materials Research Science and Engineering Center.

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 21, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–26848 Filed 10–23–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–250 and 50–251]

Florida Power and Light, Turkey Point, Units 3 and 4; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to Renewed Facility Operating License Nos. DPR–31 and DPR–41, issued to Florida Power and Light Company, for operation of the Turkey Point Nuclear Power Plant, Units 3 and 4, located in Miami-Dade County, Florida. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would increase the number of fuel assemblies that can be stored at each unit at Turkey Point from 1,404 fuel assemblies to 1,535 fuel assemblies, an increase of 131. A freestanding spent fuel storage rack module would be installed in the cask pit in each unit's spent fuel pool. In addition, the new spent fuel storage racks will use Boral as a neutron absorbing material.

The proposed action is in accordance with the licensee's application for amendment dated November 26, 2002, as supplemented in a letter dated September 8, 2003.

The Need for the Proposed Action

The Turkey Point Nuclear Plant, Units 3 and 4, has two pressurized-water reactors. Unit 3 commenced operation in 1972 and Unit 4 in 1973. Based on the current licensed capacity, current spent fuel inventory, and the projected discharges of spent fuel, Unit 3 will lose the capability to fully offload the reactor core by the year 2007. Unit 4 will lose the capability to fully offload the reactor core by the year 2009. To extend this capability beyond the above dates, the licensee has proposed license amendments to install a freestanding spent fuel storage rack module in the cask pit of each unit's fuel handling building. The spent fuel pool for each unit is currently licensed to store a total of 1,404 fuel assemblies in high-density racks using Boraflex neutron absorbing panels. The new racks will use Boral as the neutron absorbing material. The racks are designed for storage of 131 fuel assemblies, increasing the total storage capacity of each unit to 1,535 assemblies.

The additional storage capacity provided by the cask pit racks will be used to store spent fuel to allow refueling outage fuel offloads and non-outage fuel shuffles. The cask pit racks will be removed, cleaned, and stored in an alternate location prior to any spent fuel cask loading operations.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes, as set forth below, that there are no significant environmental impacts associated with the proposed amendment. The details of the staff's safety evaluation will be provided in the license amendment when it is issued by the NRC.

During refueling outages, there may be a slight increase in the amount of heat that has to be removed from the combination of the spent fuel pool and the cask pit. The peak increase will be less than one percent, and the heat load from spent fuel storage is very small compared to the heat load from normal plant operations. Therefore, the overall increase in the amount of heat released will be quite small and insignificant.

Even though additional boron will be introduced by the Boral panels in the storage racks in the cask pit, no significant increase in tritium production from the neutron capture by boron-10 is expected.

The proposed action will not significantly increase the probability or consequences of accidents, there are no significant changes in the types or significant increase in the quantities of effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impacts. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement related to operation of Turkey Point Plant, dated July 1972, and Supplement 5 to NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Turkey Point Units 3 and 4,'' dated January 2002.

Agencies and Persons Consulted

On September 29, 2003, the staff consulted with Michael Stevens of the Bureau of Radiological Control regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 26, 2002, as supplemented by a letter dated September 8, 2003. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and

Management System (ADAMS) Public Electronic Reading Room on the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 17th day of October 2003.

For The Nuclear Regulatory Commission.

Eva A. Brown,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–26893 Filed 10–23–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–368]

Entergy Operations, Inc.; Notice of Receipt of Application for Renewal of Facility Operating License No. NPF–6 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (NRC or Commission) has received an application, dated October 14, 2003, from the Entergy Operations, Inc., filed pursuant to Section 103b of the Atomic Energy Act of 1954, as amended, and 10 CFR Part 54, to renew Operating License No. NPF–6 for the Arkansas Nuclear One, Unit 2. Renewal of the license would authorize the applicant to operate the facility for an additional 20-year period. The current operating license for the Arkansas Nuclear One, Unit 2, expires on July 17, 2018. The Arkansas Nuclear One, Unit 2, is a pressurized-water reactor designed by Combustion Engineering Company and is located in Pope County, Arkansas. The acceptability of the tendered application for docketing, and other matters including an opportunity to request for a hearing, will be addressed in subsequent **Federal Register** notices.

Copies of the application are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically from the Publicly Available Records (PARS) component of the NRC's Agencywide Documents Access and Management System (ADAMS) under accession number ML032890483. The ADAMS Public Electronic Reading Room is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html.* In addition, the application is available on the NRC web page at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html*, while the application is under review. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, (301) 415–4737, or by email to *pdr@nrc.gov.*

The license renewal application is also available to local residents near the Arkansas Nuclear One at the Ross Pendergraft Library and Technology Center at the Arkansas Tech University in Russellville, Arkansas.

Dated at Rockville, Maryland, this 21st day of October 2003.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–26891 Filed 10–23–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Exelon Generation Company (EGC), LLC; Notice of Receipt and Availability of Application for Early Site Permit for the Clinton ESP Site

On September 25, 2003, the Nuclear Regulatory Commission (NRC, the Commission) received an application from Exelon Generation Company, LLC filed pursuant to Section 103 of the Atomic Energy Act and 10 CFR part 52, for an early site permit (ESP) for property co-located with the existing Clinton Power Station facility near Clinton, Illinois, hereafter identified as the Clinton ESP site.

An applicant may seek an ESP in accordance with Subpart A of 10 CFR part 52 separate from the filing of an application for a construction permit (CP) or combined license (COL) for a nuclear power facility. The ESP process allows resolution of issues relating to siting. At any time during the period of an ESP (up to 20 years), the permit holder may reference the permit in an application for a CP or COL.

Subsequent **Federal Register** notices will address the acceptability of the tendered early site permit application for docketing and provisions for participation of the public and other parties in the ESP review process.

A copy of the application is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland and via the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* The accession number for the application is ML032721596. Future publicly available documents related to the application will also be posted in ADAMS. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

The application is also available to local residents at the Vespasian Warner Public Library in Clinton, Illinois, and it will be available on the NRC Web page at *http://www.nrc.gov/reactors/new-licensing/license-reviews/esp.html.*

Dated at Rockville, Maryland, this 20th day of October 2003.

For The Nuclear Regulatory Commission.

James E. Lyons,

Program Director, New, Research and Test Reactors Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–26894 Filed 10–23–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on November 5–8, 2003, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Monday, November 20, 2002 (67 FR 70094).

Wednesday, November 5, 2003 (Closed)

10:15 a.m.–7 p.m.: Safeguards and Security (Closed)—The Committee will meet with representatives of the Office of Nuclear Regulatory Research and the Office of Nuclear Security and Incident Response to discuss safeguards and security matters. Also, the Committee will discuss a proposed ACRS report on safeguards and security matters.

Thursday, November 6, 2003, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:30 a.m.: Proposed Resolution of Generic Safety Issue 189, ''Susceptibility of Ice Condenser and Mark III Containments to Early Failure from Hydrogen Combustion During a Severe Accident'' (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff on their proposed resolution of GSI–189.

10:45 a.m.–11:45 a.m.: Draft Final Regulatory Guide 1.32, Revision 3, ''Criteria for Power Systems for Nuclear Plants'' (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding Regulatory Guide 1.32 which endorses IEEE Standard 308–2001, ''Criteria for Class 1E Power Systems for Nuclear Generating Systems.'' The guide reflects the one public comment received during the public period which ended during July 2003.

12:45 p.m.–2:45 p.m.: Mixed Oxide Fuel Fabrication Facility (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the license applicant regarding the issuance of the Safety Evaluation Report (SER) for the proposed MOX Fuel Fabrication Facility.

3 p.m.–5 p.m.: Advanced Non-Light Water Reactor Licensing Framework (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the license applicant regarding their progress in the development of a technology neutral, risk-informed and performance-based approach for licensing future non-LWR reactor designs.

5:15 p.m.–5:45 p.m.: Subcommittee Report on the R. E. Ginna License Renewal Application (Open)—The Committee will hear a report by and hold discussions with the Chairman of the ACRS Subcommittee on Plant License Renewal regarding the review of the R. E. Ginna License Renewal Application.

5:45 p.m.–6 p.m.: Review of the NRC Safety Research Program Report (Open)—The Chairman of the Safety Research Program Subcommittee will discuss the progress to date on the annual ACRS report to the Commission on the NRC Safety Research Program.

6 p.m.–7:30 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will discuss proposed ACRS reports on matters considered during this meeting. In addition, the Committee will discuss a proposed ACRS report on safeguards and security matters (Closed).

Friday, November 7, 2003, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10 a.m.: Early Site Permit Review Standard (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the public comments on the draft standard and the efficacy of the standard as noted in the early site permit applications received to date.

10:15 a.m.–12 Noon: Effectiveness of Resolution of USI–A–45, ''Shutdown Decay Heat Removal Requirements'' (Open)—The Committee will hear an information briefing by the NRC staff on the effectiveness of the resolution of USI–A–45.

1 p.m.–2 p.m.: ACRS Retreat in 2004 (Open)—The Committee will discuss scope, topics, dates and location of a possible 2004 ACRS Retreat.

2 p.m.–2:45 p.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, including anticipated workload and member assignments.

2:45 a.m.–3 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

3 p.m.–4 p.m.: Task Force Report on Operating Experience (Open)—The Committee will receive an information briefing by the NRC staff on its task force report on operating experience.

4:15 p.m.–7:30 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will discuss proposed ACRS reports on matters considered during this meeting. In addition, the Committee will discuss a proposed ACRS report on safeguards and security matters (Closed).

Saturday, November 8, 2003, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–1 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue discussion of the proposed ACRS reports on matters considered during its meeting. In addition, the Committee will discuss a proposed ACRS report on Safeguards and Security matters (Closed).

1 p.m.–1:15 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 16, 2003 (68 FR 59644). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Associate Director for Technical Support named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Associate Director for Technical Support prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Associate Director for Technical Support if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) Pub. L. 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss and protect information classified as national security information as well as unclassified safeguards information pursuant to 5 U.S.C. 552b(c)(1) and (3).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as

well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Dr. Sher Bahadur, Associate Director for Technical Support (301–415–0138), between 7:30 a.m. and 4:15 p.m., ET.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., ET, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: October 20, 2003.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 03–26896 Filed 10–23–03; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

October 23, 2003 Public Hearing; Sunshine Act

OPIC's Sunshine Act notice of its public hearing was published in the **Federal Register** (Volume 68, Number 194, Page 57935) on October 7, 2003. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing in conjunction with OPIC's October 30, 2003 Board of Directors meeting scheduled for 2 PM on October 23, 2003 has been cancelled.

FOR FURTHER INFORMATION CONTACT: Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *cdown@opic.gov.*

Dated: October 22, 2003.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 03–27022 Filed 10–22–03; 12:07 pm]

BILLING CODE 3210–01–M

PENSION BENEFIT GUARANTY CORPORATION

Exemption From the Bond/Escrow Requirement Relating to the Sale of Assets by an Employer Who Contributes to a Multiemployer Plan; Florida Marlins, L.P.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of exemption.

SUMMARY: The Pension Benefit Guaranty Corporation has granted a request from the Florida Marlins, L.P. for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended, with respect to the Major League Baseball Players Pension Plan. A notice of the request for exemption from the requirement was published on July 9, 2003 (68 FR 41025). The effect of this notice is to advise the public of the decision on the exemption request.

ADDRESSES: The non-confidential portions of the request for an exemption and the PBGC response to the request may be obtained by writing PBGC's Communications and Public Affairs Department (''CPAD'') at Suite 240, 1200 K Street, NW., Washington, DC 20005–4026, or by visiting or calling CPAD (202–326–4040) during normal business hours.

FOR FURTHER INFORMATION CONTACT: Jason E. Wolf, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; telephone 202–326–4020. (For TTY/TDD users, call the Federal Relay Service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4020).

SUPPLEMENTARY INFORMATION:

Background

Section 4204 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980 (''ERISA'' or ''the Act''), provides that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1)(A)–(C), are that:

(A) The purchaser has an obligation to contribute to the plan with respect to the operations for substantially the same number of contribution base units for which the seller was obligated to contribute;

(B) The purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, in an amount equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred (the amount of the bond or escrow is doubled if the plan is in reorganization in the year in which the sale occurred); and

(C) The contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale. Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation (''PBGC'') to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. Senate Committee on Labor and Human Resources, 96th Cong., 2nd Sess., S. 1076, The Multiemployer Pension Plan Amendments Act of 1980: Summary and Analysis of Considerations 16 (Comm. Print, April 1980); 128 Cong. Rec. S10117 (July 29, 1980). The granting of an exemption or variance from the bond/escrow requirement does not constitute a finding by the PBGC that a particular transaction satisfies the other requirements of section 4204(a)(1).

Under the PBGC's regulation on variances for sales of assets (29 CFR part 4204), a request for a variance or waiver

of the bond/escrow requirement under any of the tests established in the regulation (sections 4204.12 & 4204.13) is to be made to the plan in question. The PBGC will consider waiver requests only when the request is not based on satisfaction of one of the three regulatory tests or when the parties assert that the financial information necessary to show satisfaction of one of the regulatory tests is privileged or confidential financial information within the meaning of 5 U.S.C. 552(b)(4) of the Freedom of Information Act.

Under section 4204.22 of the regulation, the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and section 4204.22(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption. The PBGC received no comments on the request for exemption.

Decision

On July 9, 2003, the PBGC published a notice of the pendency of a request by the Florida Marlins, L.P. (formerly known as Montreal Expos, L.P.) (the ''Buyer'') for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) with respect to its purchase of the Florida Marlins Baseball Team from the F.M. B.C. II, L.L.C. (the ''Seller'') (68 FR 41025). According to the request, the Major League Baseball Players Pension Plan (the ''Plan'') was established and is maintained pursuant to a collective bargaining agreement between the professional major league baseball teams (the ''Clubs'') and the Major League Baseball Players Association (the ''Players Association'').

According to the Buyer's representations, the Seller was obligated to contribute to the Plan for certain employees of the sold operations. Effective February 15, 2002, the Buyer and Seller entered into an agreement under which the Buyer agreed to purchase substantially all of the assets and assume substantially all of the liabilities of the Seller relating to the business of employing employees under the Plan. The Buyer agreed to contribute to the Plan for substantially the same number of contribution base units as the Seller. The Seller agreed to be secondarily liable for any withdrawal liability it would have had with respect to the sold operations (if not for section 4204) should the Buyer withdraw from the Plan within the five plan years following the sale and fail to pay its withdrawal liability. The amount of the bond/escrow required under section 4204(a)(1)(B) of ERISA is $1,254,904. The estimated amount of the unfunded vested benefits allocable to the Seller with respect to the operations subject to the sale could be as high as $11,200,000. The transaction had to be approved by Major League Baseball, which required that the debt-equity ratio of the Buyer be no more than 60 percent. While the separate major league clubs are the nominal contributing employers to the Plan, the Major League Central Fund, under the Officer of the Commissioner, receives the revenues and makes the payments for certain common expenses including each club's contribution to the Plan. In support of the waiver request, the requester asserts that: ''The Plan is funded directly from Revenues which are paid from the Central Fund directly to the Plan without passing through the hands of any of the clubs. Therefore, the Plan enjoys a substantial degree of security with respect to contributions on behalf of the clubs. A change in ownership of a club does not affect the obligation of the Central Fund to fund the Plan out of the Revenue. As such, approval of this exemption request would not significantly increase the risk of financial loss to the Plan.''

Based on the facts of this case and the representations and statements made in connection with the request for an exemption, the PBGC has determined that an exemption from the bond/escrow requirement is warranted, in that it would more effectively carry out the purposes of Title IV of ERISA and would not significantly increase the risk of financial loss to the Plan. Therefore, the PBGC hereby grants the request for an exemption for the bond/escrow requirement. The granting of an exemption or variance from the bond/escrow requirement of section 4204(a)(1)(B) does not constitute a finding by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1). The determination of whether the transaction satisfies such other requirements is a determination to be made by the Plan sponsor.

Issued at Washington, DC, on this 20th day of October 2003.

Steven A. Kandarian,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 03–26910 Filed 10–23–03; 8:45 am]

BILLING CODE 7708–01–P

PENSION BENEFIT GUARANTY CORPORATION

Exemption From the Bond/Escrow Requirement Relating to the Sale of Assets by an Employer Who Contributes to a Multiemployer Plan; Baseball Expos, L.P.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of exemption.

SUMMARY: The Pension Benefit Guaranty Corporation has granted a request from the Baseball Expos, L.P. for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended, with respect to the Major League Baseball Players Pension Plan. A notice of the request for exemption from the requirement was published on July 9, 2003 (68 FR 41024). The effect of this notice is to advise the public of the decision on the exemption request.

ADDRESSES: The non-confidential portions of the request for an exemption and the PBGC response to the request may be obtained by writing PBGC's Communications and Public Affairs Department (''CPAD'') at Suite 240, 1200 K Street, NW., Washington, DC 20005–4026, or by visiting or calling CPAD (202–326–4040) during normal business hours.

FOR FURTHER INFORMATION CONTACT: Jason E. Wolf, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; telephone 202–326–4020. (For TTY/TDD users, call the Federal Relay Service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4020).

SUPPLEMENTARY INFORMATION:

Background

Section 4204 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980 (''ERISA'' or ''the Act''), provides that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1)(A)–(C), are that:

(A) The purchaser has an obligation to contribute to the plan with respect to the operations for substantially the same number of contribution base units for which the seller was obligated to contribute;

(B) The purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, in an

amount equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred (the amount of the bond or escrow is doubled if the plan is in reorganization in the year in which the sale occurred); and

(C) The contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale. Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) authorizes the Pension Benefit Guaranty Corporation (''PBGC'') to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. Senate Committee on Labor and Human Resources, 96th Cong., 2nd Sess., S. 1076, The Multiemployer Pension Plan Amendments Act of 1980: Summary and Analysis of Considerations 16 (Comm. Print, April 1980); 128 Cong. Rec. S10117 (July 29, 1980). The granting of an exemption or variance from the bond/escrow requirement does not constitute a finding by the PBGC that a particular transaction satisfies the other requirements of section 4204(a)(1).

Under the PBGC's regulation on variances for sales of assets (29 CFR 4204), a request for a variance or waiver of the bond/escrow requirement under any of the tests established in the regulation (sections 4204.12 and 4204.13) is to be made to the plan in question. The PBGC will consider waiver requests only when the request is not based on satisfaction of one of the three regulatory tests or when the parties assert that the financial information necessary to show satisfaction of one of the regulatory tests is privileged or confidential financial information within the meaning of 5 U.S.C. 552(b)(4) of the Freedom of Information Act.

Under section 4204.22, the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and section 4204.22(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption. The PBGC received no comments on the request for exemption.

Decision

On July 9, 2003, the PBGC published a notice of the pendency of a request by the Baseball Expos, L.P. (the ''Buyer'') for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) with respect to its purchase of the Montreal Expos Baseball Team from the Florida Marlins, L.P. (formerly known as Montreal Expos, L.P.) (the ''Seller'') (68 FR 41024). According to the request, the Major League Baseball Players Pension Plan (the ''Plan'') was established and is maintained pursuant to a collective bargaining agreement between the professional major league baseball teams (the ''Clubs'') and the Major League Baseball Players Association (the ''Players Association'').

According to the Buyer's representations, the Seller was obligated to contribute to the Plan for certain employees of the sold operations. Effective February 15, 2002, the Buyer and seller entered into an agreement under which the Buyer agreed to purchase substantially all of the assets and assume substantially all of the liabilities of the Seller relating to the business of employing employees under the Plan. The Buyer agreed to contribute to the Plan for substantially the same number of contribution base units as the Seller. The Seller agreed to be secondarily liable for any withdrawal liability it would have had with respect to the sold operations (if not for section 4204) should the Buyer withdraw from the Plan within the five plan years following the sale and fail to pay its withdrawal liability. The amount of the bond/escrow required under section 4204(a)(1)(B) of ERISA is $1,254,904. The estimated amount of the unfunded vested benefits allocable to the Seller with respect to the operations subject to the sale could be as high as $11,200,000. The transaction had to be approved by Major League Baseball, which required that the debt-equity ratio of the Buyer be no more than 60 percent. While the separate major league clubs are the nominal contributing employers to the Plan, the Major League Central Fund, under the Officer of the Commissioner, receives the revenues and makes the payments for certain common expenses including each club's contribution to the Plan. In support of the waiver request, the requester asserts that: ''The Plan is funded directly from Revenues which are paid from the Central Fund directly to the Plan without passing through the hands of any of the clubs. Therefore, the Plan enjoys a substantial degree of security with respect to contributions on behalf of the clubs. A change in ownership of a club does not affect the obligation of the Central Fund to fund the Plan out of the Revenue. As such, approval of this exemption request would not significantly increase the risk of financial loss to the Plan.''

Based on the facts of this case and the representations and statements made in connection with the request for an exemption, the PBGC has determined that an exemption from the bond/escrow requirement is warranted, in that it would more effectively carry out the purposes of Title IV of ERISA and would not significantly increase the risk of financial loss to the Plan. Therefore, the PBGC hereby grants the request for an exemption for the bond/escrow requirement. The granting of an exemption or variance from the bond/escrow requirement of section 4204(a)(1)(B) does not constitute a finding by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1). The determination of whether the transaction satisfies such other requirements is a determination to be made by the Plan sponsor.

Issued at Washington, DC, on this 20th day of October 2003.

Steven A. Kandarian,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 03–26911 Filed 10–23–03; 8:45 am]

BILLING CODE 7708–01–P

POSTAL SERVICE

Sunshine Act Meeting

DATES AND TIMES: Monday, November 3, 2003; 10:30 a.m. and 3 p.m.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant

Plaza, SW., in the Benjamin Franklin Room.

STATUS: November 3—10:30 a.m. (Closed); 3 p.m. (Open).

MATTERS TO BE CONSIDERED:

Monday, November 3—10:30 a.m. (Closed)

1. Financial Transparency.
2. Strategic Planning.
3. Personnel Matters and Compensation Issues.

Monday, November 3—3 p.m. (Open)

1. Minutes of the Previous Meeting, October 2–3, 2003.
2. Remarks of the Postmaster General and CEO.
3. Quarterly Report on Service Performance.
4. Capital Investments.
a. Accounts Payable Replacement System.
b. 120 Automatic Flats Tray Lidders.
c. 2,014 Cargo Vans.
5. Tentative Agenda for the December 8–9, 2003, meeting in Washington, DC.

FOR FURTHER INFORMATION CONTACT: William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

William T. Johnstone,

Secretary.

[FR Doc. 03–27083 Filed 10–22–03; 3:58 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of October 27, 2003:

An Open Meeting will be held on Wednesday, October 29, 2003 at 10 a.m., in Room 6600.

The subject matter of the Open Meeting scheduled for Wednesday, October 29, 2003 will be:

1. The Commission will hear oral argument on an appeal by the Division of Enforcement and the Office of the Chief Accountant (together, the ''Division'') from the decision of an administrative law judge in a proceeding brought against James Thomas McCurdy, a certified public accountant. The administrative law judge found that McCurdy did not engage in improper professional conduct within the meaning of Rule 102(e) of the Commission's Rules of Practice in connection with his audit of the financial statements of JWB Aggressive Growth Fund (the ''Fund''), a registered investment company, for the year ending December 31, 1998. The law judge found that McCurdy's audit of the Fund's financial statements was not performed in accordance with generally accepted auditing standards (''GAAS''), primarily because McCurdy failed to obtain sufficient competent evidence about the probable collectibility of a receivable that was recorded as an asset in the Fund's financial statements. The law judge also found that the record did not establish the charge that the Fund's financial statements were not in accordance with generally accepted accounting principles (''GAAP'') because the Division did not establish that the receivable was not collectible. The law judge further found that McCurdy's professional conduct was neither reckless nor highly unreasonable and thus did not constitute a violation of Rule 102(e) as charged. The law judge therefore dismissed the charges against McCurdy.

Among the issues likely to be argued are:

1. whether McCurdy obtained sufficient competent evidence about the collectibility of the receivable.
2. whether the Fund's financial statements were in accordance with GAAP.
3. whether McCurdy's audit of the Fund's financial statements were in accordance with GAAS.
4. whether McCurdy's professional conduct was reckless or highly unreasonable.
5. if McCurdy's conduct was reckless or highly unreasonable, whether sanctions should be imposed in the public interest.

For further information, please contact the Office of the Secretary at (202) 942–7070.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: October 21, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–26972 Filed 10–21–03; 5:00 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48657; File No. SR–Amex–2003–87]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Allocation and Performance Evaluation Procedures for Securities Admitted to Dealings on an Unlisted Basis

October 17, 2003.

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 3, 2003 the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b-4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks a six-month extension of its allocations and performance evaluation procedures for securities admitted to dealings on an unlisted trading privileges (''UTP'') basis to permit these programs to remain in effect while the Commission considers permanent approval of these procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV 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

The Exchange proposes to extend its specialist allocation and performance evaluation rules for securities admitted to dealings on a UTP basis to permit the Commission to consider the permanent approval of these rules. The Commission approved on a pilot basis, through two independent approval orders, the Exchange's specialist

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b-4(f)(6).

[5] The Commission waived the five-day pre-filing notice requirement. *See* Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii). The Amex also asked the Commission to waive the 30-day operative delay.

allocation and performance evaluation procedures with respect to securities admitted to trading pursuant to UTP (''Pilots'').[6] Amex Rule 28, ''Allocation of Securities Admitted to Dealings on an Unlisted Trading Privileges (''UTP'') Basis,'' details the Exchange's specialist allocation rules for UTP trading and Amex Rule 29, ''Market Quality Committee'' details the Exchange's specialist performance evaluation rules for UTP trading. The proposed rule change does not alter the operation of either of the Pilots in any way.[7]

The Exchange's filing contained a detailed description of the Pilots. That description has not been included in this notice because it is duplicative of the descriptions contained in the original approval orders for the Pilots.[8] This filing extends the effective dates of both Amex Rule 28 and Amex Rule 29 until April 5, 2004.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(5)[10] in particular in that the Exchange's proposed rules are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of free and open market and a national market system and, in general, to protect investors and the public interest. More specifically, the Exchange believes that trading securities on an unlisted basis will provide investors with increased flexibility in satisfying their investment needs by providing additional choice and increased competition in markets to effect transactions in the securities subject to unlisted trading.

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. The Exchange believes that in fact, the proposed rule change will tend to enhance competition by providing investors with additional choice and increased competition in markets to effect transactions in securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not solicit nor did it receive any written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b-4(f)(6) thereunder.[12]

Although Rule 19b-4(f)(6) requires that an Exchange submit a notice of its intent to file at least five business days prior to the filing date, the Commission waived this requirement at the Amex's request in view of the fact that the proposed rule change seeks to continue existing pilot programs. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Amex has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the Exchange's allocation and performance evaluation procedures to continue on an uninterrupted basis. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–Amex–2003–87 and should be submitted by November 14, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–26818 Filed 10–23–03; 8:45 am]

BILLING CODE 8010–01–P

[6] *See* Securities Exchange Act Release Nos. 45698 (April 5, 2002), 67 FR 18051 (April 12, 2002) (File No. SR–Amex 2001–107); and 46750 (October 30, 2002), 67 FR 67880 (November 7, 2002) (File No. SR–Amex 2002–19).

[7] Telephone conference between Bill Floyd-Jones, Associate General Counsel, Amex, and Marisol Rubecindo, Law Clerk, Division of Market Regulation, Commission (October 7, 2003).

[8] Telephone conference between Bill Floyd-Jones, Associate General Counsel, Amex, Marc F. McKayle, Special Counsel, and Marisol Rubecindo, Law Clerk, Division of Market Regulation, Commission (October 15, 2003). *See also* note 6, *supra.*

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b-4(f)(6).

[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48649; File No. SR–GSCC–2002–03]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to the Revision of the Comparison-Only Membership Application Approval Process

October 16, 2003.

I. Introduction

On May 22, 2002, the Government Securities Clearing Corporation (''GSCC'')[1] filed with the Securities and Exchange Commission (''Commission'') a proposed rule change File No. SR–GSCC–2002–03 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[2] On June 25, 2002,

[1] On January 1, 2003, MBS Clearing Corporation (''MBSCC'') was merged into the Government Securities Clearing Corporation (''GSCC''), and GSCC was renamed the Fixed Income Clearing Corporation (''FICC''). Securities Exchange Act Release No. 47015 (December 17, 2002), 67 FR 78531 (December 24, 2002) [File Nos. SR–GSCC–2002–09 and SR–MBSCC–2002–01].

[2] 15 U.S.C. 78s(b)(1).

GSCC filed an amendment to the proposed rule change. Notice of the proposed rule change was published in the **Federal Register** on July 30, 2003.[3] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

In the beginning of 2002, GSCC implemented various rule changes that effectuated GSCC's new governance structure resulting from the integration of GSCC with The Depository Trust & Clearing Corporation.[4] As part of the new structure, the newly formed GSCC/MBSCC Membership and Risk Management Committee (''Committee'') was given the authority to approve or reject applications for netting membership and for comparison-only membership.[5] Upon further review, GSCC has determined that it would be more appropriate for GSCC management to approve or reject applications for comparison-only membership.[6]

The proposed rule change will permit GSCC to effectively balance the interests involved in the membership approval process, including the need for a prudent review of membership applicants as well as the need to admit members on a timely basis. This goal is most appropriately met by having management approve GSCC comparison-only membership applicants.[7] GSCC believes that, given the difference in the level of risk posed by the two types of GSCC membership applicants, only applications to become members of GSCC's netting service should require the Committee's review and approval.[8]

GSCC will activate comparison-only membership for qualified applicants upon completion of the requisite financial and/or other operational reviews and upon receipt of all membership documentation as is required by GSCC's rules. In addition, management will provide the Committee with a list of comparison-only firms being considered for approval by management prior to activating any firm's comparison-only membership.

Consistent with these changes and in order to clarify relevant terms for members, GSCC is also expanding the current definition of ''Corporation'' in its Rule 1. Going forward, ''Corporation'' will also mean ''Management'' unless otherwise indicated, and these terms will be used interchangeably. This is not a substantive change and is not a delegation of duties currently reserved for the Board.

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.[9] Because the comparison-only service provides only for the comparison of submitted trades, does not provide for any transfer between members of securities and funds, and does not provide guarantee of settlements, comparison-only members bring basically no risk to GSCC. As such, management's determination that all requisite financial and operational reviews have been completed with satisfactory results and that all requisite membership documentation have been filed is sufficient for activation of an applicant's comparison-only membership. Accordingly, the proposed rule change should not negatively affect GSCC's ability to safeguard securities and funds which are in its custody or control or for which it is responsible, and therefore, is consistent with GSCC's obligations under section 17A of the Act.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–2002–03) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–26819 Filed 10–23–03; 8:45 am]

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[3] Securities Exchange Act Release No. 48220 (July 23, 2003), 68 FR 44825.

[4] Securities Exchange Act Release No. 45378 (January 31, 2002), 67 FR 6064 [File No. SR–GSCC–2001–13].

[5] The term ''comparison-only member'' means a member that is a member only of the comparison system.

[6] The Committee voted to delegate the authority to approve comparison-only membership applicants to management during its March 7, 2002 meeting. The purpose of this rule filing is to allow GSCC to implement this change.

[7] This is consistent with the process currently employed by the National Securities Clearing Corporation (''NSCC''). The President of NSCC or a Managing Director of NSCC Risk Management may authorize a Vice President of NSCC Risk Management to approve non-guaranteed service applicants that meet membership requirements. The NSCC Membership and Risk Management Committee receives a list showing the name of each approved non-guaranteed service member.

[8] GSCC's netting service provides for GSCC's guarantee of settlement. GSCC's comparison-only service does not do so.

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48660; File No. SR–OC–2003–08]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by OneChicago, LLC Relating to Maintenance Standards for a Security Futures Product Based on a Single Security

October 20, 2003.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on October 14, 2003, OneChicago, LLC (''OneChicago'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule changes described in Items I, II, and III below, which Items have been prepared by OneChicago. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

OneChicago also has filed the proposed rule change with the Commodity Futures Trading Commission (''CFTC''). OneChicago filed a written certification with the CFTC under section 5c(c) of the Commodity Exchange Act[3] on October 13, 2003.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

OneChicago proposes to amend the maintenance standards requirement (''Maintenance Standards'') for a security futures product based on a single security (''Single Stock Future'') relating to the market price of the underlying security. The text of the proposed rule change appears below. New text is in *italics.*

Eligibility And Maintenance Criteria For Security Futures Products

I. No Change.

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] 7 U.S.C. 7a–2(c).

II. Maintenance standards for a security futures product based on a single security.

A. OneChicago will not open for trading any security futures product that is physically settled with a new delivery month, and may prohibit any opening purchase transactions in the security futures product already trading, to the extent it deems such action necessary or appropriate, unless the underlying security meets each of the following maintenance requirements; provided that, if the underlying security is an ETF Share, TIR or Closed-End Fund Share, the applicable requirements for initial listing of the related security futures product (as described in I.A. above) shall apply in lieu of the following maintenance requirements:

(i)–(iv) No Change.

(v) The market price per share of the underlying security *has not* closed below $3.00 on the previous trading day to the Expiration Day of the nearest expiring Contract on the underlying security. The market price per share of the underlying security will be measured by the closing price reported in the primary market in which the underlying security traded.

Requirement (v) as Applied to Restructure Securities:

If a Restructure Security is approved for security futures product trading under the initial listing standards in Section I, the market price history of the Original Equity Security prior to the commencement of trading in the Restructure Security, including ''when-issued'' trading, may be taken into account in determining whether this requirement is satisfied.

(vi) No Change.

B–DNo Change.

III.–IV. No Change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OneChicago has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

OneChicago proposes to correct Maintenance Standard II.A.v in which the words ''has not'' were inadvertently omitted. On February 24, 2003, OneChicago filed a proposed rule change with the Commission that amended OneChicago's maintenance standards for Single Stock Future that would prevent OneChicago from opening a Single Stock Future contract in a new delivery month if the market price per share of the underlying security closed below $3.00 on the previous trading day to the expiration of the nearest expiring Contract on the underlying security.[4] OneChicago states that the purpose clause of the February 24, 2003 proposed rule filing properly described the maintenance requirement; however, the rule text inadvertently left out the words ''has not.''[5]

The correction made today is consistent with changes made on the option exchanges. Section 6(h)(3)(C) of the Act requires that Listing Standards for security futures ''be no less restrictive than comparable Listing Standards for options traded on a national securities exchange. * * *''[6] The Commission has approved similar rule changes for the Chicago Board Options Exchange, Inc. (''CBOE''),[7] the American Stock Exchange LLC (''Amex''),[8] the International Stock Exchange, Inc. (''ISE''),[9] the Philadelphia Stock Exchange, Inc. (''Phlx''),[10] and the Pacific Exchange, Inc. (''PCX'').[11] Since CBOE, Amex, ISE, Phlx and PCX have comparable maintenance Listing Standards, the proposed rule change meets the requirement of section 6(h)(3)(C) of the Act.[12]

2. Statutory Basis

The proposed rule change is consistent with section 6(b)(5) of the Act[13] in that it is reasonably designed to prevent fraudulent and manipulative acts and practices, and promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

OneChicago does not believe that the proposed rule change will have a negative impact on competition. In fact, OneChicago believes the proposed rule change would promote competition since the proposed rule change is no less restrictive than comparable options exchanges.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change have not been solicited and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective on October 14, 2003. Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of section 19(b)(1) of the Act.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609.

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[4] *See* Securities Exchange Act Release No. 47445 (March 5, 2003), 68 FR 11595 (March 11, 2003). The Commission received no comments during the comment period.

[5] The current rule text reads:

II.A. OneChicago will not open for trading any security futures product that is physically settled with a new delivery month, and may prohibit any opening purchase transactions in the security futures product already trading, to the extent it deems such action necessary or appropriate, unless the underlying security meets each of the following maintenance requirements; provided that, if the underlying security is an ETF Share, * * *:

v. The market price per share of the underlying security closed below $3.00 on the previous trading day to the Expiration Day of the nearest expiring Contract on the underlying security. The market price per share of the underlying security will be measured by the closing price reported in the primary market in which the underlying security traded.

Requirement (v) as Applied to Restructure Securities:

If a Restructure Security is approved for security futures product trading under the initial listing standards in Section I, the market price history of the Original Equity Security prior to the commencement of trading in the Restructure Security, including ''when-issued'' trading, may be taken into account in determining whether this requirement is satisfied.

[6] 15 U.S.C. 78f(h)(3)(C).

[7] *See* Securities Exchange Act Release No. 44964 (October 19, 2001), 66 FR 54559 (October 29, 2001).

[8] *See* Securities Exchange Act Release No. 59278 (November 16, 2001), 66 FR 59278 (November 27, 2001).

[9] *See* Securities Exchange Act Release No. 45087 (November 20, 2001), 66 FR 60232 (December 3, 2001).

[10] *See* Securities Exchange Act Release No. 45086 (November 19, 2001), 66 FR 59832 (November 30, 2001).

[11] *See* Securities Exchange Act Release No. 45038 (November 6, 2001), 66 FR 57764 (November 16, 2001).

[12] 15 U.S.C. 17f(h)(3)C).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(1).

Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of these filings also will be available for inspection and copying at the principal office of OneChicago. All submissions should refer to File No. SR–OC–2003–08 and should be submitted by November 14, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–26884 Filed 10–23–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48663; File No. SR–PHLX–2003–66]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by the Philadelphia Stock Exchange, Inc., Relating to the Listing and Trading of Options on the Nasdaq Composite Index®

October 20, 2003.

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 September 29, 2003, the Philadelphia Stock Exchange, Inc. (''PHLX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PHLX. The PHLX filed Amendment Nos. 1 and 2 to the proposal on October 17, 2003.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to list and trade cash-settled, European-style options on the Nasdaq Composite Index® (the ''Nasdaq Composite Index'' or ''Index''), a broad-based, market capitalization-weighted, A.M.-settled index comprised of approximately 3,400 stocks listed and traded on The Nasdaq Stock Market, Inc. (''Nasdaq''). In addition to trading full-size options on the Index (''Full-Size Index Options''), the PHLX proposes to trade mini Index options that are 1/10th the size of full-size Index options (''Mini Index Options''), Flexible Exchange Index (''FLEX®'') options on the Index (''FLEX Index Options''), and mini-FLEX Index Options (''Mini FLEX Index Options'') (the Full-Size Index Options, Mini Index Options, FLEX Index Options, and Mini FLEX Index Options may be referred to, collectively, as the ''Index Options''). The PHLX will trade the Index Options pursuant to current PHLX rules governing the trading of index options.[4] The PHLX proposes to amend PHLX Rules 1001A, ''Position Limits,'' and 1079, ''FLEX Index and Equity Options,'' to establish position limits for the proposed Index Options. The text of the proposed rule change appears below. Proposed additions are italicized.

Position Limits

Rule 1001A. (a) Position limits for options on market indexes shall be as follows, except certain positions must be aggregated in accordance with paragraph (d) below:

(i)—(ii) No change.

(iii) Respecting the Nasdaq Composite Index, (1) 50,000 contracts total for full-size options, with 30,000 contracts in the nearest expiration month, and (2) 500,000 contracts total for mini size options, with 300,000 contracts total in the nearest expiration month.

(b)—(d) No change.

(e) Aggregation—Full value, reduced value, long term and quarterly expiring options based on the same index shall be aggregated.

(i)—(ii) No change.

(iii) For aggregation purposes, one full-size Nasdaq Composite Index option contract is the equivalent of 10 mini size Nasdaq Composite Index option contracts.

FLEX Index and Equity Options

Rule 1079. A Requesting Member shall obtain quotes and execute trades in certain non-listed FLEX options at the specialist post of the non-FLEX option on the Exchange. The term ''FLEX option'' means a FLEX option contract that is traded subject to this Rule. Although FLEX options are generally subject to the rules in this section, to the extent that the provisions of this Rule are inconsistent with other applicable Exchange rules, this Rule takes precedence with respect to FLEX options.

(a)—(c) No change.

(d) Position Limits.

(1) FLEX index options shall be subject to a separate position limit of 200,000 contracts on the same side of the market respecting market index options (TPX, VLE and XOC); *50,000 contracts on the same side of the market, with 30,000 contracts on the same side of the market in the nearest expiration month, respecting full-size Nasdaq Composite Index® Options; 500,000 contracts on the same side of the market, with 300,000 contracts on the same side of the market in the nearest expiration month respecting mini-size Nasdaq Composite Index® Options;* 36,000, 48,000, or 60,000 contracts respecting industry index options, depending on the position limit tier determined pursuant to Rule 1001A(b)(i). However, positions in P.M.-settled FLEX index options shall be aggregated with positions in quarterly expiring options listed pursuant to Rule 1101A(b)(iv) on the same underlying index, if the FLEX index option expires at the close of trading on or within two business days of the last day of trading in each calendar quarter. Positions in FLEX index options shall otherwise not be taken into account when calculating position limits for non-FLEX index options.

(2) No change.

(e)–(f) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PHLX included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these

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[15] 17 CFR 200.30–3(a)(75).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mark I. Salvacion, Director and Counsel, PHLX, to Kelly Riley, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, dated October 17, 2003 (''Amendment No. 1''); and letter from Mark I. Salvacion, Director and Counsel, PHLX, to Yvonne Fraticelli, Special Counsel, Division, Commission, dated October 17, 2003 (''Amendment No. 2''). Amendment No. 1 revises the position and exercise limits for the proposed options. Amendment No. 2 proposes to list mini FLEX options on the Nasdaq Composite Index.

[4] *See,* particularly, PHLX Rules 1000A through 1102A (Rules Applicable to Trading of Options on Indices) and, generally, PHLX Rules 1000 through 1090 (Options Rules of the PHLX).

statements may be examined at the places specified in Item IV below. The PHLX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed rule change is to list for trading cash-settled, European-style Full-Size Index Options, Mini Index Options, FLEX Index Options, and Mini FLEX Index Options on the Nasdaq Composite Index. The PHLX believes that the Index Options should provide an important hedging vehicle for traders who engage in trading securities that comprise the Index. The following is a more detailed description of the Index and the proposed Index Options.

Composition of the Index

The Index is a capitalization-weighted index designed to measure the performance of stocks listed and traded on Nasdaq. The Index includes both Nasdaq National Market issues and Nasdaq SmallCap Market issues. As described more fully below, the Index is comprised of all of the securities traded on Nasdaq that are not otherwise excluded on the basis of their security type.

The inclusion of a Nasdaq National Market security or Nasdaq SmallCap Market security in the Index is determined by the type of security. Issues included in the Index include domestic or foreign common stocks, ordinary shares, American Depositary Receipts, shares of beneficial interest, real estate investment trust securities, and tracking stocks [5] (collectively, ''Common-Type Securities''). Issues not included in the Index are convertible debentures, preferred stocks, rights, warrants, units, closed-end funds, exchange-traded funds (''ETFs''), and other derivative securities.

Index-eligible securities are added to the Index on the business day immediately after a last sale is established. If at any time a component security is no longer traded on Nasdaq or no longer meets the security-type eligibility criteria, the security is removed from the Index. The Index is updated on a daily basis and there is no periodic rebalancing of Index components.

As of July 31, 2003, the capitalization of the Index's 3,408 components ranged from $284 billion to $55,000,[6] and the market capitalization of the Index totaled $2.6 trillion. The largest Index component accounted for 11.12% of the weight of the Index and the smallest component accounted for less than 1% of the weight of the Index. The median capitalization of the Index's components was $110 million.

A total of ten industry groups are represented in the Index. The top five industry groups and their weights in the Index are: (1) Computer software and hardware, 52%; (2) healthcare, 14%; (3) financials, 11%; (4) consumer discretionary, 8%; and (5) telecommunications and media, 6%. During the period from January 1, 2003, through July 31, 2003, the average daily trading volume for the component stocks representing 95% of the weight of the Index was 850,000 shares, and the average daily volume for all of the Index's component stocks was 485,000 shares. The top 100 stocks accounted for 64% of the weight of the Index and the bottom 100 stocks accounted for 0.01% of the weight of the Index. The prices of the Index's components ranged from $0.11 per share to $780.00 per share. The average share price was $14.15. The shares outstanding for each of the Index's component stocks ranged from 10,000 shares to 11 billion shares, with an average of 43 million shares outstanding. Options-eligible stocks represented 95% of the weight of the Index.

The Index includes most of the stocks listed and traded on the Nasdaq SmallCap Market, except those issues excluded based on security type. Nasdaq SmallCap Market stocks are ''eligible securities'' within the meaning of the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis (''Nasdaq UTP Plan'' or ''Plan'').[7] Because Nasdaq SmallCap Market securities are ''reported securities'' for purposes of Rule 11Aa3–1 under the Act,[8] the PHLX and Nasdaq believe that they may be included in the Index for purposes of index option trading.[9] According to the PHLX, Nasdaq SmallCap Market securities are subject to stronger quantitative listing standards, stronger governance criteria, and stronger initial listing standards than those that were in place prior to 1997, and Nasdaq SmallCap Market securities therefore should qualify as forming part of the basis for cash-settled Index Options. Further, the PHLX maintains that the listing requirements of the Nasdaq SmallCap Market are more stringent than those of the Amex. The PHLX also notes that Nasdaq SmallCap Market stocks comprise only 1.3% of the capitalization of the Index.

Calculation of the Index

As noted above, the Index is a market capitalization-weighted index comprised of all Common-Type Securities listed on Nasdaq. The value of the Index equals the aggregate value of the Total Shares Outstanding (''TSO'') of each Index component security multiplied by each security's respective price on Nasdaq, divided by the Adjusted Base Period Market Value (''ABPMV''), and multiplied by the Base Value. The ABPMV scales the Index's aggregate value (otherwise in trillions)

[5] Tracking stocks are publicly traded securities issued by a parent company to monitor or ''track'' the underlying performance and/or earnings potential of a subsidiary. Tracking stocks allow the parent company to maintain control over the tracked unit while permitting investors to value the unit as a separate entity.

[6] For companies that list American Depositary Shares, these values represent only the value of the outstanding American Depositary Shares and not the global market capitalization of the issuer, which is the basis for listing on Nasdaq. Nasdaq's minimum listing and maintenance standard for global market capitalization is $50 million.

[7] The Nasdaq UTP Plan initially was approved in 1990. *See* Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27919 (July 6, 1990). The Plan was amended in 2001 to include Nasdaq SmallCap Market stocks. *See* Securities Exchange Act Release 45081 (November 19, 2001), 66 FR 49273 (November 27, 2001). The Plan governs the collection, processing, and dissemination on a consolidated basis of quotation and last sale information for each of its participants (the Cincinnati Stock Exchange, Inc., the National Association of Securities Dealers, Inc., the American Stock Exchange LLC (''Amex''), the Boston Stock Exchange, Inc., the Chicago Stock Exchange, Inc., the Pacific Exchange, Inc., and the PHLX). The consolidated information informs investors of the current quotation and recent trade prices of Nasdaq securities. It enables investors to ascertain from one data source the current prices in all the markets trading Nasdaq securities. The Plan serves as the required transaction reporting plan for its participants, which is a prerequisite for their trading Nasdaq securities.

[8] *See* 17 CFR 240.11Aa3–1.

[9] A ''reported security'' is defined in Rule 11Aa3–1(a)(4) under the Act as ''any listed equity security or Nasdaq security for which transaction reports are required to be made on a real-time basis pursuant to an effective transaction reporting plan.'' An ''effective transaction reporting plan'' is defined in Rule 11Aa3–1(a)(3) under the Act as a transaction reporting plan approved by the Commission under Rule 11Aa3–1 under the Act. A ''transaction reporting plan'' is defined in Rule 11Aa3–1(a)(2) under the Act as ''any plan for collecting, processing, making available or disseminating transaction reports with respect to transactions in reported securities filed with the Commission pursuant to, and meeting the requirements of, this section.'' With the extension of the Nasdaq UTP Plan to include Nasdaq SmallCap Market securities, Nasdaq SmallCap Market securities became securities reported pursuant to an effective transaction reporting plan approved by the Commission.

to a lower order of magnitude, which is more desirable for Index reporting purposes.

The Index Value calculation can be summarized as follows: (Aggregate Market Value/ABPMV) × Base Value.

The Index began on February 5, 1971, at a Base Value of 100.00.

Each Index component's influence on the value of the Index is directly proportional to the value of its Index share weight.

The Index is disseminated every 15 seconds through the Nasdaq Index Dissemination Services℠ (''NIDS'') during normal Nasdaq trading hours (9:30 A.M. to 4:00 P.M. ET). NIDS is a Nasdaq data feed carrying intra-day index values and valuation data for ETFs listed on Nasdaq. The NIDS data feed is carried by all major market data vendors.

The Index is calculated using Nasdaq prices (not consolidated) during the day and the Nasdaq Official Closing Price (''NOCP'') for the close.[10] The NOCP is based on the price of the last unmodified trade reported to Nasdaq's Automated Confirmation Transaction Service℠ at or before 4:00:02 P.M. ET (the ''Predicate Trade''). Nasdaq systems will ''normalize'' the price of the Predicate Trade by comparing it to Nasdaq's best bid and offer prices (''BBO'') (*i.e.*, the best prices displayed by all SuperMontage participants) at the time the Predicate Trade was reported, or by comparing it to the Nasdaq BBO at 4:00:00 P.M. ET for trades reported after that time (the ''Predicate BBO''). Subject to review by Nasdaq Market Watch, if the price of the Predicate Trade falls at or within the Predicate BBO, that price becomes the NOCP. If the price of the Predicate Trade falls outside the Predicate BBO, Nasdaq will adjust it up to the Predicate BBO bid if it is below the bid price or adjust it down to the Predicate BBO ask if it is above the ask price. The NOCP methodology will only impact the individual market close for the Nasdaq; it will not impact the consolidated close or individual market closes of the UTP exchanges. The PHLX notes that the NOCP should not be confused with the consolidated last sale price, which is comprised of the final last sale eligible trade report submitted to the securities information processor during the regular trading session by any market center, including Nasdaq.

Although the Index is calculated until 4:00 P.M. ET, the Index's closing value may change up until 5:15 P.M. ET due to changes or corrections to the last sale in the Index's component securities.

Maintenance

Nasdaq will maintain the Index, and the PHLX represents that it will not influence any Nasdaq decisions concerning maintenance of the Index.

Changes in the number of shares outstanding driven by corporate events such as stock dividends, splits, and certain spin-offs and rights issuances will be adjusted on the ex-date. A change in the TSO arising from other corporate actions including secondary offerings, stock repurchases, conversions, and acquisitions is ordinarily made to the Index on the evening prior to the effective date of the corporate action or as soon as practicable thereafter. Changes are made after the market close and are reflected on *http://www.nasdaqtrader.com/asp/nasdaqcomp.asp* the following morning.

Index-eligible security additions to Nasdaq (either an initial public offering or a seasoned security) will be included in the Index once there is a Nasdaq last sale established (usually day two of listing on Nasdaq). As stated above, if at any time a component security is no longer traded on Nasdaq or no longer meets the eligibility criteria, the security is removed from the Index.

Ordinarily, whenever there is a change in a component security's TSO, a component addition or deletion, or changes due to certain spin-offs and rights offerings, Nasdaq adjusts the ABPMV to ensure that there is no discontinuity in the value of the Index.

The ABPMV can be determined as follows: (Market Value after Adjustments/Market Value before Adjustments) × ABPMV before Adjustments.

Although the PHLX is not involved in the maintenance of the Index, it has represented that it will monitor the Index on a semi-annual basis and will notify Commission staff if and when: (1) 10% of the capitalization of the Index comprises securities with a market capitalization of less than $100 million; or (2) when 10% of the capitalization of the Index is made up of components with an average daily trading volume of less than 10,000 shares over the previous six months. As of July 31, 2003, 2.56% of the capitalization of the Index was made up of securities with a market capitalization of less than $100 million, and 2.19% of the capitalization of the Index was made up of components with an average daily trading volume of less than 10,000 shares over the previous six months.

Index Option Trading

As noted above, the Exchange proposes to trade Full-Size Index Options, Mini Index Options, FLEX Index Options, and Mini FLEX Index Options. The contract multiplier for Full-Size Index Options will be $100 and the contract multiplier for Mini Index Options will be $10. Each contract will trade under separate ticker symbols and will not be fungible with the other. The size of the underlying Index will remain the same for each contract (*i.e.*, Mini Index Options will not overlie a separate Index calculation reduced by 1/10th), and therefore the Exchange will list similar strikes for each and the settlement value will be uniform for each.

According to the PHLX, the proposed Mini FLEX Index Options are designed to provide small institutional and high net-worth customers with the ability to tailor their notional value exposure with a greater degree of precision than would be available with Full-Size Index Options. For example, the PHLX notes that the minimum opening transaction for FLEX index options is $10 million. At an index level of 1900 points, this would represent 53 full-size FLEX Index options and 527 Mini-FLEX index options. For the full-size FLEX index option, each additional contract would increase the notional exposure by $190,000, which is nearly 2% of the notional value of the opening position, while each additional Mini-FLEX index option contract increases the notional exposure by $19,000. The PHLX notes that for customers who have specific investment objectives with acceptable margins of error of less than $190,000, or 2%, the Mini-FLEX index option would represent the preferred product.

The Exchange will list strike prices in $5.00 intervals for Index Options. The minimum tick size for series quoted below $3.00 (*i.e.*, $300 in premium after factoring in the $100 contract multiplier for Full-Size Index Options and $30 in premium after factoring in the $10 contract multiplier for Mini Index Options) will be $.05 (*i.e.*, $5.00 for Full-Size Index Options, and $.50 for Mini Index Options), and for series quoted above $3.00 the minimum tick size will be $.10 (*i.e.*, $10.00 for Full-Size Index Options and $1.00 for Mini Index Options). The trading hours for Index Options will be from 9:30 A.M. to 4:15 P.M. ET.

The PHLX represents that the Options Price Reporting Authority (''OPRA'') has informed the Exchange that trading in Index Options will have a minimal

[10] *See* Securities Exchange Act Release No. 47517 (March 18, 2003), 68 FR 14446 (March 25, 2003) (File No. SR–NASD–2002–158) (approving the establishment of the NOCP).

impact on OPRA's current quoting capacity.[11]

Settlement of Index Options

The proposed Full-Size Index Options and Mini Index Options will expire on the Saturday following the third Friday of the expiration month.[12] Trading in the expiring contract month will normally cease at 4:15 P.M. ET on the immediately preceding Thursday. Nasdaq will calculate the exercise settlement value of the Index at option expiration based on the volume-weighted opening price (''Nasdaq VWOP'') of the component securities in the first four minutes of trading (the ''Extraction Period'') on the business day prior to expiration, which will normally be a Friday. Each Index component will have a trade extraction history independently maintained beginning with the receipt of the first day's trade in that issue and continuing for four continuous minutes. Nasdaq will record and reflect trade adjustments during the Extraction Period for each component until the four-minute window for the last component stock closes or 10:30 A.M., whichever is sooner. Nasdaq will then calculate the Nasdaq VWOP for each security based on the extracted trades and aggregate the Nasdaq VWOPs of the Index's components to calculate the Index settlement value. If a stock fails to open for trading, the last available price on the stock will be used to calculate the Index, as is done for currently listed indexes. A stock will be deemed to have failed to open for trading when it does not open for trading prior to 10:30 A.M. on such trading day.

Surveillance

To monitor trading in Index Options, the Exchange will use the same surveillance procedures it uses currently for each of the Exchange's sector index options.[13] These procedures include complete access to trading activity in the underlying securities. Movements in price and volume are used as a primary indicator in detecting market manipulations such as insider trading activity within the underlying component issues of an index. The PHLX notes that underlying securities are used to determine trading rotations, halts or re-openings [14] and to monitor for price and volume movements in the underlying component issues.

The Intermarket Surveillance Group (''ISG'') Agreement, dated July 14, 1983, as amended, will be applicable to the trading of Index Options. According to the PHLX, as of July 31, 2003, 315 securities, representing 3.27% of the capitalization of the Index and 9.24% of the number of components in the Index, are incorporated outside the United States. Of those 315 securities, only 125, or 0.64% of the capitalization of the Index and 3.67% of the number of components in the Index, are incorporated in countries whose domestic equity exchange is not a member of ISG.[15]

Position Limits

The PHLX proposes to amend Phlx Rule 1001A to establish position limits of 50,000 contracts for Full-Size Index Options, with 30,000 contracts in the nearest expiration month, and 500,000 contracts for Mini Index Options on either side of the market, with 300,000 contracts total in the nearest expiration month. Exercise limits will be set at the same level as position limits. The proposed amendment to PHLX Rule 1001A will require that the position limits in Full-Size Index Options and Mini Index Options be aggregated for the purpose of determining compliance with position and exercise limits. The PHLX proposes to establish the position limit of the index hedge exemption at 150,000 contracts for Full-Size Index Options and 1,500,000 contracts for Mini Index Options. The Exchange proposes to amend PHLX Rule 1079 to establish a separate position limit of 50,000 contracts on the same side of the market for FLEX Index Options, with 30,000 contracts on the same side of the market in the nearest expiration month. For Mini FLEX Index Options, the PHLX proposes to establish a position limit of 500,000 contracts on the same side of the market, with 300,000 contracts on the same side of the market in the nearest expiration month.

(2) Basis

The PHLX believes that the proposed rule change is consistent with Section 6(b)[16] of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[17] in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The Commission is considering granting accelerated approval of the proposed rule change at the end of a 15-day comment period.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies

[11] *See* Letter from Joseph P. Corrigan, Executive Director, OPRA, to Matthew Holm, Director, PHLX, dated September 16, 2003.

[12] Under PHLX Rule 1079(a)(6), a FLEX option on the Index may not expire on any day that falls on or within two business days prior to or subsequent to an expiration day for a non-FLEX option on the Index.

[13] *See, e.g.*, PHLX rules pertaining to: (1) affirmative quoting obligations (PHLX Rule 1014, ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders''); (2) priority and parity (PHLX Rule 1014); (3) execution guarantees (PHLX Rule 1015, ''Execution Guarantees''); (4) firm quotations (PHLX Rule 1082, ''Firm Quotations''); and (5) excessive dealing (PHLX Rule 1021, ''Excessive Dealing in Options'').

[14] *See* PHLX Rule 1047A, ''Trading Rotations, Halts or Reopenings.''

[15] *See* Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 10, 1994) (order approving File Nos. SR–Amex–92–35; SR–CBOE–93–59; SR–NYSE–94–17; SR–PSE–94–07; and SR–PHLX–94–10) (establishing streamlined procedures for the listing of options on any narrow-based index that meets specified criteria, including, among other criteria, the requirement that non-U.S. component securities that are not subject to comprehensive surveillance agreements account for no more than 20% of the weight of the index).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to file number SR–PHLX–2003–66 and should be submitted by November 10, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–26883 Filed 10–23–03; 8:45 am]

BILLING CODE 8010–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Trade and Environment Policy Advisory Committee (TEPAC)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice that the November 5, 2003, meeting of the Trade and Environment Policy Advisory Committee will be held from 10 a.m. to 12 noon. The meeting will be closed to the public from 10 a.m. to 11:40 a.m. and open to the public from 11:40 a.m. to 12 noon, when trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

SUMMARY: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to section 2155(f)(2) of Title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States.

DATES: The meeting is scheduled for November 5, 2003, unless otherwise notified.

ADDRESSES: The meeting will be held at the Winder Building in Conference Room 305, located at 600 17th Street, NW., Washington, DC, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Christina Sevilla, Office of Intergovernmental Affairs and Public Liaison, (202) 395–6120.

Christopher A. Padilla,

U.S. Trade Representative for Intergovernmental Affairs and Public Liaison.

[FR Doc. 03–26811 Filed 10–23–03; 8:45 am]

BILLING CODE 3190–W3–M

[18] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No.: OST–2003–15856]

Notice of Request for Renewal of a Previously Approved Collection

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for renewal and comment. The ICR describes the nature of the information collection and its expected cost and burden. The **Federal Register** Notice, with a 60-day comment period soliciting comments on the following collection of information, was published on August 13, 2003 (68 FR 48439). No comments were received.

DATES: Comments on this notice must be received by November 24, 2003.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number OST–2003–15856 by the following methods:

- Web site: *http://dms.dot.gov:* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility: U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington DC 20590–001.
- Hand Delivery: Room PL–401 on Plaza Level of the Nassif Building, 400 Seventh Street SW., Washington DC, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Regulatory Notes.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the Plaza Level of the Nassif Building, 400 Seventh Street SW., Washington DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Elaine Wheeler; M–61, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, telephone (202) 366–4272 or email to *Elaine.Wheeler@ost.dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Transportation Acquisition Regulation (TAR), 48 CFR part 12.

OMB Control Number: 2105–0517.

Affected Public: Individuals or households and business or other for-profit organizations.

Annual Estimated Burden: 33,115 hours. There is no change to the annual estimated burden.

Abstract: The requested extension of the approved control number covers the TAR which includes forms DOT F 4220.4, DOT F 4220.7, DOT F 4220.43, DOT F 4220.45, DOT F 4220.46, and Form DD 882. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the use of automated collection techniques or other forms of

information technology. All responses to this notice will be summarized and included in the request for OMB approval.

Issued in Washington, DC, on October 16, 2003.

Michael Robinson,

Information Technology Program Management, United States Department of Transportation.

[FR Doc. 03–26871 Filed 10–23–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–16334]

Notice of Receipt of Petition for Decision That Nonconforming 2000 Audi A8 and S8 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2000 Audi A8 and S8 passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2000 Audi A8 and S8 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is November 24, 2003.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies of Baltimore, Maryland (''J.K.'') (Registered Importer 90–006) has petitioned NHTSA to decide whether 2000 Audi A8 and S8 passenger cars are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 2000 Audi A8 and S8 passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2000 Audi A8 and S8 passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 2000 Audi A8 and S8 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2000 Audi A8 and S8 passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 118 *Power-Operated Window Systems,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 225 *Child Restraint Anchorage Systems,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

Petitioner states that the vehicles also comply with the Bumper Standard found at 49 CFR part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* replacement of the instrument cluster with a U.S.-model component.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamps and front sidemarker lamps; (b) installation of U.S.-model taillamp assemblies, which incorporate rear sidemarker lamps.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* inscription of the required warning statement on the passenger side rearview mirror.

Standard No. 114 *Theft Protection:* programming of the vehicles to activate the ignition key warning and the seat belt warning systems.

Standard No. 208 *Occupant Crash Protection:* reprogramming of the seat belt warning system so that it activates in the proper manner. The petitioner states that the vehicles are equipped with automated restraint systems consisting of dual front air bags. The petitioner also states that the vehicles are equipped with combination lap and shoulder belts at the front and rear outboard designated seating positions that are self-tensioning and release by means of a single red pushbutton. The

petitioner describes these components and systems as identical to U.S.-model components and systems.

The petitioner states that all vehicles must be inspected to ensure compliance with the Theft Prevention Standard at 49 CFR part 541, and that anti-thefts marking must be added to vehicles that are not already so marked.

The petitioner also states that a vehicle identification plate must be affixed to the vehicles near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 17, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–26872 Filed 10–23–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–03–16341, Notice 1]

Group Lotus Plc.; Receipt of Application for a Temporary Exemption From Federal Motor Vehicle Safety Standard No. 108 and Part 581 Bumper Standard

In accordance with the procedures of 49 CFR part 555, Group Lotus Plc. (''Lotus'') has applied for a Temporary Exemption from S7. Headlighting requirements, of Federal Motor Vehicle Safety Standard (''FMVSS'') No. 108, *Lamps, reflective devices, and associated equipment;* and Part 581 *Bumper Standard.* The basis of the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

We are publishing this notice of receipt of the application in accordance with the requirements of 49 U.S.C. 30113(b)(2), and have made no judgment on the merits of the application.

I. Background

Lotus, which was founded in 1955, produces small quantities of performance cars. In the past five years, Lotus has sold a total of 550 automobiles in the United States. The only current Lotus vehicle sold in the United States is Lotus Esprit (''Esprit''). In the same time period, Lotus has manufactured a total of 18,888 vehicles worldwide, including Lotus Elise (''Elise'').

The Elise was introduced in 1996, but it was not originally designed or intended for the U.S. market. However, after deciding to terminate production of the Esprit by 1999,[1] petitioner sought to introduce the Elise in the United States. Significant management, ownership and financial hardship issues contributed to the delay in introducing the Elise model. Recently, Peruashan Otomobile Nasional Berhad (''Proton'') has taken a 100% ownership of Lotus. Petitioner is now ready to introduce the Elise vehicle into the U.S. Market. A description of the Elise vehicle is set forth in the Exhibit 1 of the petition (Docket No. NHTSA–03–16341). For additional information on the vehicle, please go to *http://www.LotusCars.com.*

II. Why Lotus Needs a Temporary Exemption

Lotus has continued to experience substantial economic hardship, previously discussed by the agency in a March 3, 2003 Renewal of a Temporary Exemption from FMVSS No. 201 (68 FR 10066).[2] Lotus' latest financial submissions show the company's operating loss of £43,228,000 (≈$69,000,000) for the fiscal year 2000; a loss £18,055,000 (≈ $29,000,000) for the fiscal year 2001; and a loss of £2,377,000 (≈ $4,000,000) for its fiscal year 2002. This represents a cumulative loss for a period of 3 years of £63,660,000 (≈ $102,000,000).[3]

According to the petitioner, the cost of making the Elise compliant with the headlighting requirements of FMVSS 108 and the bumper standard is beyond the company's current capabilities. Petitioner contends that developing and building FMVSS-compliant headlamps and Part 581-compliant bumpers cannot be done without redesigning the entire body structure of the Elise. Specifically, developing Part 581-compliant bumpers would cost $6 million dollars over a period of 2 years. Producing an actual FMVSS-compliant headlamp would cost approximately $1.1 million. In addition, there are unspecified costs of body modifications in order to accommodate the new headlamp, because there is insufficient space in the current body structure to permit an FMVSS-compliant headlamp.

Lotus requests a three-year exemption in order to concurrently develop compliant bumpers and headlamps and make necessary adjustments to the current body structure. Petitioner anticipates the funding necessary for these compliance efforts will come from immediate sales of Elise vehicles in the United States.

III. Why Compliance Would Cause Substantial Economic Hardship and How Lotus Has Tried in Good Faith To Comply With Standard No. 108 and the Bumper Standard

Petitioner contends that Lotus cannot return to profitability unless it receives the temporary exemption. In support of their contention, Lotus prepared alternative forecasts for the next 3 fiscal years. The first forecast assumes that the petitioner receives exemptions from S7 of FMVSS No. 108 and the bumper standard. The second forecast assumes the exemptions are denied.[4] In the event of denial, Lotus anticipates extensive losses through the fiscal year 2006, because it cannot bring the Elise into full compliance any earlier.

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[1] Espirit produciton was eventually extended by three years while petitioner sought to bring Elise into compliance with FMVSS. Espirit will cease production on 12/31/2003.

[2] We note that the Elise vehicle is FMVSS No. 201 compliant.

[3] All dollar values are based on an exchange rate of £1= $1.60.

[4] See Petition Exhibit 2 (Docket No. NHTSA–03–16341).

Fiscal Year	Forecast if exemptions granted (in $)	Forecast if exemptions denied (in $)
2003	≈$975,000	≈ − $1,700,000
2004	≈$12,520,000	≈ − $15,402,000
2005	≈$11,749,000	≈ − $22,718,000

According to the petition, Lotus expended substantial resources (approximately $27,000,000) in the past 12 months in order to bring Elise into compliance with the Federal Motor Vehicle Safety Standards and other U.S. regulations. Specifically, Lotus invested approximately $5,000,000 in order to obtain a suitable engine supplier capable of complying with U.S. emissions standards. Next, Lotus developed an FMVSS 208 compliant air bag system. Significant resources are currently being expended in order to bring Elise in compliance with all other Federal Motor Vehicle Safety Standards, including FMVSSs 208, 210, 212, 214, 219 and 301.

As previously discussed, the Elise was not designed for the U.S. market and does not have a conventional bumper system or the underlying bumper structure. Instead, it was designed with ''clam shell'' body parts. According to the petitioner, installing a compliant bumper system would require re-designing the entire body of the automobile.

Petitioner considered equipping the Elise with an ''interim headlamp'' that would comply with FMVSS No. 108. This headlamp would not feature a polycarbonate cover currently on the vehicle, and would have been assembled from ''off-the-shelf'' parts. However, the development of this ''interim headlamp'' would cost $500,000. Because Lotus anticipates introducing an all-new, fully compliant Elise in 2006, the projected number of vehicles sold until the introduction of the new 2006 model could not justify this investment.

Petitioner contends that installation of ''an interim headlamp'' without a polycarbonate cover would also significantly decrease forecasted sales because aesthetic appearance of the automobile would be compromised. Lotus marketing research forecasted a sales decline of as much as 30%. Further, the absence of the polycarbonate cover would have a negative effect on vehicle aerodynamics, and would decrease fuel economy. Finally, Lotus indicated that installation of ''interim headlamps'' could result in U.S. customers purchasing aftermarket or ''European-spec'' headlamps and installing these headlamps on their vehicles.

As previously stated, Lotus plans to introduce the second generation Elise in late 2006. This vehicle will feature compliant headlamps, bumpers and advanced air bags.

IV. Why an Exemption Would Be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety

Petitioner put forth several arguments in favor of a finding that the requested exemption is consistent with the public interest and the objectives of the Safety Act. Specifically:

1. Petitioner notes that the current Elise headlamp does not pose a safety risk because the headlamp's photometrics are very close to the requirements of FMVSS 108. The headlamp has also been subjected to environmental testing, and has a good warranty record.

2. Petitioner argues that the clamshell body system utilized by the Elise vehicle acts to reduce low-speed damage even in the absence of conventional bumpers. In a situation involving greater damage, the cost of an entire fiberglass clamshell is comparable to bumper-related repair costs of other ''high-end'' vehicles.

3. Petitioner suggests that denial of the petition would prevent Lotus from introducing the Elise for a period of three years and would in fact cause Lotus to seize U.S. operations. This would in turn result in loss of jobs by Lotus employees in the U.S.[5]

4. With respect to consumers, petitioner argues that denial of the petition would limit consumer choices by eliminating Lotus from the marketplace. Lotus contends that its continued presence in the U.S. is needed in order to provide parts and service for the existing Lotus Esprit customers.

5. Lotus remarks that due to the nature of the Elise vehicle, it will, in all likelihood, be utilized infrequently as a ''second'' or a recreational vehicle.

6. Finally, Lotus notes that the Elise does comply with all other Federal Motor Vehicle Safety Standards, and features above-average fuel economy.

[5] In the event the petition is granted, Lotus anticipates hiring more employees and expanding its dealer network.

V. How You May Comment on Lotus's Application

We invite you to submit comments on the application described above. You may submit comments [identified by DOT Docket Number NHTSA–03–16341] by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site by clicking on ''Help and Information'' or ''Help/Info.''
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided.

Docket: For access to the docket in order to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

We shall consider all comments received before the close of business on the comment closing date indicated below. To the extent possible, we shall

also consider comments filed after the closing date. We shall publish a notice of final action on the application in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 24, 2003.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

FOR FURTHER INFORMATION CONTACT: George Feygin in the Office of Chief Counsel, NCC–112, (Phone: 202–366–2992; Fax 202–366–3820; E-Mail: *George.Feygin@nhtsa.dot.gov*).

Issued on: October 20, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–26873 Filed 10–23–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–02–12087; Notice 2]

Century Products; Denial of Application for Decision of Inconsequential Noncompliance

Century Products, a Division of Graco Children's Products, Inc. (Century Products and Graco), of Macedonia, Ohio, determined that as many as 185,175 child restraints fail to comply with 49 CFR 571.213, Federal Motor Vehicle Safety Standard (FMVSS) No. 213, ''Child restraint systems,'' and filed appropriate reports pursuant to 49 CFR Part 573, ''Defect and Noncompliance Responsibility and Reports.'' Century Products also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to safety.

Notice of receipt of the application was published, with a 30-day comment period, on May 17, 2002, in the **Federal Register** (67 FR 35188). NHTSA received one comment, from Advocates for Highway and Auto Safety (Advocates).

FMVSS No. 213, Paragraph S5.1.1, states that when a child restraint system is tested in accordance with S6.1, it shall ''[e]xhibit no complete separation of any load bearing structural element and no partial separation exposing either surfaces with a radius of less than ¼ inch or surfaces with protrusions greater than ⅜ inch above the immediate adjacent surrounding contactable surface of any structural element of the system.''

In its Part 573 Defect and Noncompliance Information Report filed with the agency on December 11, 2001, Century Products stated that ''On December 5, 2001, Century Products * * * decided that a noncompliance with Federal Motor Vehicle Safety Standard No. 213 exists in * * * certain * * * ''Celestia'' model infant car seats manufactured by Century Products. * * *'' The Celestia infant seat is sold with a detachable base that may be used to permit a fixed installation into the vehicle, allowing the child seat to be taken in and out of the vehicle without having to do a complete installation each time. The Celestia infant seat can also be used without the detachable base. Century Products identified 185,175 Celestia infant car seats manufactured between January 1, 2000, and December 6, 2001, that may contain this noncompliance. In its Application for Decision of Inconsequential Noncompliance, Century Products stated that it:

> has discovered variations in the plastic molding process during the manufacture of the plastic shell of the carrier portion (not the base) of the Subject Products, which can result in a void in the shell wall. This void may cause shell wall separation during the dynamic crash test specified by FMVSS No. 213 when the base is not used, rendering the seat noncompliant. * * * There is no noncompliance problem when the car seat is installed in the vehicle *with the base* (emphasis in original).

In its Part 573 Report, Century Products stated that:

> Graco conducted a dynamic crash test audit of its Celestia infant car seats on December 4, 2001. Graco tested (ten) 10 Celestia infant car seats without the base, randomly taken from inventory. Four (4) of the ten (10) units exhibited wall separation and the presence of a void at the initiation point of the separation. As a result of this audit testing, Graco determined that a noncompliance existed.

Century Products believes that the FMVSS No. 213 noncompliance described above is inconsequential to motor vehicle safety. Century Products supported its application for inconsequential noncompliance with the following:

> The risk of injury resulting from the wall separation during the dynamic crash test is inconsequential for several reasons. First, the shell wall separation does not affect, increase, or adversely influence the seat back angle. Thus, the restraint systems comply with FMVSS 213 S5.1.4, which provides that ''[w]hen a rear-facing child restraint system is tested in accordance with S6.1, the angle between the system's back support surface for the child and the vertical shall not exceed 70 degrees.''
>
> Second, all portions of the test dummy's torso were retained within the system and all other requirements regarding target points on either side of the dummy's head comply with FMVSS 213 S5.1.3.2.
>
> Third, the infant shell remained securely attached to the lap belt during testing. The separation did not contribute to any degradation in the ability of the vehicle belt to retain the infant seat in its original position.
>
> Fourth, the shell wall separation did not create an opening that contributes to the pinching, shearing, or scissoring of fingers, toes, or limbs or any other body part of either the occupant or an adjacent child seated next to the infant seat. The seat pad also acts as a mechanism to keep the occupant from contacting the separated area.
>
> Fifth, the shell wall separation occurs at relatively high energy levels, with the separation occurring late in the application of energy of the crash test (as revealed by Century Products' review of the flexing of the infant shell wall). Few motor vehicle accidents occur at the maximum energy levels of the dynamic crash test. The possibility of a wall separation occurring in the field therefore is remote.
>
> Sixth, the shell wall separation occurs only in a high stress area on the shell when the shell is used *without the base.* When the shell is used with the base, the area in question experiences no significant stress. All of the subject products were sold with a stay-in-the-car base. The base is the most predominately used mode with the infant shell due to its convenience of removing the carrier from the vehicle.
>
> Seventh, in the approximately 18 months that the infant shell has been in use in the subject products, there have been no reports of any incidents or complaints regarding the wall separation on the shell.
>
> Eighth, product owners are advised in the accompanying literature that the seat should be discarded following a crash. In addition, it is a well-known industry practice to discontinue using a child restraint after it has experienced a crash. Thus, there is little risk of injury from the wall separation during a subsequent incident.
>
> Based on the above, Century Products believes that a child subjected to a crash will be fully protected as required by FMVSS No. 213.

NHTSA has reviewed Century Products' application and concluded that the noncompliance is not inconsequential to safety for the following reasons.

The requirements to be met in the dynamic testing of child restraints include: (1) Maintaining the structural integrity of the system, (2) retaining the head and knees of the dummy within specified excursion limits, and (3) limiting the forces exerted on the dummy by the restraint system. These requirements reduce the likelihood that a child using a complying child restraint system will be killed or injured by the collapse or disintegration of the system, by contact with the interior of the vehicle, or by imposition of intolerable forces by the restraint system. Omission

of any one of these three requirements would render incomplete the criteria for the quantitative assessment of the safety of a child restraint system and could lead to the design and use of unsafe restraints. It follows that the failure to comply with one or more of these three requirements will increase the likelihood that a child may be killed or injured in the event of a crash.

Graco's dynamic crash test audit of 10 units selected at random confirmed that, in this limited series of tests, four of the selected units ''exhibited wall separation and the presence of a void at the initiation point of the separation.'' However, there is no way for either Graco, Century Products, or NHTSA to assure that the location, extent, and consequences of the structural failures seen in this limited series of tests is representative of the performance of *all* potentially defective units that have been manufactured. In its comments, Advocates states that:

> Nothing indicates that the wall separation occurs only in a location that cannot be reached by either the infant occupant or another child passenger. Furthermore, this conclusion is premised entirely on the four failures that were found in the Applicant's test of Celestia infant seats taken from its inventory. Those tests may not reveal the full extent and location of wall separation that may occur in the 40 percent (or more) noncompliant models in use. There is no evidence that suggests that the four test failures accurately reflect the full scope, extent and location of shell wall separation that could potentially occur in real-world crashes.

While Century Products contends ''[t]he seat pad also acts as a mechanism to keep the occupant from contacting the separated area,'' we agree with Advocates that it is possible that the seat pad could prevent a parent ''from observing that the infant seat has suffered shell wall separation. Indeed, unless a close inspection is conducted, the shell wall separation may not be detected. * * *'' Notwithstanding Century Products' assertion that it is a ''well-known industry practice'' to discard a child seat that has been in a crash, it is likely that many parents will continue to use a restraint that does not exhibit any evidence of damage. A child restraint that has been structurally damaged in a crash, but has not been replaced and remains in use, is unlikely to be capable of adequately protecting the child in the event of a subsequent crash.

With respect to the assertion by Century Products that ''[t]he base is the most predominately used mode with the infant shell due to its convenience of removing the carrier from the vehicle,'' Advocates commented:

> The implication of this contention is that the base is used in most cases and, therefore, actual shell wall separation is a remote possibility. Aside from the fact that the Applicant presents no data to support its assertion that the ''base is the most predominately used mode with the infant shell due to its convenience,'' the Applicant acknowledges that the infant carrier shell can be used as a separate, independent seat without the detachable base. This use is readily foreseeable even if the Applicant did not affirmatively advertise the separate use of the detachable carry shell. The possibility that some portion of the public will use the carry shell without the base is not remote.

We concur with Advocates. In addition, we note that it is possible that some parents will leave the base installed in one vehicle and use the restraint without the base in other vehicles. In any event, the relative frequency of use with and without the base is not relevant to the issue of the safety risk that is present when the base is not used.

In consideration of the foregoing, NHTSA has decided that the applicant has not met its burden of persuasion that the noncompliance it describes is inconsequential to safety. Accordingly, its application is hereby denied. Century Products must now fulfill its obligation to notify and remedy under 49 U.S.C. 30118(d) and 30120(h).

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: October 16, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–26874 Filed 10–23–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications 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 (30 days after publication).

ADDRESSES: Records 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 application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications (*See* Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC 20590 or at *http://dms.dot.go.*

This notice of receipt of applications for new exemptions 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 October 20, 2003.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
13297–N		WMG Inc., Peekskill, NY	49 CFR 173.403, 173.427(a), (b) & (c), 173.465(c) & (d).	To authorize the manufacture, marking, sale and use of a specially designed device containing Class 7 radioactive materials. (Mode 1)
13301–N		United Technologies Corporation, West Palm Beach, FL.	49 CFR 172 Subparts C, D, E and F.	To authorize the transportation in commerce of certain hazardous materials for a distance of approximately 400 feet without proper hazard communication. (Mode 1)
13303–N		Koch Materials Company, Wichita, KS.	49 CFR 174.67(c)(2) and (i).	To authorize an alternative monitoring system for rail cars throughout the steam-heating operation when no product is being transferred. (Mode 2)
13304–N		Matheson Tri Gas, East Rutherford, NJ.	49 CFR 173.304, 173.40	To authorize the transportation in commerce of hydrogen sulfide in DOT specification cylinders with a service pressure of 480 PSIG. (Modes 1, 3)
13305–N		Matheson Tri Gas, East Rutherford, NJ.	49 CFR 171.14	To authorize the transportation in commerce of DOT 5A drums containing a residual amount of certain hazardous materials for disposal. (Mode 1)
13306–N		Ecolab Inc., St. Paul, MN	49 CFR 172.312(a), 173.22a, 173.24a(a)(1).	To authorize the transportation in commerce of a combination packaging having inner receptacles with closures on the side, i.e., not oriented in the upward direction for use in transporting Organic peroxide, Division 5.2. (Modes 1, 2, 3)
13307–N		United Phosphorous, Inc., Trenton, NJ.	49 CFR 172.504	To authorize the transportation in commerce of an aluminum phosphide based pesticide which meets the definition of a Division 4.3 material to be shipped as aluminum phosphide pesticide, a Division 6.1 material. (Mode 1)
13308–N		Florida Air Transport, Pembroke Park, FL.	49 CFR 172.101 Col. 9b, 172.204(c)(3), 173.27(b)(2)(3), 175.30(a)(1).	To authorize the transportation in commerce of Class 1 explosives which are forbidden or exceed quantities presently authorized. (Mode 4)
13309–N		OPW Engineered Systems, Lebanon, OH.	49 CFR 174.67(i) & (j)	To authorize tank cars containing hazardous materials to remain standing with connections attached provided a minimal level of monitoring is maintained and a specially designed hose capable of preventing uncontrolled release is used. (Mode 2)
13311–N		HazMat Services, Inc., Anaheim, CA.	49 CFR 173.12	To authorize the transportation in commerce of laboratory reagent chemicals packaged in lab packs to facilitate relocation of laboratory facilities. (Mode 1)
13312–N		Air Products & Chemicals, Inc., Allentown, PA.	49 CFR 173.301(f)(3), 180.205(c)(4).	To authorize the transportation in commerce of DOT–3, 3A, and 3AA cylinders in chlorine service with a pressure relief device set to discharge at 75% of the test pressure. (Modes 1, 3)
13314–N		Sunoco Inc., Philadelphia, PA.	49 CFR 177.834(h)	To authorize the discharge of Division 6.1 liquids from DOT 51 portable tanks without removing the tanks from the vehicle on which it is transported. (Mode 1)

[FR Doc. 03–26869 Filed 10–23–03; 8:45 am]
BILLING CODE 4910–60–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 exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications 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. Requests for 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. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before November 10, 2003.

ADDRESSES: Records 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 exemptions 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 October 20, 2003.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Exemptions and Approvals.

Application No.	Docket No.	Applicant	Modification of exemption
10323–M		Air Products and Chemicals, Inc., Allentown, PA (*See* Footnote 1)	10323
10504–M		Air Products and Chemicals, Inc., Allentown, PA (*See* Footnote 2)	10504
11598–M		Metalcraft, Inc., Baltimore, MD (*See* Footnote 3)	11598
11646–M		Bundit, Vesta, MN (*See* Footnote 4)	11646
12443–M	RSPA–00–7209.	Kinder Morgan Materials Services, Sewickley, PA (*See* Footnote 5)	12443
12698–M	RSPA–01–9652.	Precision Technik, Inc., Atlanta, GA (*See* Footnote 6)	12698
13169–M	RSPA–02–13894.	ConocoPhillips Alaska, Inc., Anchorage, AK (*See* Footnote 7)	13169
13179–M	RSPA–02–14020.	Onyx Environmental Services, L.L.C., Flanders, NJ (*See* Footnote 8)	13179

[1] To modify the exemption to update testing requirements of the non-DOT specification full-open head salvage cylinders and add a Division 2.2 material.

[2] To modify the exemption to authorize a design change of the non-DOT specification full removable head salvage cylinder, add a Class 8 material and add cargo vessel as an additional mode of transportation.

[3] To modify the exemption to authorize the use of an additional DOT Specification cylinder equipped with an alternative pressure relief device system for transporting certain Division 2.2 materials.

[4] To modify the exemption to authorize the transportation of additional Class 3 materials unloaded from drums and/or intermediate bulk containers without removal from motor vehicles.

[5] To modify the exemption to authorize product hoses for a Class 9 elevated temperature, liquid material to remain connected provided monitoring occurs at least every 12 hours.

[6] To modify the exemption to authorize design changes of the non-DOT specification full opening head salvage cylinders for overpacking a damaged or leaking cylinder containing various hazardous materials.

[7] To reissue the exemption originally issued on an emergency basis for the transportation of certain Class 3 materials in DOT Specification UN31A intermediate bulk containers which exceed quantity limitations when shipped by air.

[8] To modify the exemption to authorize cargo vessel as an additional mode of transportation for transporting Division 2.1 materials which has been removed from their inner packaging and are being sent for disposal.

[FR Doc. 03–26870 Filed 10–23–03; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket Nos. AB–124 (Sub–No. 2) and AB–279 (Sub–No. 3)]

Waterloo Railway Company—Adverse Abandonment—Lines of Bangor and Aroostook Railroad Company and Van Buren Bridge Company in Aroostook County, ME; Canadian National Railway Company—Adverse Discontinuance—Lines of Bangor and Aroostook Railroad Company and Van Buren Bridge Company in Aroostook County, ME

On October 6, 2003, the Trustee of the Bangor and Aroostook Railroad Company (BAR), *et al.* (the Trustee), filed with the Surface Transportation Board an application under 49 U.S.C. 10903 [1] seeking: (a) In STB Docket No. AB–279 (Sub–No. 3), the adverse (involuntary) discontinuance of certain trackage rights acquired by the Canadian National Railway Company (CN) from BAR and its wholly owned subsidiary, the Van Buren Bridge Company; and (b) in STB Finance Docket No. AB–124 (Sub–No. 2), the adverse (involuntary) abandonment of the operating easement acquired by a CN subsidiary, the Waterloo Railway Company (Waterloo), over the same lines.[2] The lines run between Madawaska, ME, and the Canadian border, and serve a mill owned by Fraser Papers Inc. (Fraser) at Madawaska, ME. The lines are now owned by the Montreal, Maine & Atlantic Railway, Ltd. (MMA), which purchased them from the estate of the bankrupt BAR on January 9, 2003. They are fully operational rail lines used by CN to serve the plant of Fraser at Madawaska.

The Trustee seeks to terminate CN's authority to serve Fraser over the lines. This would leave MMA as the only carrier with authority to serve that shipper over the lines. For additional background information, see the Board's decision served on June 25, 2002, in *Canadian National Railway Company—Trackage Rights Exemption—Bangor and Aroostook Railroad Company and Van Buren Bridge Company,* STB Finance Docket Nos. 34014, *et al.*

The Trustee maintains that termination of CN's authority to serve Fraser, leaving MMA as the serving carrier, is required by the ''present or future public convenience and necessity'' under 49 U.S.C. 10903. The Trustee contends that, under either 49 U.S.C. 10903 or 11 U.S.C. 1170, the public interest will be served by discontinuance of the CN trackage rights and abandonment of the Waterloo easement, because the potential harm to the BAR estate, the new owner of the former BAR system (MMA), and its shippers and the communities it serves from the continued existence of the CN trackage rights and Waterloo easement substantially outweighs the potential

[1] The Trustee contends that the bankruptcy law at 11 U.S.C. 1170 applies to this application, meaning that the Board's decision would constitute an advisory report to the Bankruptcy Court. The matter is currently before the United States District Court for the District of Maine.

[2] The lines involved in the trackage rights and easement are more precisely described as follows: (1) A line between approximately Milepost (MP) 0.0 at Madawaska, ME, and approximately MP 22.72 at Van Buren (Canadian Junction), ME; and (2) a line between approximately MP 0.0 at Van Buren (Canadian Junction), ME, and approximately MP 0.31 at the United States-Canada border, a total distance of approximately 23 route miles in Aroostook County, ME. The lines include the stations of Madawaska (MP 0.0), N CL Sign Madawaska (MP 1.25), Saint David (MP 4.20), and Grand Isle (MP 8.66) and traverse Postal Service ZIP Codes 04756, 04773, 04746, 04749, and 04785.

harm to Fraser and CN from discontinuance of the trackage rights and abandonment of the easement. In adverse abandonment and discontinuance proceedings, the Board considers whether to withdraw its primary jurisdiction to permit the operation of state, local, or, as here, other Federal law to take affect. *See Modern Handcraft, Inc.—Abandonment,* 363 I.C.C. 969 (1981); *Kansas City Pub. Ser. Frt. Operations—Exempt.—Aban.,* 7 I.C.C.2d 216 (1990).

The applicant's entire case for discontinuance and abandonment was filed with the application.[3] Any interested person may file with the Board a statement protesting or commenting on the Trustee's application for adverse abandonment and discontinuance. Interested persons who wish to participate actively and fully in these proceedings should submit their entire case in the form of argument and verified witness statements containing detailed evidence and the information required by 49 CFR 1152.25(a)(1), to the extent that it is needed or appropriate in this type of proceeding.[4] Those who do not wish to participate fully by the filing of witness statements may file comments. Those submitting detailed evidence or comments may also submit the information described in 49 CFR 1152.24(a)(2), to the extent that it is needed or appropriate (see footnote 4, above).

The interests of employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

All filings in response to this notice, and every document filed with the Board in these proceedings, must identify these proceedings by their docket numbers, *i.e.*, STB Docket Nos. AB–124 (Sub–No. 2) and AB–279 (Sub–No. 3), and should be served on: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; (2) Kevin M. Sheys, Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue, NW., Washington, DC 20036–1221 [Trustee's representative]; (3) William C. Sippel, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2875 [CN's representative]; and (4) Carolyn F. Corwin, Covington & Burling, 1201 Pennsylvania Avenue, NW., Washington, DC 20004–2401 [intervener MMA's representative]. The original and 10 copies of all comments or protests shall be filed with the Board, together with a certificate of service.

All comments or protests must be filed by November 20, 2003.

Persons seeking information concerning the filing of statements may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152. [Assistance for the hearing impaired is available through the Federal Information Relay Services (FIRS) at 1–800–877–8339.] Board decisions and notices are available on our Web site at *"http://www.stb.dot.gov."*

Decided: October 17, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–26742 Filed 10–23–03; 8:45 am]

BILLING CODE 4915–00–P

[3] In decisions served on September 25, 2002, and October 23, 2002, the Board approved exemptions from statutory provisions and waiver of regulatory requirements that were designed for typical abandonment and discontinuance proceedings, where carriers voluntarily seek to terminate a service obligation that protestants may wish to preserve, but were not intended to apply to adverse abandonment or discontinuance proceedings.

[4] This provision was developed for typical abandonment proceedings, where carriers voluntarily seek to terminate a service obligation that protestants may wish to preserve, rather than proceedings where, as here, the serving carrier (CN) seeks to continue its right to provide service and service by another carrier (MMA) would continue even if the application is granted.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 16, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 24, 2003, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0212.

Form Number: IRS Form 5558.

Type of Review: Extension.

Title: Application for Extension of Time to file Certain Employee Plan Returns.

Description: This form is used by employers to request an extension of time to file the employee plan annual information return/report (Form 5500 series) or employee plan excise tax return (Form 5330). The data supplied on Form 5558 is used to determine if such extension of time is warranted.

Respondents: Business or other for-profit, not-for-profit institutions.

Estimated Number of Respondents: 335,000.

Estimated Burden Hours Per Respondent: 33 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 185,724 hours.

OMB Number: 1545–61276.

Regulation Project Number: FI–88–86 Final.

Type of Review: Extension.

Title: Real Estate Mortgage Investment Conduits (TD 8458).

Description: Section 860E(e) imposes an excise tax on the transfer of a residual interest in a REMIC to a disqualified party that is an interest holder.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1,600.

Estimated Burden Hours Per Respondent: 20 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 525 hours.

OMB Number: 1545–1546.

Revenue Procedure Number: Revenue Procedure 97–33.

Type of Review: Extension.

Title: EFTPS (Electronic Federal Tax Payment System).

Description: Some taxpayers are required by regulations issued under section 6302(h) of the Internal Revenue Code to make Federal Tax Deposits (FTDs) using the Electronic Federal Tax Payment System (EFTPS). Other taxpayers may choose to voluntarily participate in EFTPS. EFPTS requires that a taxpayer complete an enrollment form to provide the information the IRS needs to properly credit the taxpayer's account. Revenue Procedure 97–33 provides procedures and information that will help taxpayers to electronically make FTDs and tax payments through EFTPS.

Respondents: Business or other for-profit, individuals or households, not-for-profit institutions, farms, Federal Government, State, local or tribal government.

Estimated Number of Recordkeepers: 557,243.

Estimated Burden Hours Per Recordkeeper: 30 minutes.

Frequency of Response: On occasion, weekly, monthly, quarterly, semi-annually, annually, biennially.

Estimated Total Recordkeeping Burden: 278,622 hours.

OMB Number: 1545–1695.

Revenue Ruling Number: Revenue Ruling 2000–33.

Type of Review: Extension.

Title: Deferred Compensation Plans of State and Local Governments and Tax-Exempt Organizations.

Description: This revenue ruling specifies the conditions the plan sponsor should meet to automatically defer a certain percentage of its employees' compensation into their accounts in an eligible deferred compensation plan.

Respondents: Not-for-profit institutions, State, local or tribal government.

Estimated Number of Respondents: 500.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 500 hours.

OMB Number: 1545–1696.

Form Number: IRS Form 8872.

Type of Review: Extension.

Title: Political Organization Report of Contributions and Expenditures.

Description: Internal Revenue Code section 527(j) requires certain political organizations to report certain contributions received and expenditures made after July 1, 2000. Every section 527 political organization that accepts a contribution or makes an expenditure for an exempt function during the calendar year must file Form 8872, except for: A political organization that is not required to file Form 8871, or a State or local committee of a political party or political committee of a State or local candidate.

Respondents: Not-for-profit institutions.

Estimated Number of Respondents/ Recordkeepers: 10,000.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping	9 hr., 48 min.
Learning about the law or the form.	24 min.
Preparing and sending the form to the IRS.	34 min.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 431,200 hours.

OMB Number: 1545–1705.

Regulation Project Number: REG–246249–96 Final.

Type of Review: Extension.

Title: Information Reporting Requirements for Certain Payments Made on Behalf of Another Person, Payment to Joint Payees, and Payments of Cross Proceeds From Sales Involving Investment Advisers.

Description: The regulation under section 6041 clarifies who is the payee for information reporting purposes if a check or other instrument is made payable to joint payees, provides information reporting requirements for escrow agents and other persons making payments on behalf of another person, and clarifies that the amount to be reported as paid is the gross amount of the payment. The regulation also removes investment advisers from the list of exempt recipients for information reporting purposes under section 6045.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1.

Estimated Burden Hours Respondent: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 1 hour.

OMB Number: 1545–1707.

Regulation Project Number: REG–106511–00 NPRM.

Type of Review: Extension.

Title: Estate Tax; Form 706, Extension to File.

Description: This document contains proposed regulations relating to the filing of an application for an automatic 6-month extension of time to file an estate tax return (Form 706). The proposed regulations provide guidance to executors of decedents' estates on how to properly file the application for the automatic extension.

Respondents: Individuals or households.

Estimated Number of Respondents: 1.

Estimated Burden Hours Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–26889 Filed 10–23–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Liquidation—the Home Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: Liquidation of an insurance company formerly certified by this Department as an acceptable surety/reinsurer on Federal bonds.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: The Home Insurance Company, a New Hampshire company, formerly held a Certificate of Authority as an acceptable surety on Federal bonds and was last listed as such at 59 FR 34161, July 1, 1994. The Company's authority was terminated by the Department of the Treasury effective June 30, 1995. Notice of the termination was published in the **Federal Register** of August 23, 1995, on page 43839.

On May 8, 2003, upon a petition by the Commissioner of Insurance for the State of New Hampshire, the Superior Court of New Hampshire issued an Order of Liquidation with respect to The Home Insurance Company. Paula T. Rogers, the Commissioner of Insurance for the State of New Hampshire, was appointed as the Liquidator. All persons having claims against The Home Insurance Company must file their claims by June 13, 2004, or be barred from sharing in the distribution of assets.

All claims must be filed in writing and shall set forth the amount of the claim, the facts upon which the claim is based, any priorities asserted, and any other pertinent facts to substantiate the claim. Federal Agencies should assert claim priority status under 31 U.S.C. 3713, and send a copy of their claim, in writing, to: Department of Justice, Civil Division, Commercial Litigation Branch, P.O. Box 875, Ben Franklin Station, Washington, DC 20044–0875, Attn: Mr. Randy Harwell, Attorney.

The above office will consolidate and file any and all claims against The Home Insurance Company, on behalf of the United States Government. Any questions concerning filing of claims may be directed to Mr. Harwell at (202) 307–0180.

The Circular may be viewed and downloaded through the Internet (*http://www.fms.treas.gov/c570*). A hard copy may be purchased from the Government Printing Office (GPO), Subscription

Service, Washington, DC, (202) 512–1800. When ordering the Circular from GPO, use the following stock number 769–004–04643–2.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: October 15, 2003.

Wanda Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 03–26812 Filed 10–23–03; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI) Committee Will Be Conducted (Via Teleconference)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI) Committee will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Friday, November 21, 2003 from 1 pm EST to 2 pm EST.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or (954)–423–7977

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Multilingual Initiative Issue Committee will be held Friday, November 21, 2003 from 1 pm EST to 2 pm EST via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or (954)–423–7977.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: October 17, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–26942 Filed 10–23–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted via teleconference.

DATES: The meeting will be held Tuesday, November 18, 2003, at 1:30 p.m., Eastern Standard Time.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227, or (414) 297–1611.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Tuesday, November 18, 2003, from 1:30 to 3 p.m. Eastern Standard Time via a telephone conference call. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or (414) 297–1611, or write Barbara Toy, TAP Office, MS–1006–MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or FAX to (414) 297–1623. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Barbara Toy. Ms. Toy can be reached at 1–888–912–1227 or (414) 297–1611, or FAX (414) 297–1623.

The agenda will include the following: Monthly committee summary report, discussion of issues brought to the joint committee, office report and discussion of next meeting.

Dated: October 17, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–26943 Filed 10–23–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 68, No. 206

Friday, October 24, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4861–N–01]

Notice of Funding Availability for Revitalization of Severely Distressed Public Housing; HOPE VI Revitalization and Demolition Grants, Fiscal Year 2003

Correction

In notice document 03–26476 beginning on page 60178 in the issue of Tuesday, October 21, 2003, make the following corrections:

1. On page 60178, in the third column, under the heading ''(D) Application Deadline'', in the second line, ''January 19, 2004'' should read ''January 20, 2004''.

2. On page 60179, in the second column, under the heading ''(B) Application Submission Timeframes'', in the third and fourth lines, ''January 19, 2004'' should read ''January 20, 2004''.

[FR Doc. C3–26476 Filed 10–23–03; 8:45 am]

BILLING CODE 1505–01–D

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Privacy Act of 1974, as Amended; System of Records Notices

Correction

In notice document 03–26613 beginning on page 60121 in the issue of Tuesday, October 21, 2003, make the following correction:

On page 60121, in the second column, under the **EFFECTIVE DATES** heading, in the fifth line, ''November 20, 2003 '' should read ''November 17, 2003 ''.

[FR Doc. C3–26613 Filed 10–23–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
October 24, 2003

Part II

Department of the Interior

Bureau of Land Management

43 CFR Parts 3710, 3730, et al.
Locating, Recording, and Maintaining Mining Claims or Sites; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3710, 3730, 3810, 3820, 3830–3840, and 3850

[WO–620–1430–00–24 1A]

RIN 1004–AD31

Locating, Recording, and Maintaining Mining Claims or Sites

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is publishing this rule to streamline the regulations on locating, filing, and maintaining mining claims or sites by consolidating provisions that were scattered in various portions of Groups 3700 and 3800 into ten consecutive parts placing the provisions in logical order, clarifying conflicting language, eliminating duplication, and removing obsolete provisions. These revisions are part of BLM's overall effort to rewrite regulations in plain language to make them easier for the public to use and understand and to provide better customer service.

DATES: This final rule is effective November 24, 2003.

FOR FURTHER INFORMATION CONTACT: Roger Haskins in the Solid Minerals Group at (202) 452–0355 or Ted Hudson in the Regulatory Affairs Group at (202) 452–5042. For assistance in reaching the above contacts, individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1 (800) 877–8339 at any time.

SUPPLEMENTARY INFORMATION:

I. Background

BLM has primary responsibility for the administration of mining claims and sites on Federal lands. At the end of fiscal year (FY) 2002, there were 198,029 mining claims and sites maintained on the Federal lands. During FY 2002, claimants recorded 15,407 new mining claims and sites. In addition, BLM processed 6,249 waiver documents containing 21,334 mining claims and sites and processed 174,845 annual maintenance fee transactions. BLM also collected a total of $19,410,375 in location and maintenance fees. BLM pays these collected fees into a special fund, and Congress appropriates the money to BLM to pay for the personnel and operations of the Mining Law Administration program, which includes, among other things—

- Recording and adjudicating mining claims and sites located on the public lands,
- Processing patent applications, plans of operations and notices,
- Inspecting operations, and
- generally enforcing the regulations.

A. Mining Claims or Sites

A mining claim, which can be either lode or placer, may be located on Federal land and must contain a valuable mineral deposit. In contrast, a mill site may be located on nonmineral land and must be used to support a lode or placer mining claim operation or support itself independent of a particular claim. A tunnel site contains a tunnel to a lode mine or is used to discover previously unknown lode mineral deposits.

B. Current Regulations

How Are Current Regulations Organized?

Regulations on locating, recording, and maintaining mining claims or sites are currently scattered throughout 43 CFR Groups 3700 and 3800. BLM and the General Land Office (GLO), BLM's predecessor agency, created them piece by piece since 1939, when the first Code of Federal Regulations (CFR) was issued. Past practice of BLM and GLO was to create a new subpart in the CFR if Congress amended the General Mining Law or passed new laws affecting mining claims or sites. For this reason, the regulations that this final rule replaces were disjointed and contained conflicting, obsolete, expired, and duplicative information. This rule is BLM's first attempt to consolidate, clarify, and eliminate duplications in these regulations.

What Other Regulations Are Related to This Rule?

This rule concerns the location, recording, and maintenance of mining claims and associated mineral rights on the Federal lands of the United States that are subject to the General Mining Law. In order to obtain permission to occupy or disturb the surface or subsurface of your mining claims or sites, you must follow the Surface Management regulations of the surface management agency.

- For BLM-administered lands, you must follow 43 CFR 3715, 3802, 3809, or 3814 as applicable.
- On National Forest lands, you must follow 36 CFR part 228.
- On National Park System lands, you must follow 36 CFR parts 6 and 9.
- In addition, most States require you to obtain mining and reclamation permits before beginning surface disturbing operations on Federal lands.

To apply for a mineral patent for your mining claim or mill site, you must follow the regulations at 43 CFR parts 3860 and 3870. However, due to a Congressional budget moratorium in effect since October 1, 1994, BLM will not accept any new mineral patent applications unless and until Congress removes the moratorium.

What Previously Proposed Rules Relate to This Rule?

Since 1992, Congress has passed four short-term laws requiring claimants to pay various fees when locating, recording, and maintaining mining claims or sites. As the designated fee collector, BLM has implemented each of these laws by amending its regulations. An administrative final rule dated June 3, 2002 (67 FR 38203) implemented the fourth of these short-term laws—the Interior and Related Agencies Appropriation Act of November 5, 2001, for Fiscal Year 2001 (the Act) (Title I of Pub. L. 107–63, 115 Stat. 414; 30 U.S.C. 28–28k) by continuing to require claimants to pay location and maintenance fees on unpatented mining claims or sites and to make annual maintenance fee waivers available to small miners until September 30, 2003. BLM collected these fees and provided for waivers under the existing regulations based on a previous law that expired on September 30, 2001. To implement the earlier Acts, BLM published rules amending 43 CFR parts 3730, 3821, 3833, and 3850 at 59 FR 44857 and 64 FR 47201. This final rule retains the changes made in the June 2002 administrative final rule.

Statutory History

Originally, all commercially valuable minerals were locatable under the General Mining Law. Congress has, over time, added minerals to or removed them from the General Mining Law through amendments and the enactment of laws such as the Mineral Leasing Act, the Geothermal Steam Act, and the Surface Resources Act. As a result, whether minerals are locatable is defined by the intersection of these statutes with the General Mining Law. The Federal Land Policy and Management Act (FLPMA) affects location, recording, and maintenance of mining claims or sites through its broad directive to the Secretary of the Interior to manage all public lands. In addition, Congress requires special procedures for locating or maintaining claims or sites that fall under the Stockraising

Homestead Act, the Mining Claim Rights Restoration Act, or the Energy Policy Act.

1. The Federal Land Policy and Management Act

The Federal Land Policy and Management Act of 1976 (FLPMA) requires the Secretary to manage all public lands under broad-ranging authority. This Act resulted from Congress completely overhauling the entire public land management system of the United States. Relevant sections in FLPMA:

- Require recording and maintenance of all mining claims or sites with BLM or they are forfeited (section 314, 43 U.S.C. 1744);
- Make knowing disregard or circumvention of any regulation issued under the authority of FLPMA a Federal criminal offense (section 303, 43 U.S.C. 1733).

2. The General Mining Law

How Do I Locate Minerals Under the General Mining Laws?

The General Mining Laws, *as amended*, which generally comprise chapters 2, 11, 12, 12A, 15, 16, and 20, and section 161 of title 30 of the United States Code, are the primary statutes governing disposition of minerals on Federal lands by location. Locating claims or sites has four elements:

- Discovering a valuable mineral deposit (for claims)
- Locating mining claims or sites
- Recording mining claims or sites
- Maintaining mining claims or sites

Claimants who comply with these four elements gain a right of possession to the deposit and a right to extract and develop the minerals. This right includes the use of the surface for exploration, mineral development, mineral extraction, and uses reasonably incident to exploration, extraction, and development. This right is a real property interest and may be bought, sold, transferred, leased, rented, devised, or inherited. The United States retains ownership and title to the land, even while a claimant is developing the mineral deposit. On lands where the United States is not the owner of the surface estate, which is the situation on Stockraising Homestead Act and Taylor Grazing Act lands, the surface owner retains title to the surface of the land and BLM administers the mineral estate reserved to the United States.

3. Mineral Leasing Act

The Mineral Leasing Act allows you to lease the Federal lands for development of certain types of mineral. The Mineral Leasing Act made several minerals that were once locatable and are now not available under the General Mining Law leasable after February 25, 1920, including:

- Oil and gas
- Coal
- Potassium, sodium, and phosphate
- Oil shale, tar sands, native asphalt, solid and semisolid bitumen
- Oil recovered from oil sands after the deposit is mined or quarried
- Sulphur in Louisiana and New Mexico that belongs to the United States

These minerals are administered under 43 CFR Groups 3100, 3200, 3400, and 3500.

4. Mineral Materials Act and Surface Resources Act

The Mineral Materials Act and the Surface Resources Act govern sales of mineral materials on Federal land. These mineral materials include petrified wood and common variety mineral materials. Common variety mineral materials were locatable until July 23, 1955, when the Surface Resources Act (30 U.S.C. 611–615) made all deposits of common varieties of sand, stone, gravel, pumice, pumicite, cinders, and clay salable and therefore no longer locatable. Uncommon varieties of mineral materials, which have distinct and special value, are still locatable under the General Mining Law. BLM administers mineral materials under 43 CFR part 3600.

5. Stockraising Homestead Act and the Homestead Act

Claimants must follow additional procedures when seeking to locate mining claims or sites on lands patented under the Stockraising Homestead Act (SRHA) of 1916 (43 U.S.C. 291–299) or, in some instances, the Homestead Act of 1862, as amended (43 U.S.C. 161–284). The United States owns only the mineral estate in these lands.

Under the Homestead Act, the United States granted land patents (or title) to homesteaders who wanted to enter and cultivate the land. However, in some situations, particularly in the arid West, some land was not suitable for traditional crop farming. The SRHA allowed homesteaders to use the land for grazing, instead of traditional farming. For those who already had an application (entry) under the Homestead Act but could not meet the cultivation and irrigation requirements, the SRHA permitted conversion of the Homestead entry into an SRHA entry. The Government issued these converted patents under the Homestead Act. However, unlike other Homestead Act patents that granted title to both the surface and mineral estates, the converted entries and patents conveyed title to the surface estate only and reserved the mineral estate to the United States under the SRHA.

Thus, certain lands that appear to have been patented under the authority of the Homestead Act after December 29, 1916, were patented under the SRHA with a Federal mineral estate reservation. You may locate mining claims or tunnel sites (but not mill sites) on these reserved mineral estates under certain conditions. Congress enacted amendments to the Stockraising Homestead Act in 1993 that impose notification requirements on mining claimants other than the surface owner who wants to enter Stockraising Homestead Act lands to explore for minerals and locate mining claims. Act of April 16, 1993; Pub. L. 103–23; 43 U.S.C. 299(b); 43 CFR part 3838.

6. Energy Policy Act

The Energy Policy Act (30 U.S.C. 242) no longer requires assessment work for oil shale placer claims, and instead requires payment of an annual $550 fee for most oil shale claims, and also requires an annual filing of a notice of intent to hold. In cases where $550 is due, the claimant is not required to pay an additional maintenance fee.

7. Federal Oil and Gas Royalty Management Act

The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 188(f)) provides that a mining claimant may seek to convert an oil placer mining claim that was validly located before February 24, 1920, to a non-competitive oil and gas lease as of the date the claimant fails to comply with section 314 of FLPMA and the mining claim is deemed abandoned and void. The claimant's failure must be inadvertent, justifiable, or not due to lack of reasonable diligence on the part of the claimant.

8. State Laws

Most states have passed their own laws about mining claim location, recording, and annual maintenance as authorized by the General Mining Law. In addition to following Federal regulations, each claimant must follow all applicable state law requirements not in conflict with these rules.

II. Discussion of Public Comments

A. General Discussion

We received 103 documents commenting on the proposed rule published August 27, 1999 (64 FR

47023). These consisted of post cards, e-mail, regular mail, and legal briefs. Several duplicates were received, as several persons sent us both an e-mail and followed up with a paper copy by regular mail. In terms of source, 62 documents were submitted by individuals, 13 by businesses, 11 by industrial or trade associations, 15 by environmental groups, and 2 by agencies of the Federal Government. Most documents had more than one comment or suggestion concerning these regulations. We will address the general comments here. Those that are specific to a particular part or section will be discussed under the heading for the appropriate part or section further below.

Legislative Repeal

Nine comments suggested we repeal the General Mining Law of 1872. Laws may not be changed by rulemaking, but only by Act of Congress. Therefore we cannot act upon this suggestion.

Waste on Mill Sites

Many comments requested that we not allow the dumping of mining ''waste'' on the public land upon mill sites. This is for the most part an operational issue that is regulated by BLM under 43 CFR subparts 3715 and 3809 and not under these regulations, which only cover locating, recording, and maintaining mining claims and sites. Nevertheless, we have addressed this concern by requiring claimants to locate only that amount of mill site acreage that is necessary to be used or occupied for efficient and reasonably compact mining or milling operations.

Mill Site Opinion

The Solicitor's Opinion of November 12, 1997, concerning the allowable amount of mill site acreage per mining claim location received 49 adverse comments, as did part 3832.32, in which we proposed to implement the 1997 Opinion's conclusions. Deputy Solicitor Roderick E. Walston issued a new opinion on October 7, 2003, that supercedes the 1997 Opinion. We discuss this further in the section-by-section analysis below.

Scope, Form and Intent of This Final Rule

This rule is intended to:

(1) Consolidate in one series of parts (parts 3830—3839) all rules and regulations concerning the location, holding, maintenance, transfer, amendment, and recording of mining claims and sites that are currently scattered in various parts of Groups 3700 and 3800;

(2) Remove all obsolete and expired provisions that have legislatively sunset or that courts have rendered ineffective;

(3) Place into regulation the long standing case law elements of the Department that affect the items in (2) above; and

(4) Complete the consolidation in plain language for ease of understanding by our customers and the BLM staff.

''Revising the Mining Law by Regulation''

Several comments objected to BLM placing longstanding administrative practice and rules established by case law into this regulation and declared that this was essentially an attempt to revise the law administratively to suit our purposes. BLM's position is that by placing these longstanding administrative practices and judicial holdings into these regulations, we are clarifying the applicable requirements for our customers and our own personnel, thereby reducing misunderstanding. We have modified the language in some sections from the proposed rule so that they more closely match the language and intent of applicable case law. For example, to define uncommon varieties of mineral materials, we rely on the court's decision in *McClarty* v. *Secretary of the Interior,* 408 F.2d 907 (9th Cir. 1969).

B. Section-by-Section Analysis

This section-by-section analysis will briefly outline how the final regulations are organized and highlight any substantive changes. We will also discuss comments we received addressing each section and our responses.

The chart below provides a map of the final numbering changes to help guide you through the new consolidated part. The column on the left shows the section numbers in this rule, and the column on the right shows the sections in the old regulations from which the provisions are derived, or states that they are new. Sections ending in ''0'' are generally introductory sections leading into a series of related substantive sections, and may not have equivalent sections shown in the Existing Regulations column. Also, the final regulations have more numbered parts, which did not have part equivalents in the existing regulations. The table, modified from the table published in the proposed rule of August 27, 1999 (64 FR 47023), shows both the ''cross walk'' of existing CFR sections and parts into the new part 3830 and the new language development for some of those proposed sections.

Final regulations	Existing regulations
Part 3830	
3830.1	New; 3833.0–1
3830.2	New; 3833.0–1;
3830.3	New; 3832
3830.5	New; 3833.0–5
3830.8	3833.0–9
3830.9	3833.5(g)
3830.10	
3830.11	3812.1
3830.12	New; 3711.1; 3811.1; 3812.1
3830.20	
3830.21	New; 3833.1–1; 3833.1–4; 3833.1–5; 3852.2
3830.22	3833.1–1
3830.23	3833.1–3(a); 3833.1–4(f)–(g)
3830.24	3833.1–3(a); 3833.0–5(m); 3833.1–4(f)–(g)
3830.25	3833.1–3(a); 3833.1–4(a)–(b)
3830.90	
3830.91	New; 3833.4(a)–(b)
3830.92	3833.4(f)
3830.93	New; 3833.4(b)
3830.94	New; 3833.4(b); 3833.4(c); 3833.5(d); 3833.5(f)
3830.95	New; 3833.1–3(b); 3833.4(a)
3830.96	3833.1–3(b); 3833.4(b)
3830.97	3833.1–2(c)(3)
3830.100	3833.5(h)
Part 3832	
3832.1	New; 3831.1
3832.10	
3832.11	3831.1; 3833.1–2(b); 3841.4–4; 3841.4–5; 3841.4–6
3832.12	3833.1–2(a)–(b); 3842.1–1 through 3842.1–5; 3841.4
3832.20	
3832.21	3812.1; 3841.3; 3841.4; 3842.2; 3842.4
3832.22	3841.4–1; 3841.4–2; 3842.1–2
3832.30	
3832.31	New; 3844
3832.32	New; 3844
3832.33	New; 3844
3832.34	New; 3844
3832.40	
3832.41	New; 3843
3832.42	3843
3832.43	3843
3832.44	3843.1
3832.45	New; 3843
3832.90	
3832.91	New; 3833.0–5(p) & (r)
Part 3833	
3833.1	New; 3833.4(a); 3833.4(d); 3833.5(a)–(c) & (e)
3833.10	
3833.11	3833.1–2(a); 3833.1–2(b)(1)–(4); 3833.5(c)
3833.20	
3833.21	New; 3833.0–5(p)
3833.22	New; 3833.0–5(p)
3833.30	
3833.31	3833.3
3833.32	New; 3833.3(c)
3833.33	3833.3(a); 3842.1–1
3833.90	
3833.91	New; 3833.4(a); 3833.5(a) & (f); 3811.1

Final regulations	Existing regulations
3833.92	New; 3833.4(c); 3833.5(d)
Part 3834	
3834.10	
3834.11	3833.1–5(b) & (e); 3833.1–4(b)
3834.12	3833.1–5(a), (b), & (e)
3834.13	3833.1–5(c)
3834.14	New; 3833.1–5(a) & (d); 3833.1–6
3834.20	
3834.21	3833.1–5(h)
3834.22	3833.1–5(h)(1)
3834.23	New; 3833.1–5(h)(2)
Part 3835	
3835.1	New; 3833.1–5 & 3833.1–6
3835.10	3833.1–6; 3833.1–7
3835.11	New; 3833.1–7(d)–(e); 3833.1–6(b) & (d)
3835.12	New
3835.13	3833.1–6(a)–(f); 3851.5; 3851.6(a)–(b);
3835.14	New; 3833.1–6; 3833.1–7(d); 3833.2–5; 3833.2–6; 3851.1(b)
3835.15	New; 3833.1–7(d); 3833.2–5; 3833.2–6; 3851.1(b)
3835.16	New; 3833.1–6(b); 3833.2–2(c); 3851.1; 3851.3
3835.17	New; 3833.1–6(d); 3833.1–7; 3833.2
3835.17	3833.2–1
3835.20	New; 3833.1–5(g)
3835.30	
3835.31	New; 3833.0–5(n); 3833.2–3(c); 3851.1
3835.32	3833.2–4
3835.33	3833.2–5;
3835.90	
3835.91	3833.2–3(a) and (b); 3833.4(a)
3835.92	3833.4(a)
3835.93	New; 3833.4–1
Part 3836	
3836.10	
3836.11	3851.1(b)–(c)
3836.12	New; 3851.1
3836.13	3851.2
3836.14	New; 3851.2
3836.15	3833.4(a); 3851.3
3836.20	New; 3852.5
3836.21	3852.1; 3833.1–6(d)
3836.22	3852.1; 3833.1–6(d); 3833.2–1
3836.23	3852.2; 3852.3
3836.24	3852.3
3836.25	3833.1–6(e); 3852.5
3836.26	3852.4
3836.27	3852.5
Part 3837	
3837.10	
3837.11	3851.4(a) and (d)
3837.20	
3837.21	New; 3851.4(b)
3837.22	3851.4(a)
3837.23	New; 3851.4(b)
3837.24	New; 3851.4
3837.30	New
Part 3838	
3838.1	New
3838.2	New
3838.3	New
3838.10	
3838.11	New; 3833.0–3(g); 3833.1–2(c)&(d)
3838.12	New; 3833.1–2(c)–(d)
3838.13	New; 3833.1–2(c)–(d)
3838.14	3833.0–3(g); 3833.1–2(c)
3838.15	3833.0–3(g); 3833.1–2(c)
3838.16	3833.1–2(d)(6)
3838.90	
3838.91	New; 3833.4(a)

Part 3710—Public Law 167; Act of July 23, 1955

Subpart 3711—Common Varieties

In the proposed rule, the contents of this section were shown in the ''crosswalk table'' as being moved to new part 3830, section 3830.12. However, in the proposed rule, we inadvertently neglected to remove the old subpart 3711 from the text of the regulations. Since we have moved all of the substantive material defining uncommon varieties of mineral materials to the proposed and final section 3830.12, we are removing the heading of subpart 3711 in this final rule as redundant.

Part 3730—Public Law 359; Mining in Powersite Withdrawals: General

We amended cross references in section 3734.1 to reflect the reorganization of part 3830. No public comments addressed this part.

Part 3810—Lands and Minerals Subject to Location

Subpart 3812—Minerals Under the Mining Law

In the proposed rule, we removed this subpart describing minerals that are subject to location. You will find this information in section 3830.11 ''Which minerals are locatable under the mining law?'' in the final rule. A number of comments addressed this subject, but they were directed at new section 3830.12. We will address them under that heading.

Part 3820—Areas Subject to Special Mining Laws

Subpart 3821—O and C Lands

We amended cross references in sections 3821.2 and 3821.3 to reflect the reorganization of part 3830. No comments addressed this subpart.

Part 3830—Locating, Recording, and Maintaining Mining Claims or Sites; General Provisions

Sections 3830.1 through 3830.94 of this final rule contain provisions that generally apply to all the regulations in parts 3830 through 3839. You should refer back to these sections on general policies and procedures when you follow regulations in the subsequent parts.

Sections 3830.1, 3830.2, and 3830.3 outline the purpose, scope, and authority for this part. Section 3830.5 contains definitions that are important to understand in this series of parts. Section 3830.8 discusses information collection requirements. Section 3830.9 describes the penalties for submitting a document to BLM that you know contains false, erroneous, or fictitious information or statements.

Section 3830.11 and 3830.12 describe which minerals are locatable under the mining law and subject to these regulations.

Sections 3830.20 through 3830.25 explain payment procedures for various fees and service charges required in part 3830. Section 3830.21 contains a table describing the fees and service charges and when they are due. Section 3830.22 describes when BLM will refund fees you have paid. Section 3830.23 explains the forms of payment BLM will accept. Section 3830.24 tells you how you can get your payments to BLM. Section 3830.25 explains when you should pay for a new location.

Sections 3830.91 through 3830.96 describe what happens if you fail to comply with the regulations, the types of defects that may affect claims and sites, and the procedures you must follow if you want to cure defects. Section 3830.97 describes appeal procedures and includes cross references to other regulations, including appeals regulations found in parts 4 and 1840 of this title, that state procedures for appealing to the Interior Board of Land Appeals.

In addition to this general section on defects, most parts also contain sections xxxx.90 through xxxx.9x, which identify the types of common errors that are specific to that part, and tell you whether you can correct them and how to do so.

Subpart A—Introduction

Section 3830.1 What Is The Purpose of These Regulations?

We added language to paragraph (b) in the final rule to remind you that to the extent a state law conflicts with these regulations, you must comply with these regulations. We also recast

the opening paragraphs of this section in list form with handy cross-references.

Section 3830.2 What Is The Scope of These Regulations?

We added paragraph (c) in the final rule, derived from old section 3833.0–1(e). It reminds you that BLM is not the official recording office for ancillary documents related to mining claims, such as liens, wills, judgments, grubstake contracts, or leases. You should file such documents locally according to state law.

One comment suggested removing reference to units of the National Park System, since National Park lands are included in Federal lands. In response to the comment, we have amended the provision to make it clear that these regulations do not authorize location of new mining claims on any Federal lands withdrawn from the operation of the General Mining Law.

Section 3830.3 Who May Locate Mining Claims?

One comment suggested combining proposed paragraphs (a) and (b). We did not adopt the proposal, because we felt the section was clear as written. Two comments suggested changes to clarify proposed paragraph (c). We rewrote the paragraph to make it clear that various kinds of business entities that have been organized under the laws of any state may locate claims and sites.

Section 3830.5 Definitions.

Many comments addressed this section. The majority of them suggested language changes in the proposed definitions. We adopted some of these suggestions in order to clarify the meaning and intent of certain definitions. Other suggestions we rejected, because the definitions at issue have been established by longstanding practice and case law. Several comments requested that we add new definitions to the section. After careful consideration, we agreed to add several definitions that we felt were necessary to the proper administration of these regulations or to clarify certain concepts or requirements that occur in these regulations. We added definitions for ''discovery,'' ''final certificate,'' ''nonmineral land,'' and ''recording.''

One comment questioned the meaning of the term ''holder'' as used in various provisions in the proposed rule. To avoid confusion, we have substituted the defined term ''claimant'' in each such instance.

One comment suggested amending the definition of ''Federal lands'' by removing the exclusion of National Park System lands. We have removed the exclusion, but have added a sentence to section 3830.3 stating that these regulations do not authorize the location of any mining claims or sites on Federal lands that are closed to mineral entry, including units of the National Park System.

One comment suggested that we add a provision to the definition of ''mineral materials'' to make it clear ''that mineral materials cannot be sold from NPS lands'' by adding the phrase ''* * * from Forest Service and BLM lands * * *'' to the definition. The change is not necessary. The phrase ''sold under the Mineral Materials Act'' is itself limiting, since that Act says that nothing in the Act applies to lands in any national park or national monument. Further, expressly stating such a limitation here would go beyond the scope of a definition by including regulatory requirements.

One comment stated that we should amend the definition of ''patent'' as proposed to make it clear that issuing a patent does not always convey full fee simple title. We agree that Congress requires the surface of some lands to be reserved in mineral patents and have revised the definition to reflect this possibility.

One comment suggested that we add a definition for ''withdrawn lands'' to this section. The writer stated that such a definition would be helpful because the term appears so often in the regulations, and offered a definition. We have not adopted the suggestion in this final rule because the rule text does not use the term. Instead, the rule uses the phrase ''closed to mineral entry,'' which is defined.

One comment suggested adding definitions for ''monument'' and ''discovery monument,'' saying that the physical process of staking a claim is not sufficiently described in these regulations. We have not added this definition because the term ''discovery monument'' is used only once in the rule and refers to a type of monument that may be used to anchor metes and bounds descriptions of mining claims. Discovery monuments are no longer required by many states to mark the position of a claimant's discovery point. Parties who are interested in learning more about the physical process for staking mining claims or sites should consult applicable state law and may visit or contact a local BLM office for further information.

One comment addressed the definitions of ''filed'' and ''filing period,'' stating that they were internally inconsistent. We have revised the definition of ''filed'' to include a postmark rule under which BLM will accept a document as timely filed if the document you mailed was postmarked before the due date and BLM received the document within 15 days after the due date. Another comment questioned the effect if a document is postmarked on time, but still not received by 15 days after you posted it because the BLM office was not open on the 15th day because of a holiday or other circumstance. In this case, under 43 CFR 1822.14, the grace period ends on the next official business day.

Several comments suggested removing the definition of ''filing period'' because the term does not appear in the regulations. We have removed the definition in the final rule, but explained the 15-day grace period or postmark rule in the definition of ''filed.''

Several comments addressed the definition of ''segregation.'' One suggested that we add that segregation ends when the land becomes open to mineral entry. We have not adopted this change. Doing so would merely describe the effect of ending segregation, not the event that ends segregation. Another comment stated that the definition conflicts with the regulations on segregating and opening public lands. We have amended the definition to make it clear that segregation ends when the statutory period of segregation ends or when BLM causes an administrative segregation to end under section 2091.2–2. However, in the case of Stockraising Homestead Act lands, we still use the notation rule and so mark the official records as to when the land is closed and opened.

One comment suggested that we amend the definition of ''control'' by removing language allowing BLM to consider facts other than whether a person is an officer, director, or majority shareholder in determining control. We have not adopted this recommendation. This definition tracks the statutory definition in 30 U.S.C. 28f(d)(2). We have removed from the definition of ''control'' the reference to publicly traded companies or corporations (which did not appear in the previous definition). The same principles of control apply to all companies, whether publicly traded or not.

One comment recommended changes in the definition of ''copy of the official record'' to make it cover documents that have not yet been recorded in the local jurisdiction recording office. Other comments preferred to remove the definition altogether, because the term appears only once in the regulations and could be explained thoroughly in that context. We have adopted this latter suggestion in the final rule. Our

rewritten version of section 3833.11(a) in fact does not use the term at all, and we have removed the definition from the final rule.

Several comments criticized the definition of ''local recording office'' for including the notion that claimants need to record documents in the local recording office to make them effective. These comments noted that such documents are binding between the parties regardless of whether they are recorded. State law governs whether documents must be recorded with the state in order to be effective. Consequently, we have removed any reference to the legal effect of recording with state offices from this definition.

Subpart B—Providing Information to BLM

Section 3830.8 How Will BLM Use the Information it Collects and What Does it Estimate the Burden Is On the Public?

One comment stated that our estimate that a customer needs 8 minutes of time per document was low, but offered no explanation or time estimate for BLM to work with. We have not made a change in the final rule.

Subpart C—Mining Law Minerals

Section 3830.12 What Are Characteristics of a Locatable Mineral Deposit?

We received a large number of comments adverse to proposed paragraph 3830.12(a)(2), which stated that a characteristic of a locatable mineral is that the mineral is found in a quantity and quality to constitute a valuable mineral deposit. Paragraph 3830.12(a)(2) also defined ''valuable mineral deposit.'' Some of the comments stated that our language imprecisely paraphrased the prudent person test and that we proposed to change the law by saying that in order for a mineral to be locatable it must first be found in quantities and qualities to support a valuable or profitable mine. We removed paragraph 3830.12(a)(2). The purpose of this section is to describe characteristics of locatable minerals, not characteristics of a validly-located mining claim. By removing this paragraph, we are not suggesting that a discovery of a valuable mineral deposit is not necessary to locate a valid mining claim.

In a similar manner, a number of comments opposed paragraph 3830.12(b), which we proposed to move from subpart 3711 and rewrote in plain language. This section concerns the definition of an uncommon variety of a mineral material under the Surface Resources Act (30 U.S.C. 611), subject to location under the General Mining Law. The Federal 9th Circuit Court of Appeals in 1969 laid out five tests that a mineral material must meet in order to qualify as uncommon and therefore subject to location. See *McClarty* v. *Secretary of the Interior*, 408 F.2d 907 (9th Cir. 1969). In the final rule, we replaced the original language of proposed section 3830.12(b) paraphrasing the holding of the *McClarty* Court with the five tests directly from the decision to avoid ambiguity.

Subpart D—BLM Service Charge and Fee Requirements

Section 3830.21 What Are the Different Types of Service Charges and Fees?

One comment, repeated by several others, stated that it was hard to tell whether some of the charges and fees shown in the table in this section applied on a per claim basis or per filing. It is not necessary to amend the table in response to these comments. The column heading in the table clearly says ''Amount due per mining claim or site.''

Section 3830.22 Will BLM Refund Service Charges or Fees?

One comment asked why oil shale claims are excluded from this section. The Mineral Leasing Act prohibits locating oil shale claims after February 25, 1920. Therefore, the location fees discussed in this section do not apply to oil shale claims, and there is no need to provide for their refund. Also, the Energy Policy Act of 1992 established separate fees for oil shale placer claims.

Another comment asked why we removed the previous provision on applying overpayments of maintenance fees to years ahead. You may still apply an overpayment to future fee requirements. We have restored this provision in the final rule.

One comment stated that not refunding service charges is a change from the existing regulations and suggested that the final rule allow for refund of service charges. The previous regulations did provide for service charge refunds if BLM found the claim to be void. However, BLM has changed this practice because BLM spends the service charge funds it receives in order to process the documents, even if the claim for which the documents were filed turns out to be void. Therefore, the final rule allows refunds of overpayments only.

Subpart E—Failure To Comply With These Regulations

Section 3830.91 What Happens if I Fail To Comply With These Regulations?

Several comments addressed this section. One said the use of the word ''defect'' was too broad. The term ''defect'' is intended to cover a broad range of circumstances. BLM receives many documents and payments that are incomplete in various ways. The purpose of this regulation is to explain how claimants will be able to fix defects, to the extent they are curable, and to caution claimants about defects that cannot be cured.

Another questioned the Secretary's authority to cancel claims if cancellation is not expressly provided for by statute. We have added a list of ways in which you could forfeit your claims or sites by law or regulation. In addition, under the authority of 43 U.S.C. 1201, you may forfeit a claim or site if there is a defect in your compliance with the regulations and you fail to remedy the defect after BLM notifies you.

Another comment stated that an owner of a forfeited or canceled claim should not be held responsible for reclamation of the claim. A reclamation requirement is not new. Under the Federal Land Policy and Management Act, the Secretary has the responsibility to prevent unnecessary or undue degradation of the public lands. 43 U.S.C. 1732(b). You may learn more about your reclamation responsibilities in 43 CFR subpart 3809. You remain responsible for reclamation if you forfeit a claim or site, regardless of the reason for the forfeiture.

Several comments stated that most of the language of proposed part 3830 is explanatory or factual, and did not impose requirements on miners, and therefore that it would not be appropriate to impose penalties, including forfeiture of mining claims, on persons who violate the regulations in ''this part,'' part 3830. We have amended the heading to make it clear that this section depicts the consequences for failing to comply with the regulations in all the parts and subparts from part 3830 through 3839.

Section 3830.93 When Are Defects Curable?

One comment specifically addressed paragraph (b) and asked for examples of requirements imposed by regulation (curable) and not by statute (incurable). We have added a list of the requirements that are statutory in section 3830.91. The ways in which

claimants may fail to comply with regulatory requirements are innumerable. BLM will notify you when they have determined that a filing or payment you have submitted is defective, but curable. For example, when recording a mining claim with BLM, FLPMA requires claimants to include a description of the claim that allows BLM to find the claim on the ground. 43 U.S.C. 1744(b). When you record a claim with BLM, the regulations require that you file a map showing where the claim is situated. If you omit a description altogether, you have failed to record the claim as required by statute, so the failure to include it is not curable, and BLM will reject the document. (In such a case, you may re-file, but your claim will be subject to location by other locators until you provide the description required by law. However, if you include a description that is inadequate, BLM will allow you to cure the defect, just as we would if you failed to provide material required by regulation but not statute, without losing your time advantage over competitors.) On the other hand, if you fail to include a map as required by regulation, BLM will send a decision to you, allowing you 30 days to send in the missing map. We encourage you to contact the BLM State Office if you have questions about filing requirements.

One comment suggested cross-referencing the sections of this rule into two groups, one for curable defects and one for incurable defects. We believe the existing organization is sufficiently clear. Another comment suggested that we should provide a listing of the common errors and defects a locator or claimant should avoid. We decline to do this, because such a list would be extremely lengthy and, even then, likely to have omissions. Such defects will become apparent if you read the individual regulations pertaining to your specific activity.

Section 3830.95 What if I Pay Only Part of the Service Charges, Location Fees, or First Year Maintenance Fees for Newly Filed Claims or Sites?

and

Section 3830.96 What if I Pay Only Part of The Service Charges and Fees for Oil Shale Claims or Previously-Filed Mining Claims or Sites?

Several comments said these sections proposed no cure for defects in complying with requirements that are not statutory, a result they say is inconsistent with section 3830.91. Section 3830.91 provides that defects in complying with statutory requirements are not curable, while defects in complying with regulatory requirements are curable. In fact, sections 3830.95 and 3830.96 provide a means by which claimants may cure defects in complying with regulatory requirements. Both sections provide that BLM will notify you of such defects and give you 60 days from the date you receive notification to remedy curable defects in small miner waiver filings and 30 days from the date you receive notification to remedy all other curable defects. The comments said that the old regulations at section 3833.1–3 allowed claimants to cure defective service charge payments when recording a new claim within 90 days of the location of the claim, but that the proposed rule allowed no such cure. We reorganized sections 3830.95 and 3830.96 to make clear that you may still cure defective fees and charges by resubmitting the location with a complete payment of fees and charges within the 90-day period that FLPMA provides for you to record a new mining claim or site.

Also, in section 3830.96 in the proposed rule we inadvertently omitted a provision that would allow claimants who own existing claims or sites, including oil shale claims, to cure an incomplete service charge payment by submitting the complete payment within 30 days after receiving notice of the defect from BLM. We have corrected this oversight in the final rule.

Part 3831—Mineral Lands Available for Locating Mining Claims or Sites

This part is reserved so that BLM may, at some future time, consolidate the available information describing the public lands that are open to mineral entry. This information is currently found in 43 CFR Group 2000, parts 3730, 3740, 3809, 3810, and 3820.

Part 3832—Locating Mining Claims or Sites

This part consolidates location requirements for lode and placer mining claims and mill and tunnel sites, which were in 43 CFR subpart 3831 and part 3840 of the previous regulations.

Section 3832.1 describes what location is. Sections 3832.10 through 3832.12 describe general procedures for locating mining claims or sites. Sections 3832.20 through 3832.22 provide specific requirements for lode and placer mining claims.

Sections 3832.30 through 3832.34 contain specific requirements for dependent and independent or custom mill sites (these terms are explained in section 3832.31). Sections 3832.40 through 3832.45 contain specific requirements for tunnel sites. Sections 3832.90 and 3832.91 specify when and how you can correct defects in your location of claims or sites.

Subpart A—Locating Mining Claims and Sites

Section 3832.1 What Does It Mean To Locate Mining Claims or Sites?

Several comments asked whether a claimant must discover a valuable mineral deposit before locating a mining claim or a mill site. While you may locate and record a mining claim before discovering a valuable mineral, your mining claim is not valid until you have made such a discovery. In addition, you may locate and record mill sites only on nonmineral lands. Therefore, in this final rule, we have removed discovery as an element of locating mining claims.

Section 3832.11 How do I locate mining claims or sites? One comment stated that the law does not require discovery before location and that our regulations need to reflect this. We have amended this section to recognize that claimants may locate mining claims before discovering a valuable mineral deposit. However, we have added a provision that states that the location is not valid until the claimant has discovered a valuable mineral deposit. As the U.S. Supreme Court has recognized:

> [I]t has come to be generally recognized that while discovery is the indispensable fact and the marking and recording of the claim dependent upon it, yet the order of time in which these acts occur is not essential to the acquisition from the United States of the exclusive right of possession of the discovered minerals or the obtaining of a patent therefor, but that discovery may follow after location and give validity to the claim as of the time of discovery, provided no rights of third parties have intervened.

Union Oil Co. v. *Smith,* 249 U.S. 337, 347 (1919).

Several comments noted some lack of clarity in some of the language in this section. We have made editorial changes to the text to clarify our intent and the requirements in this section.

One comment suggested several additions to paragraph (b), stating that we needed to emphasize that you can locate mining claims and sites only on Federal lands, that you must comply with applicable state monumenting requirements, and that the requirement for posting public notice of the claim should include a statement of the name of the claim. We have placed the necessary language to effect the first addition in paragraph (b)(1) in the final rule. We believe that paragraph (b)(5), which requires claimants to follow all relevant state law requirements, would

include any applicable state monumenting requirements. We also added paragraph (b)(3)(iv), which requires the posting to include the name or number of the claim or site, or both, if the claim or site has both.

Another comment stated that the word ''public'' in section 3832.11(a)(3) did not properly describe ''notice of location on the claim or site.'' We agree and have removed this word in the final rule.

Section 3832.12 When I File a Mining Claim or Site, How Do I Describe the Lands I Have Claimed?

Several comments focused on the need to use the legal subdivision (aliquot part) and lots in claim descriptions, and noted that they do not apply *per se* to lode claims. Another comment asked about protracted (unsurveyed) sections and their proper use for descriptive purposes.

We have amended section 3832.12 to clarify these issues and help you describe your claim or site properly. Also, you may correct erroneous descriptions. You may do this by filing an amended location notice or certificate, regardless of who finds the error. Paragraph (a) gives the general rule that you must follow in order for BLM to enter the essential data into our computerized mining claim recording system. Paragraph (b) expands on the specific descriptive requirements for lode claims, and paragraph (c) does the same for placer mining claims.

Several comments objected to the requirement for a metes and bounds description of a lode claim, saying that it would be unnecessary, not required by law, and burdensome, especially if it made a survey necessary. We have not changed the regulations in the final rule in response to these comments. This is not a new requirement. Lode claims cannot be described by aliquot part because of their parallelogram shape. We have retained in paragraph (a)(2)(iv) the provision that professional surveys are not necessary. We do not believe that it is burdensome to provide a metes and bounds description. The previous regulations at section 3841.4–5 required descriptions by courses and distances from the discovery monument. Courses and distances are part of a metes and bounds description, so we are merely correcting our terminology. Since the monuments on the ground govern, the courses and distances in the metes and bounds description need not be derived from a professional survey, but must be sufficient to allow a surveyor to identify the tract unambiguously on the ground if at some time in the future you seek a patent. Of course, a mineral survey is a prerequisite for a patent.

Several comments criticized section 3832.12(a) for requiring claim descriptions to follow the public land survey system ''as much as possible.'' They pointed out that lode claims are required by law to follow the mineral vein, which usually does not follow surveyed section lines. We have not made a substantive change in the final rule in response to these comments. As paragraph (b), which specifically covers lode claims, provides, you must describe your lode claims by metes and bounds. Paragraph (a) is of general applicability, and you must follow it unless paragraph (b) on lode claims or paragraph (c) on placer claims provides differently. Paragraph (a) allows for this by saying ''as much as possible.'' We never intended that lode claims must follow the rectangular survey system. However, since this provision caused so much confusion on the part of knowledgeable readers, we added an introductory phrase to paragraph (a) in the final rule clarifying this intent.

A couple of comments pointed out a typographical error in the first sentence of paragraph (a)(1). As the comment suggested, we added the word ''and'' to show that aliquot parts are used to describe land within quarter sections.

Section 3832.21 How do I Locate a Lode or Placer Mining Claim?

Several comments addressed this section, especially the descriptions of what minerals are generally locatable as lode deposits and which are locatable as placer deposits. Some comments asked for more extensive lists of minerals that are locatable. In both cases, lode and placer, the lists are not comprehensive. We have taken them from the general case law and the statute itself. BLM recognizes that there are always exceptions to the general rule, but we will decide these on a case-by-case basis through a mineral examination and/or contest action as necessary.

One comment asked for a definition of ''mineral-bearing brine'' as used in paragraph (b)(3)(v), stating that we need to differentiate brine or saline water from ''fresh water and the minerals therein.'' We have added explanation of what is a mineral-bearing brine in this section. The principal distinction is that a mineral-bearing brine is locatable if it contains an extractable locatable mineral that is the principal object of the mining operation. However, if you are mining the brine primarily for the leasable salt(s) content, and are also extracting locatable minerals, BLM considers those minerals co-products under the Mineral Leasing Act, and you must obtain a lease and pay royalties under 43 CFR part 3500.

Some comments raised the issue of discovery, that is, whether the miner needs to discover a valuable mineral deposit before locating a claim. We moved the discovery reference to a separate paragraph that states that your lode claim is not valid until you discover a valuable mineral deposit. In this way, the discovery requirement is not among the location requirements but the regulation nevertheless makes clear that the location is not a valid mining claim until you make a discovery.

One comment objected to the word ''similar'' in the phrase ''gold, silver, cinnabar, lead, tin, copper, zinc, fluorite, barite, or other similar valuable mineral'' in paragraph (a)(2)(ii). It stated that there is no justification for limiting the types of minerals that are subject to location under the Mining Law to those minerals that are similar to the minerals listed in this paragraph. We have amended this paragraph by removing the word ''similar'' and conforming the provision more closely with the Mining Law and case law.

Some comments stated that paragraph (a)(3) misstates the requirements for establishing extralateral rights to a lode. We have revised the paragraph to correct a drafting error and clarify the requirements. This paragraph describes how your claim must be situated for you to follow a vein, lode, or ledge underground beyond the long-side boundaries of your rectangular lode claim:

- The top of the deposit must be within your claim, whether on the surface or below it;
- The long-side boundaries of your claim must be substantially parallel to the direction of the lode, vein, or ledge deposit.

You do not have extralateral rights to follow a deposit beyond the end lines of your lode claim.

Several comments addressed paragraph (a)(4), questioning the requirement in this paragraph of the proposed rule that you expose the vein, lode, or ledge by tracing the vein or lode on the surface or by drilling or tunneling to a sufficient depth. The comments stated that this should not be a requirement for locating a lode, but only a requirement for claiming the full extent of extralateral rights. The comments are correct. We have amended this provision in the final rule to clarify what you have to do to establish extralateral rights.

Another group of comments stated that the language in this section was ambiguous and could lead to multiple interpretations. We have amended the

language to clarify areas that we agree seemed ambiguous.

Section 3832.22 How Much Land May I Include in My Mining Claim?

One comment stated that a lode claim may only extend the exposed length of the lode or vein claimed, or 1,500 feet, whichever comes first. If the exposed vein is 1,000 feet long, and you have reason to believe, from the geology, that the vein or lode is 1,500 feet or longer, you may take up the entire 1,500 allowed by law. The comment urged that this section be amended to provide that lode claims may extend to 1,500 feet along the course of the vein, lode, or ledge only if the lode, vein, or ledge also extends that far. The comment said that there is no guaranteed right to possession of the statutorily defined maximum size lode claim without proof of valuable mineralization underlying the entire length of the claim, and that to the extent the land covered by the claim does not also contain valuable minerals or lie within 300 feet on either side of a vein or lode, the Mining Law grants no rights to make use of those lands for any purpose. The question is whether the statutory language ''along the vein or lode'' means that the center line of the claim must track the vein or lode precisely, and if the lode stops the claim must also stop. We have found no case law that supports this interpretation. The common definition of ''along'' is ''in a line parallel with the length or direction of.'' We have not adopted the comment in the final rule.

Several comments stated that this section, in providing that the claim is limited to 300 feet on either side of the middle of a vein, lode, or ledge, follows an obsolete 1879 regulation that has since been modified by Solicitor's Opinions and court decisions. The comments said that there is no requirement in the Mining Law that a claim be laid along the course of the vein. The Mining Law at 30 U.S.C. 23 limits the claim to ''three hundred feet on each side of the middle of the vein at the surface.'' The comment is correct. However, to protect your extralateral rights, you should lay out your claim along the course of the lode, vein, or ledge. We have amended this provision in the final rule to make this clear.

Section 3832.30 Mill Sites

During the comment period, we received 49 comments addressing the series of mill site sections beginning with section 3832.30. Since the comment period closed, the Secretary and the Solicitor have continued to receive correspondence regarding these sections, including from Congress.

The General Mining Law allows miners to locate and patent nonmineral lands in association with mining claims. However, under the 5-acre mill site provision, 30 U.S.C. 42, no location of these nonmineral lands, called mill sites, may exceed 5 acres.

In 1997, former Solicitor John Leshy issued an opinion entitled ''Limitations on Patenting Millsites under the Mining Law of 1872,'' M–36988 (''1997 Opinion''). The opinion stated that under the 5-acre mill site provision of the Mining Law, an applicant may patent only up to 5 mill site acres per mining claim. In addition, the opinion stated that BLM should not ''approve plans of operations which rely on a greater number of mill sites than the number of associated claims being developed unless the use of additional lands is obtained through other means.'' As a consequence, the proposed rule that BLM published in 1999 sought to limit the amount of mill site acreage claimants could locate per mining claim, in a manner that also sought to prevent claimants from subdividing their mining claims to obtain the rights to more mill sites.

Deputy Solicitor Roderick E. Walston has reviewed the Mining Law, its legislative history, pertinent case law, and the Department's prior written guidance and prevalent practice regarding the 5-acre mill site provision. On October 7, 2003, Deputy Solicitor Walston issued an opinion entitled ''Mill Site Location and Patenting under the 1872 Mining Law,'' M–37010. (''2003 Opinion''). In the 2003 Opinion, the Deputy Solicitor determined that:

- Before the 1997 Opinion, Interior's prevalent practice and interpretation was to view the 5-acre mill site provision as limiting the size of individual mill sites, not the number of mill sites per mining claim.
- Interior consistently followed this practice and interpretation for at least 50 years immediately preceding the 1997 Opinion under the pre-existing regulations.
- The 1997 Opinion significantly departed from this 50-year practice and interpretation.
- Interior's pre-1997 practice and interpretation was consistent with Supreme Court precedent interpreting the statutory size limitations for lode and placer claims.
- Interior's pre-1997 practice and interpretation was consistent with Congress's goal in the Mining Law to promote mineral development on the public lands.
- Another clause of the mill site provision effectively limits the mill sites a claimant may locate and patent to the number used or occupied for mining or milling purposes.

Congress twice prohibited by law the Department from applying the 1997 Opinion. The conference report for the first law stated that the 1997 Opinion was ''particularly troubling because both the Bureau of Land Management and the Forest Service have been approving patents with more than one 5-acre millsite per patent based on procedures outlined in their operations manuals.'' H.R. Conf. Rep. No. 106–143, at 90 (1999).

Therefore, instead of changing the Department's past prevalent practice and interpretation of the mill site provision, BLM has decided to withdraw the proposed amendment to the mill site regulations and continue its prevailing practice and interpretation that the Department followed for a half century before the 1997 Opinion. That practice and interpretation, as described by the 2003 Opinion, is set forth in section 3832.32. This action does not change BLM's practice regarding mill site locations. Before former Solicitor Leshy issued his 1997 mill site opinion, BLM viewed the 5-acre mill site provision as a limit on the size of individual mill sites, not a limit on the allowable mill site acreage per mining claim. Deputy Solicitor Walston describes BLM's consistently-held written guidance in this way:

> For nearly a half century, the BLM's written guidance has reflected the view that the mill site provision does not categorically limit the number of mill sites that may be located and patented for each mining claim. The BLM Manual, adopted in 1954, sets forth three requirements for mill sites to qualify for patenting: (1) the lands must be nonmineral in character, (2) the mill site cannot be contiguous to a vein or lode, and (3) ''[t]he mill site does not include an area exceeding 5 acres.'' BLM Manual, ch. 3.3.2 (Apr. 20, 1954). The 1954 BLM Manual contained no restriction on the number of mill sites that may be located for a mining claim. Additionally, the BLM in 1954 issued a document entitled ''Mining Locations, Entries and Patents,'' which stated, on page 28, that ''[i]t has been held that more than one mill site may be embraced in an application for a patent, provided each such tracts [sic] keep within the restriction of 5 acres of non-mineral land and that each is needed and used for mill site purposes.'' Similarly, a BLM Manual issued in 1958 stated, ''More than one millsite may be located, provided each tract is of no more than 5 acres of nonmineral land and that each is needed and used for millsite purposes.'' Id. ch. 5.2.15 B. (Nov. 19, 1958). Thus, the BLM guidance and accompanying documents made clear that the Mining Law imposes no categorical restrictions on the number of mill sites that may be located and patented for each mining claim.

The BLM continued to adhere to this view. In 1966, a BLM minerals specialist prepared a summary of mill site requirements. Under the topic heading ''Number of Millsites,'' the minerals specialist stated, ''Although there is no number specified, it has been held that as many millsites as are actually needed for the operation can be located. There must be a clear showing of need and use if more than one millsite is taken. This also applies to custom mills.'' Memorandum from Minerals Specialist, PSC, to Chief, Mining Staff, Washington Office, BLM 1 (May 11, 1966). In another 1966 document entitled ''Mineral Patents—Information Relative to the Procedure for Obtaining Patent to a Mining Claim,'' the BLM stated, ''Lands entered as mill sites may be for an area of not more than 5 acres for each mill site and must be shown to be nonmineral in character and not contiguous to a vein, lode, or placer.'' Mineral Patents-Information Relative to the Procedure for Obtaining Patent to a Mining Claim 13 (1966). These documents support the view that the five-acre mill site provision defines the size of individual mill sites but does not limit their number.

In 1976, the BLM Manual stated that a mineral examiner, in conducting a field examination, must make certain determinations regarding mill sites: (1) the lands must be nonmineral in character, (2) the claim must be occupied and used for mining or milling purposes; and (3) there must be a quartz mill or reduction works on the claim if for custom mill. BLM Manual § 3930.14 C (Oct. 8, 1976). The BLM Manual also stated, ''The maximum size of a mill site claim is 5 acres. However, several mill site claims may be embraced in a single application, provided the total acreage does not exceed 5 acres per mill site.'' Id. § 3864.11 B (Oct. 6, 1976). Again, the BLM Manual articulated limitations on the size of mill sites but not their number, except to the extent it applied the use-or-occupancy requirement.

In 1980, the BLM Washington Office issued a ''Mineral Survey Procedures Guide'' that stated, on page 26, ''There is no limit to the number of mill sites that may be located, so long as they are necessary for the operation of a mine or mill.'' Today, BLM's Handbook for Mineral Examiners provides that ''[a]ny number of millsites may be located but each must be used in connection with the mining or milling operation.'' BLM Handbook for Mineral Examiners, H–3890–1, Ch. III § 8 (Mar. 17, 1989). Additionally, the BLM Manual states that ''[a] mill site cannot exceed 5 acres in size. There is no limit to the number of mill sites that can be held by a single claimant.'' BLM Manual § 3864.11 B (1991).

Thus, the BLM has, through its written guidance, consistently interpreted the five-acre mill site provision as limiting the size of individual mill sites but not as precluding claimants from locating and patenting multiple mill sites in association with a single mining claim.

2003 Opinion, at 24–25.

In addition, in 1996, BLM's Deputy Director asked all BLM State Offices to describe state office practice regarding patenting and approving plans of operations involving more than one 5-acre mill site per mining claim. Memorandum from Mat Millenbach, Deputy Director, BLM, to Assistant Directors and State Directors, BLM (Mar. 5, 1996). The state office responses support the conclusion that BLM's consistently-held practice was to treat the 5-acre mill site provision as a limit on the size of individual mill sites. The survey responses also show that BLM's primary determination regarding mill site validity is to determine whether claimants are using or occupying each mill site for mining or milling purposes. See 2003 Opinion Appendix.

After former Solicitor Leshy issued his mill site opinion in 1997, BLM's practice effectively did not change. The Department of the Interior attempted to deny a proposed plan of operations for the Crown Jewel mine in Washington State, in part, based on the interpretation of the 5-acre mill site provision described in the 1997 Opinion. However, Congress quickly enacted a provision disallowing the Department from applying the 1997 Opinion to the Crown Jewel mine or any other patent or proposed plan of operations that was filed before the provision's date of enactment. Pub. L. 106–31, 113 Stat. 90–91 (1999).

Thereafter, Congress enacted a second law, the FY 2001 Appropriations Act for the Department of the Interior and Related Agencies, prohibiting the Department from applying the 1997 mill site opinion. Pub. L. 106–291, 144 Stat. 922 (Oct. 11, 2000). As a consequence, beyond the unsuccessful denial of the Crown Jewel plan of operations, the Department has not applied the 1997 Opinion to any other proposed plans of operations or patents. Because of these intervening laws, the Department effectively has not departed in practice from its earlier consistently-held interpretation of the 5-acre mill site provision. In addition, because the proposed rule published on August 27, 1999, was never finalized, the Department has not departed by regulation from its earlier interpretation of the 5-acre mill site provision. Thus, the language of this rule does not change BLM's prevalent practice and interpretation regarding mill site locations; rather, it confirms the practice and interpretation that existed before Solicitor Leshy's 1997 Opinion, as well as the effective practice following the 1997 Opinion.

In response to comments on the initial proposed rule and in accordance with the 2003 Opinion, we are adopting mill site regulations that continue the Department's past prevalent practice and interpretation under the pre-existing regulations and that make clear that the 5-acre mill site provision in the Mining Law is a limit on the size of individual mill sites and not a limit on the allowable mill site acreage per mining claim. That is, the final rule maintains BLM's past practice regarding the 5-acre mill site provision.

Section 3832.31 What Is a Mill Site?

One comment recommended that we state the limitation, if any, on the acreage of independent or custom mill sites that you can locate. Section 3832.32 addresses the size limitations of all mill sites, including independent or custom mill sites. The maximum size of individual mill sites is 5 acres.

Section 3832.32 How Much Land May I Include In My Mill Site?

As discussed above, we have withdrawn the proposed amendment to this section in response to comments and the 2003 Opinion and have conformed the rule to the Department's prevalent practice under the pre-existing regulations as described in the 2003 Opinion.

Comments from various mining industry groups and mining companies stated that the Department's prevalent practice for at least the past fifty years has not required a one-to-one ratio between mill sites and lode (or placer) claims, let alone a 5-to-20 acre ratio, as provided in the proposed rule.

Comments from environmental interests supported the limits on mill sites in the proposed rule, saying they were necessary to prevent improper waste dumping on the public lands. We have addressed this concern by requiring claimants to locate only that amount of mill site acreage that is necessary to be used or occupied for efficient and reasonably compact mining or milling operations. This is a new regulatory requirement, which BLM will implement by applying this standard in its review of proposed plans of operations under 43 CFR subpart 3809. In addition, the regulations at 43 CFR subparts 3715 and 3809 prohibit the unauthorized placement of waste rock, tailings, or other mining materials.

Section 3832.34 How May I Use My Mill Site?

Several comments addressed permitting requirements for mill site use. One comment asked for language limiting the use of National Park System lands for rock and soil dumps. In response to this comment, we added language to advise a mill site owner to comply with the regulations of the

surface management agency before beginning operations.

One comment suggested that we remove paragraph (a)(6), because miners should be able to use mill sites for mine closure operations. The case law rejects this idea. Mill sites may not be located or patented for closure operations alone. You may only locate or patent mill sites for the support of a mining operation. You may use a mill site for the storage of top soil and materials that you removed in initial mine stripping that you will later replace on the mine site for reclamation. Of course, you may reclaim a mill site and, indeed, must do so upon termination of your operation. See *United States* v. *Utah International, Inc.*, 45 IBLA 73 (1980).

We have amended this section to describe separately the types of uses allowed for independent or custom mill sites.

Section 3832.44 What Rights do I Have to Minerals Within my Tunnel Site?

We revised paragraph (c) of this section for the sake of clarity. Although no one commented on this provision, on reviewing it while drafting the final rule, we found its wording in the proposed rule somewhat inaccurate. The intent of this paragraph is that, to maintain your right to possess all unknown, undiscovered veins, lodes, or ledges that your tunnel may intersect as you develop it, you must perform at least some work on the tunnel within every consecutive 6-month period.

Subpart E—Defective Locations

Section 3832.91 How Do I Amend a Mining Claim or Site Location if it Exceeds the Size Limitations?

Numerous industry comments objected to the provision in paragraph (a) that you would forfeit a claim or site if it were oversized by more than 10 percent, and said that any forfeiture should only cover the excess acreage. After further consideration, BLM agrees and has removed the language in the final rule. If a claim is oversize, BLM will issue a decision, notify you, and direct you to file an amended location certificate correcting the matter within 30 days.

Part 3833—Recording Mining Claims or Sites [Added]

This part walks you through the Federal process for recording a mining claim or site.

Section 3833.1 describes what it means to record mining claims and sites and why you must record your mining claims and sites. The recording process provides BLM with a record of claims and sites, as required by FLPMA.

Sections 3833.10 and 3833.11 outline the procedures for recording mining claims and sites. Specifically, section 3833.11 describes how you record mining claims and sites. Some of this information may be the same information that you used to locate your claim under part 3832.

Sections 3833.20 through 3833.23 describe when and how you may amend the record of a previously located mining claim or site. Sections 3833.30 through 3833.35 cover transfers of mining claims or sites.

Finally, sections 3833.90 through 3833.93 describe how to cure certain defects in your recording of mining claims or sites.

Section 3833.1 Why Must I Record Mining Claims and Sites?

A comment suggested that BLM use the term ''record'' in these regulations to refer to the county recorder's office and the term ''file or filing'' to refer to documents given to BLM. We did not adopt this comment because the term file or filing as applied to a notice of location can be confused with the other types of filings claimants make with BLM. In addition, the heading for the section in FLPMA that requires claimants to file a copy of the notice of location with the state and BLM is ''Recordation of Mining Claims and Abandonment.'' We have added a definition of the term ''recording'' to make clear that recording applies only to filing of notices or certificates of location.

A comment, repeated in numerous letters, stated that we should add language to the rule at this point requiring demonstration of discovery before mining activity can occur, saying that staking a claim does not guarantee discovery. We have addressed this concern in earlier sections in which we state that a mining claim is not valid until the claimant discovers a valuable mineral deposit.

Another comment noted we did not state that the 90-day recording requirement of section 314(b) of FLPMA also applies to county recordings. We have added language to paragraph (a) to correct this oversight.

For paragraph (b), another comment requested that this section include a list of items that would cause a claim to become invalid, void, or without effect. We have provided a list of defects that are not curable in section 3830.91 and will lead to a forfeiture of your claim. Other failures may mean that you have not established a valid mining claim. For example, your mining claim is not valid if you have not discovered a valuable mineral deposit. Because overall mining claim validity depends on so many factors that are case specific, we have not adopted this suggestion in the final rule.

We also removed from the final rule the last sentence of paragraph (b) as proposed, which provided that recording a claim does not in and of itself establish property rights in the land. That sentence was redundant to the first sentence in paragraph (b).

Section 3833.11 How Do I Record Mining Claims and Sites?

One comment asked for an explanation of ''O and C Lands'' as used in paragraph (d). ''O and C Lands'' refers to Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands in Oregon. These are explained in 43 CFR subpart 3821.

Several comments stated that the wording of paragraph (a) was internally inconsistent, requiring the claimant to record with the county a copy of the document he or she already recorded with the county. We have corrected this problem in the final rule.

One comment asked that we identify which among those items that paragraph (b) requires to be in the notice or certificate of location, if omitted, would be—

- A curable defect, or
- An incurable defect causing forfeiture of the mining claim.

We believe that such a list is unnecessary in light of the explanation of when and how to amend locations in section 3833.20 *et seq.*

Subpart B—Amending Mining Claims and Sites

Section 3833.21 When May I Amend a Notice or Certificate of Location?

Several comments disputed paragraph (b)(4) of this section, which provides that you cannot enlarge a claim by amendment. The comments stated that state laws and case law allow enlargement of undersized claims so long as there are no intervening rights. The cases and other authorities cited in the comments do not support this position.

The general rule is that you may not enlarge an existing mining claim or site by amendment. The Interior Board of Land Appeals (IBLA) has held that such an attempted amendment is a re-location of the original claim (see *Junior L. Dennis,* 133 IBLA 239 (1995) and cases cited therein).

You may reposition lode claims at a later date, in the absence of intervening rights, by amendment for proper alignment along a vein or lode as work progresses, in order to secure your

extralateral rights. See II *Lindley on Mines* § 339, 3rd ed. 1916. The cases cited in the comments also state this rule, but do not address the issue of enlargement of claims by amendment.

Several comments suggested that the regulations should allow other amendments after land is withdrawn other than reducing acreage. The available case law does not permit other kinds of amendments of the claim itself. We have amended this section to make it clear that you may correct clerical errors in your filings, such as mistakes in your land descriptions or in other filing documentation, but that you may change the actual boundaries or move the monuments of your claim on withdrawn land only to reduce the size of the claim or site.

Section 3833.22 How Do I Amend My Location?

Several comments questioned BLM's authority to void claims if the claimants did not record completed amendments within 90 days after recording the amendment in the local recording office. Upon reconsideration, we have removed this provision and restored the provision from the old regulations, which says that we will not recognize the changes in your claim (just the original location documents) until you file them properly.

Subpart C—Filing Transfers of Interest

Section 3833.31 What Is a Transfer of Interest?

Several comments addressed the applicability of community property rights to unpatented mining claims. Upon further analysis, we have removed this provision; as proposed, it only applied to the patenting process, which is not the subject of this regulation.

Another comment asked if we intended this section to apply to mortgages, liens, leases, etc. The answer is no, as explained previously in the preamble discussion of section 3830.2.

Section 3833.32 How Do I Transfer a Mining Claim or Site?

Several comments noted that the legal effects of recordings and filings of legal documents (deed, grants, etc.) are a state law issue. We agree and have rewritten this section (as paragraph (a) of a section combining sections 3833.32 and 3833.33 of the proposed rule) to provide that state law governs transfers of mining claims and sites and determines the effective date of a transfer.

Subpart D—Defective Filings

Section 3833.91 What Defects Cannot Be Cured Under This Part?

We removed paragraph (d), which provided that you cannot forfeit a claim already void or forfeited, because it merely repeated section 3833.21(b)(2).

Several comments objected to paragraph (e), which would void a claim that is more than 10 percent larger than the statutory maximum size. We have removed this provision from the final rule.

Part 3834—Required Fees for Mining Claims or Sites

This part guides you through annual maintenance of your claims or sites. It describes what you must do each year to maintain your mining claims or sites properly to avoid forfeiting them. Section 3834.11 describes the location fee, initial maintenance fee, annual $100 maintenance fee, and oil shale placer claim fee.

Sections 3834.12 through 3834.14 go through the procedures for and effects of paying the maintenance fee.

Sections 3834.20 through 3834.23 outline when and how the Secretary may adjust the amount of the maintenance and location fees.

Subpart A—Fee Payment

Section 3834.11 Which Fees Must I Pay to Maintain a Mining Claim or Site and When Do I Pay Them?

Several comments found the language in paragraphs (a) and (b) to be imprecise and ambiguous, especially as to what period of time the annual maintenance fee covers. They suggested alternative phrasing in some places. After careful analysis, BLM has amended paragraphs (a) and (b), in some cases adopting the suggested phrasing, to make this section more clear.

Section 3834.12 How Will BLM Know Which Mining Claims or Sites I am Paying the Fees For?

Several comments pointed out that the claimant does not always have the serial number when it is time to pay the annual maintenance fee. We amended this provision to say that your list of claims for which you are paying must include the serial numbers of the claims if BLM has informed you that we have assigned serial numbers.

Section 3834.13 Will BLM Prorate Annual Maintenance or Oil Shale Fees?

One comment suggested rephrasing this provision to emphasize that the full annual maintenance fee is required even if the claimant held the claim for only one day in the assessment year. We adopted this suggestion in the final rule.

Section 3834.14 May I Obtain a Waiver From These Fees?

One comment objected to a lack of waiver rights for oil shale mining claims. This is a statutory requirement over which BLM has no discretion. Unless you filed a patent application and received a first half of mineral entry final certificate before October 24, 1992, the Energy Policy Act of 1992 (30 U.S.C. 242) requires the payment of an annual $550 fee and a FLPMA filing of a notice of intent to hold. The comment also asked whether, after a mineral patent is issued, an oil shale mining claim is still subject to the annual fee. The answer is no.

Section 3834.23 When Do I Start Paying The Adjusted Fees?

One comment addressed the timing of fee adjustments. We have not made any changes to this section because it reflects the statutory language.

Part 3835—Waivers From Annual Maintenance Fees

Section 3835.1 provides general information about fee waivers and their applicability. Sections 3835.10 through 3835.11 address general filing requirements for waivers, while section 3835.13 lists specific types of waivers, their duration, and how you should renew them. Five types of waivers are available to claimants who are—

- Small miners,
- Military personnel under the Soldiers and Sailors' Relief Act,
- Performing reclamation,
- Denied access, or
- Mineral patent applicants, under certain circumstances.

Sections 3835.14 through 3835.17 establish the conditions and the process—

- For obtaining a small miner waiver in the assessment year following the assessment year of location,
- For filing a waiver one year and paying the maintenance fee the next,
- For paying the maintenance fee one year and filing a waiver the next assessment year, and
- For obtaining a waiver for claims or sites on National Park System lands.

Section 3835.20 addresses whether waivers continue when a claim is transferred. It explains that a waiver is still effective if the transferee also qualifies for the waiver. If not, the required maintenance fees are due by the September 1st following the date of transfer.

Sections 3835.30 through 3835.34 describe annual FLPMA documents and

when they are required to be filed. Annual FLPMA documents include affidavits of assessment work when required as a condition of a waiver, or notices of intent to hold the claim when an affidavit of assessment work cannot be filed.

As in the earlier parts, sections 3835.90 through 3835.93 describe the procedures to cure certain defects if you have any in your waiver request.

Subpart A—Filing Requirements

Upon reviewing the public comments, and after carefully reviewing this subpart, we reorganized it somewhat in the final rule, and replaced proposed section 3835.1 with the table explaining waiver qualification requirements from proposed section 3835.12.

Section 3835.10 How Do I File for a Waiver?

This section appeared as section 3835.11 in the proposed rule. Comments suggested modifications in this section to make it read more clearly, particularly as to what assessment year is covered by a waiver request, and who must sign the request if an agent submits it. BLM has amended this section by adding language making it clear that the waiver request maintains the claim for the assessment year that begins on the date the waiver request is due and stating that a request submitted by an agent must include the agent's original signature, not necessarily that of the claimant.

Another comment asked whether BLM would provide forms that claimants must use to request a waiver. BLM makes BLM form number 3830–2 (Small Miner Waivers) available in all of its state offices, and its use is required in order to request a waiver from payment of annual maintenance fees.

Sections 3835.11 What Special Filing and Reporting Requirements Pertain to the Different Types of Waivers?

This section appeared as section 3835.12 in the proposed rule, in tabular form. In the final rule, we present this provision in the form of text; the table added little to aid understanding. Several comments addressed this section, seeking clarity as to what year the waiver request must cover, and stating that assessment work is not required in every year of the life of a mining claim. For example, assessment work is not required in the year of location. We have amended the language in light of these suggestions, using the term ''the applicable assessment year'' and adding the qualification ''required by the Mining Law of 1872'' to the provision for what assessment work must be certified in your small miner waiver request.

Section 3835.12 What Are My Obligations Once I Receive a Waiver?

This section is new in the final rule, based on comments that the FLPMA filing requirements are very confusing and should not be summarily dealt with in a section on waiver requirements. This section provides the necessary cross-references to the annual filing procedures you must follow to maintain claims for which you have a waiver from the maintenance fee.

The waiver qualification table in this section in the proposed rule now appears in section 3835.1 in the final rule.

Section 3835.13 How Long Do the Waivers Last and How do I Renew Them?

One comment pointed out a drafting error in the table in this section, where we inadvertently switched the renewal requirements for two of the waiver types. We have corrected the error in the final rule.

Section 3835.14 How Do I File for a Small Miner Waiver for Newly-Recorded Mining Claims?

Comments found this section confusing, especially in light of provisions later in this subpart. We have removed redundant provisions from this section, and added a cross-reference to sections 3835.31 through 3835.34, to make it clear when you must make filings under Section 314 of FLPMA for a newly-located claim or site if you have also submitted a waiver request at the time of recording the claim or site.

Section 3835.15 If I Qualify as a Small Miner, How Do I Apply for a Waiver if I Paid the Maintenance Fee in the Last Assessment Year?

Some of the comments on this section betrayed such a lack of understanding of its meaning that it became clear to us that it was confusing and we needed to clarify the section. Following a suggestion in one comment, we added introductory text (1) telling you that you must submit a waiver request, and (2) cross-referring to the appropriate regulatory guidance for doing so. We also reworded the rest of the section to try to make it clearer. The section should not be read, as one comment interpreted it (perhaps with tongue in cheek), to require you to do ''twice the normal amount of assessment work during the first assessment year for which your maintenance fee was waived.''

Section 3835.16 If I Am a Qualified Small Miner, and I Obtained a Waiver in One Assessment Year, What Must I Do if I Want To Pay the Maintenance Fee for the Following Assessment Year?

One comment said that this section was incorrect, that it should have required you to do the assessment work for the year before the year for which you obtained a waiver, rather than the year for which you obtained a waiver. While it is true that you must do assessment work for the year before you obtain a waiver, you must obtain a new waiver each year, having done the assessment work during each preceding assessment year as you go along. Of course, this amounts to a requirement that during every year covered by a waiver you must do assessment work, plus the year before your initial waiver request. Thus, if, for whatever reason, you wish to or are required to pay the maintenance fee in a subsequent year, the present year must necessarily be covered by a waiver, and you must do the assessment work for that year, ''the assessment year for which the fee was waived.'' We made no substantive change in this provision. The following table shows how the provision works, based on four possible scenarios that may describe the affected miner's situation; in the table, ''xx'' refers to the current calendar year:

Assessment year end 9/1/xx	FLPMA filing due 12/30/xx	Assessment year end 9/1/xx+1	FLPMA filing due 12/30/xx+1	Assessment year end 9/1/xx+2	FLPMA filing due 12/30/xx+2	Assessment year end 9/1/xx+3	FLPMA filing due 12/30/xx+3
If you paid the maintenance fee.	No FLPMA filing necessary.	If you asserted small-miner waiver.	You must file Notice of Intent to Hold your claim or site.	If you asserted small-miner waiver.	You must file Proof of Labor for assessment year Sept. xx+1 to Sept. xx+2.	If you asserted small-miner waiver.	You must file Proof of Labor for assessment year Sept. xx+2 to Sept. xx+3.
If you asserted small-miner waiver.	You must file Proof of Labor for assessment year Sept. xx – 1 to Sept. xx.	If you paid the maintenance fee.	You must file Proof of Labor for assessment year Sept. xx to Sept. xx+1.	If you paid the maintenance fee.	No FLPMA filing necessary.	If you paid the maintenance fee.	No FLPMA filing necessary.

Assessment year end 9/1/xx	FLPMA filing due 12/30/xx	Assessment year end 9/1/xx+1	FLPMA filing due 12/30/xx+1	Assessment year end 9/1/xx+2	FLPMA filing due 12/30/xx+2	Assessment year end 9/1/xx+3	FLPMA filing due 12/30/xx+3
If you paid the maintenance fee.	No FLPMA filing necessary.	If you asserted small-miner waiver.	You must file Notice of Intent to Hold your claim or site.	If you paid the maintenance fee.	You must file Proof of Labor for assessment year Sept. xx+1 to Sept. xx+2.	If you asserted small-miner waiver.	You must file Notice of Intent to Hold your claim or site.
If you asserted small-miner waiver.	You must file Proof of Labor for assessment year Sept. xx − 1 to Sept. xx.	If you paid the maintenance fee.	You must file Proof of Labor for assessment year Sept. xx to Sept. xx+1.	If you asserted small-miner waiver.	You must file Notice of Intent to Hold your claim or site.	If you the paid the maintenance fee.	You must file Proof of Labor for assessment year Sept. xx+2 to Sept. xx+3.

Section 3835.17 What Additional Requirements Must I Fulfill To Obtain a Small Miner Waiver for My Mining Claims or Sites on National Park System Lands?

A comment from the National Park Service asked that we add provisions instructing miners how to comply with waiver and assessment work requirements for mining claims on NPS lands, and provided language to serve that purpose. We have substantially adopted the recommended language. Your plan of operations must be approved by the NPS before you can begin, and your assessment work must further the goal of developing the mineral deposit. If NPS does not approve the plan in time to qualify for a small miner waiver, the final rule gives you three options: pay the maintenance fees; petition for a deferment of assessment work; or file for a lack of access waiver.

Subpart B—Conveying Mining Claims or Sites Under Waiver

Section 3835.20 Transferring, Selling, Inheriting, or Otherwise Conveying Mining Claims or Sites Already Subject to a Waiver.

This section explains whether BLM will continue to apply a waiver to a mining claim after the person who first qualified for the waiver transfers it to another claimant. One comment stated that if a miner with a small miner waiver performs the required assessment work and then transfers a claim to a miner who does not qualify for a waiver, the second miner should not have to pay the maintenance fee. The argument is that the work done on the claim should have been effective for the whole assessment year and therefore should have excused the claim from the maintenance fee requirement.

When a small miner conveys a claim to a claimant who does not qualify for a small miner waiver, the status of the claim changes immediately upon the transfer, and the waiver no longer applies. To retain the claim for the current assessment year, the transferee must pay the maintenance fee for the newly acquired claim. Under this scenario, assessment work previously done to hold the claim is not an acceptable alternative to paying the maintenance fee, as the comment seems to be saying. Doing assessment work is never an optional alternative to paying the maintenance fee for claimants who own more than 10 claims or sites.

Another comment found paragraph (b) as proposed to be confusing. We have amended the paragraph to explain to claimants who do not qualify for a waiver what they must do to maintain a claim that they obtain from someone who did qualify for a waiver.

Subpart C—Annual FLPMA Filings

Section 3835.31 When Do I File an Annual FLPMA Document?

Several comments stated that the proposed language of sections 3835.31 and 3835.32 was ambiguous and confusing. Some offered substitute language. They stated that we omitted crucial information that claims could be forfeited if the claimant did not record an affidavit of assessment work or notice of intention to hold in the local recording office before the statutory deadline. They also criticized some imprecise wording as to where annual FLPMA filings must be filed, and what year is meant by ''December 30th of the calendar year in which the assessment year ends.'' They questioned the meaning of ''current assessment year'' in paragraph (c). They disputed a statement in paragraph (a) that you must submit a FLPMA filing by December 30th of the calendar year in which the assessment year ends, saying that this contradicted the statutory provision that paying the maintenance fee satisfies the FLPMA filing requirement.

We have combined sections 3835.31 and 3835.32 in the final rule to clarify when you must make filings and what filing is required under various circumstances. We have also amended the table that describes the filing requirements and deadlines.

One comment suggested adding a ''situation'' to the table now in paragraph (d) of this section. It would describe what happens if you have a deferment of assessment work: the regulations would not require an affidavit of assessment work, but you would have to file a notice of intent to hold. We have added this situation to the table, with a reference to paragraph (c) of this section, which describes this situation and the actions you must take.

One comment stated that paragraph (h) in the table was inaccurate because it did not account for the fact that most claimants would be paying the maintenance fee. The comment suggested that the provision should merely state BLM does not require an affidavit or notice after you obtain the mineral entry final certificate. We have amended paragraph (h) as suggested by the comment.

Section 3835.32 What Should I Include When I Submit an Affidavit of Assessment Work?

This section appeared as section 3835.33 in the proposed rule. Several comments stated that the regulatory text was not specific and clear enough in this section as to what form and type of assessment work documents have to be filed. The comments focused on what we meant by evidence of assessment work, by a copy of the surveys that you must file with BLM, and what documents need to be recorded in the local recording office, and offered alternative language. We have revised the section to be even more specific. We make it clear that FLPMA allows you to submit a detailed report of geological, geochemical, and geophysical surveys and reports, as provided in 30 U.S.C. 28–1, in lieu of an affidavit of assessment work.

Section 3835.33 What Should I Include When I Submit a Notice of Intent To Hold?

This section appeared as section 3835.34 in the proposed rule. Two comments addressing the section noted that FLPMA does not require the signatures of all claim holders on a Notice of Intent to Hold (NOI), as required in the proposed rule. The comment is correct and the language has been revised to require that one or more co-owners must sign the NOI to make it effective.

The comments also stated that the regulations did not clearly include the FLPMA requirement that the document you file with BLM must be a copy of the

document you filed with the local recording office. We have amended paragraph (a) of this section to make it clear that you must file with BLM a copy of the notice of intent to hold that you have recorded or will record with the county.

Subpart D—Defective Waivers and FLPMA Filings

Sections 3835.91–3835.93.

Numerous Comments stated that some provisions in these sections were ambiguous as proposed. Some comments included alternative language. After a careful analysis, BLM has amended these sections to include plainer identification of the possible defects, the penalties, and the remedies available.

Section 3835.91 What If I Fail To File Annual FLPMA Documents?

One comment stated that ''on time'' was insufficiently specific as a standard for making annual FLPMA filings, and requested a specific date instead. We amended this section to provide the specific annual deadline of December 30.

Section 3835.92 What If I Fail To Submit a Qualified Waiver Request?

One comment asked that we amend this section to—

- Define the term ''qualified waiver request'';
- Define ''on time''; and
- Clarify the difference between ''defective waiver'' and ''non-qualified waiver.''

We amended this section in the final rule by adding a cross-reference to an explanation of qualifying for a waiver, and by stating the actual deadline rather than saying ''on time.'' In this section, we no longer refer to ''qualified waiver requests'' or ''qualified waivers.''

These comments also stated that paragraph (d) must be amended to make it clear that it is only in the case where a miner has filed a waiver request but does not pay the maintenance fee that a co-owner's failure to qualify as a small miner will invalidate the claim. We have amended paragraph (d) to clarify that if you, a co-claimant, or any related parties file small miner waivers for more than 10 mining claims or sites and also fail to pay the maintenance fee for each claim or site, the claims and sites will be forfeited. We have also added language that states that you may be subject to criminal penalties if you attempt to obtain a small miner waiver for more than 10 mining claims or sites.

Part 3836—Annual Assessment Work Requirements for Mining Claims

This part consolidates the provisions of current part 3851 on performing and recording assessment work, which is sometimes a condition for a maintenance fee waiver. Sections 3836.10 through 3836.15 identify the types of work that qualify as assessment work, and tell you how to record the work. Section 3836.16 discusses what happens if you fail to perform assessment work. If you are a qualified small miner, and you have been denied access to your claims, you may petition BLM to defer assessment work as outlined in sections 3836.20 through 3836.25.

Subpart A—Performing Assessment Work

Section 3836.11 What Are the General Requirements for Performing Assessment Work?

Several comments addressed this section. One comment stated that paragraph (a) should say that assessment work must be done before the small miner waiver deadline in order to qualify for the waiver. The comment is correct. We have amended the rule accordingly.

Another comment pointed out that the requirement in paragraph (a) to do assessment work for every claim every year does not recognize that you need not perform assessment work in the assessment year during which you locate a new claim. We have amended this provision in light of the comment.

Several comments stated that our interpretation in paragraph (b) of the assessment provision of the General Mining Law is erroneous. A comment also challenged the ''on claim'' provision, stating that some work can be performed off site and still qualify. We are not aware of any case law that would disallow BLM's longstanding practice of allowing claimants to comply with the assessment work requirement by conducting work on a group of contiguous claims that cover the same deposit. In addition, the Supreme Court in *St. Louis Smelting & Refining Co.* v. *Kemp,* 104 U.S. 636 (1881), held that off site work qualifies as assessment work so long as it supports development of the claim. BLM therefore has amended this provision in the final rule accordingly.

Some of these comments said that this paragraph was not clearly worded. We have amended the language to try to make it more clear.

Section 3836.14 What Other Requirements Must Geological, Geochemical, or Geophysical Surveys Meet to Qualify As Assessment Work?

One comment questioned the term ''local district recording office'', which was a typographical error in the proposed rule. The term ''local recording office'' replaces it in the final rule.

Subpart B—Deferment of Assessment Work

Section 3836.21 How Do I Qualify for a Deferment of Assessment Work on My Mining Claims?

One comment stated that this provision in the proposed rule seemed garbled, and left incomplete the reasons allowed for obtaining a deferment of assessment work. The comment stated that it did not specifically allow for deferment when a unit of government has issued a declaration of taking. We have revised this paragraph in light of the comment.

Section 3836.22 How Do I Qualify for a Deferment of Assessment Work on My Mining Claims That Are on National Park System (NPS) Lands?

We have added this section in the final rule in response to a public comment. A comment addressed the issue of deferments and documentation on Nation Park System lands, stating that the rule should explain the procedure for obtaining a deferment of assessment work for claims situated on National Park System land. The comment suggested language to fix the problem. We accepted this recommendation and created a new section 3836.22, renumbering proposed section 3836.22 as 3836.23.

Section 3836.23 How Do I Petition for Deferment?

Several comments asked why a petition for deferment must be submitted in duplicate. The requirement is obsolete, a holdover from old General Land Office regulations promulgated when photocopy machines could have appeared only in science fiction. It is clearly no longer necessary, and we have removed it in the final rule.

These comments also suggested the following amendments to clarify this section—

- Amend paragraph (a)(4) to make it clear that you must meet its requirements only if the provisions of the paragraph apply to your situation. We have amended the paragraph to make clear that you must file a statement that you plan to submit a small miner waiver form on or before

September 1st, since you need not conduct assessment work unless you are going to file for a small miner waiver from the $100 maintenance fee;

• In paragraph (b)(1), clarify the meaning of ''nature of the land'' (which must be described by applicants for a right-of-way to a claim). We have added words to clarify what you must describe in your petition;

• In paragraph (c), add references to declarations and notices of taking. We have added a provision at section 3836.21(b) in the final rule adding these to the circumstances qualifying you for a deferment of assessment work.

Part 3837—Acquiring a Delinquent Co-Claimant's Interests in a Mining Claim or Site

This part consolidates the procedures in current subpart 3851 and 30 U.S.C. 28 for acquiring the interests of a delinquent co-claimant in a mining claim or site when the co-claimant has failed to contribute a proportionate share of the assessment work, expenditures, or maintenance fees. Sections 3837.10 and 3837.11 state the conditions for acquisition and sections 3837.20 through 3837.24 lay out the steps for acquisition. Section 3837.30 provides guidance in the event of a dispute between co-claimants.

Subpart A—Conditions for Acquiring a Delinquent Co-Claimant's Interests in a Mining Claim or Site

Section 3737.11 When May I Acquire a Delinquent Co-Claimant's Interests In a Mining Claim Or Site?

One comment found the opening sentence of paragraph (a)(4) somewhat unclear and suggested that we lay out the timing of the notice and the co-claimants' acquisition of the delinquent's rights more clearly. We have adopted language suggested in the comment. The delinquent co-claimant has 90 days from the date the claimant received actual notice or 90 days from the date the publication period ended in which to carry out a proportionate share of the assessment work or to pay a proportionate share of expenditures or maintenance fees or forfeit all interest in the claim to the other co-claimants.

In this final rule, we amended the title of this section by changing the first word from ''how'' to ''when.''

Subpart B—Acquisition Procedures

Section 3737.21 How Do I Notify the Delinquent Co-Claimant That I Want To Acquire His or Her Interests?

and

Section 3737.23 How Do I Notify BLM That I Have Acquired a Delinquent Co-Claimant's Interests In a Mining Claim or Site?

Several comments objected to the requirement that a co-claimant conduct a diligent search to locate a missing co-locator before we allow publication of a notice and potential loss of ownership interest. The comments questioned our authority to require this procedure, saying that 30 U.S.C. 28 ''simply give the option of personal notice in writing or notice by publication.'' The Secretary has such authority under 43 U.S.C. 1201 to establish, by regulation, such rules and procedures as she deems necessary for the orderly conduct of business on the public lands. Over the last 10 years, BLM has seen instances in which this provision is used inequitably. For example, some claimants who know how to contact a co-claimant have instead published notice in a newspaper, hoping that the co-claimant would not see the notice. In order to protect the rights of all claimants, we have amended the regulations to establish a simple sequence of steps that the other co-claimants must follow before being allowed to deprive a delinquent co-claimant of an interest in the claim or site.

Part 3838—Special Procedures for Locating and Recording Mining Claims and Tunnel Sites on Stockraising Homestead Act Lands

This part contains special procedures for exploring for minerals and locating, recording, and maintaining mining claims or tunnel sites located on or under Stockraising Homestead Act (SRHA) lands. If you want to locate mining claims on SRHA lands, you must take these special steps before locating, recording, and maintaining mining claims or tunnel sites under this part. These procedures are required by the Act of April 16, 1993; Public Law 103–23; 43 U.S.C. 299(b). The Act took effect on October 13, 1993.

Sections 3838.1 and 3838.2 describe what SRHA lands are, and why claims or sites on them require special procedures. Sections 3838.10 through 3838.14 and section 3838.16 discuss the procedures for exploring for minerals and locating mining claims on SRHA lands. Specifically, you must record a notice of intent to locate mining claims (NOITL) with BLM, and serve a copy of the NOITL on the surface owners. You must then wait 30 days before entering the lands to explore for minerals or locate any mining claims. Section 3838.15 describes the benefits you receive when you file a NOITL, while sections 3838.90 and 3838.91 state the consequences of failing to file a NOITL.

Subpart B—Locating and Recording Mining Claims and Tunnel Sites on SRHA Lands

Section 3838.12 What Must I Include In a NOITL on SRHA Lands?

We revised this section to improve clarity, based on our own review of the proposed rule. We have made it clear that a duly-authorized agent may file the NOITL on behalf of claimants. We have also expanded the list of evidence that you may submit to show surface ownership to include tax assessments and receipts, and title insurance documentation.

Section 3838.13 What Restrictions Are There On Recording a NOITL on SRHA Lands?

One comment, supported by two others, stated that BLM lacked statutory authority, in paragraph (d), to impose a 30 day waiting period after the expiration of a NOITL before the same claimant may file a new NOITL. As noted above, under 43 U.S.C. 1201, BLM has such authority. We drafted this provision to correct abuses of the system whereby certain individuals were filing a new NOITL every 90 days over the same land and never locating mining claims. Their purpose was to keep other potential claimants out.

Section 3838.15 How Do I Benefit From Properly Filing a NOITL on SRHA Lands?

One comment, supported by two others, stated that the period during which a claimant may enter lands covered by a NOITL does not begin when BLM accepts the NOITL, but 30 days after notice is provided under 43 U.S.C. 299(b)(3). It went on to state that the exploration period ''ends 90 days after the NOITL was filed with BLM.'' The comment correctly states the law and we have revised the introductory text of paragraph (a) accordingly. In order to maximize the 90-day time period after you file a NOITL with BLM, you may give the surface owner notice 30 days before you plan to file the NOITL with BLM. If you give the surface owner notice at the same time you file a NOITL with BLM, the 90-day exploration and location period will be effectively diminished by the 30 days you must wait after you give the surface owner notice.

Part 3839—Special Laws, in Addition to FLPMA, That Require Recording or Notice

We are reserving this part for future consolidation of regulations about

recording and notice requirements and contest procedures under certain special laws. The current regulations are found in 43 CFR parts 3710, 3730, 3740, 3810, and 3820. These parts cover surface rights determinations under the Surface Resources Act of 1955; permission to use or occupy placer mining claims located in power site withdrawals under the Mining Claim Rights Restoration Act of 1955; conflict resolution between mining claims and mineral leases under the Multiple Mineral Development Act of 1954; and timber use on O. and C. lands (Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands) in Oregon by mining claimants.

Part 3840—Nature and Classes of Mining Claims

BLM has moved the provisions of part 3840, which describes the types of claims or sites and how to locate and record them, to parts 3832 and 3833. See the conversion chart earlier in this preamble.

Part 3850—Assessment Work

BLM has moved the provisions of part 3850, which describes assessment work requirements, to part 3836.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is a significant regulatory action. The Office of Management and Budget (OMB) makes the final determination under Executive Order 12866.

- The rule will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. These changes do not significantly change the substance of current mining claim administration within BLM. The annual revenue received from the collection of the congressionally mandated oil shale, maintenance, and location fees has averaged $24 million since 1999. This rule does not change the fee amounts and thus will not have a significant impact on fees collected.
- This rule will not create inconsistencies with other agencies' actions. It does not change the relationships of BLM to other agencies and their actions.
- This rule will not materially affect entitlements, grants, loan programs, or the rights and obligations of their recipients. The rule does not address any of these programs.
- This rule will not raise novel legal issues. It makes no major substantive changes in the regulations. The Constitutionality of the rental and maintenance fees has been challenged in the Federal Courts. The Courts have consistently upheld the previous 1992, 1993, and 1998 Acts, which provided for the maintenance and location fees, and their implementing regulations.
- The proposed rule raised a novel policy issue regarding the number of millsites that the Mining Law allows per mining claim. This final rule, although it reverses this policy proposal from the proposed rule, will likely continue to be controversial as to this matter. We have amended the final rule, as discussed earlier in this Preamble, to adopt previous prevalent practice as the standard in this connection.

Regulatory Flexibility Act

We certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) The rule will not have an impact because the fees paid by small entities will not change. A final Regulatory Flexibility Analysis is not required, and a Small Entity Compliance Guide is not required.

For the purposes of this section a ''small entity'' is an individual, limited partnership, or small company, at ''arm's length'' from the control of any parent companies, with fewer than 500 employees or less than $5 million in revenue. This definition accords with Small Business Administration regulations at 13 CFR 121.201.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- Does not have an annual effect on the economy of $100 million or more. As explained in section 1 above, the revised regulations will not materially alter current BLM policy or the fees paid by mining claimants. Under this rule claimants will pay about $20 million annually.
- Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. The changes implemented by this rule are likely to leave all other economic aspects of BLM unaffected.
- Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

- This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is unnecessary.
- This rule will not produce a Federal mandate of $100 million or greater in any year. It is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The changes implemented in this rule do not require anything of any non-Federal governmental entity.

Executive Order 12630, Takings

In accordance with Executive Order 12630, the rule does not have takings implications. A takings implication assessment is not required. This rule does not substantially change BLM policy. Nothing in this rule constitutes a taking. The Federal Courts have heard a number of suits challenging the imposition of the rental and maintenance fees as a taking of a right, or, alternatively, as an unconstitutional tax. The Courts have upheld the previous 1992, 1993, and 1998 Acts and the BLM rules thereunder as a proper exercise of Congressional and Executive authorities.

Executive Order 13132, Federalism

In accordance with Executive Order 12612, BLM finds that the rule does not have significant Federalism effects. A Federalism assessment is not required. This rule does not change the role or responsibilities between Federal, state, and local governmental entities, nor does it relate to the structure and role of states or have direct, substantive, or significant effects on states.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with E.O. 13175, we have found that this final rule does not include policies that have tribal implications. Because this rule does not specifically involve Indian reservation lands (which are closed to the operation of the general mining law), we believe that relations with Indians, Indian tribes, and tribal governments will remain unaffected.

Executive Order 12988, Civil Justice Reform

In accordance with Executive Order 12988, BLM finds that the rule does not

unduly burden the judicial system and therefore meets the requirements of sections 3(a) and 3(b)(2) of the Order. BLM consulted with the Department of the Interior's Office of the Solicitor throughout the drafting process.

Paperwork Reduction Act

The Office of Management and Budget has approved the information collection requirements in the proposed rule under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, and has assigned clearance number 1004–0114.

This rule does not require a new information collection under the Paperwork Reduction Act. This rule makes no changes to the approved information collection required to implement the Act other than conforming section numbers where necessary.

The existing approval pertains to the current edition of these regulations at 43 CFR parts 3730, 3820, 3830, and 3850. This final rule consolidates these parts into 43 CFR part 3830. The information to be collected remains the same. There are no changes in the form or types of information to be collected, or in the amounts of fees required to be paid by the mining claimants. The BLM will continue to use form 3830–2 ''Maintenance Fee Payment Waiver Certification'' and form 3830–3 ''Notice of Intent to Locate a Lode or Placer Mining Claim and/or a Tunnel Site(s) on Lands Patented Under the Stockraising Homestead Act of 1916, as amended by the Act of April 16, 1993.''

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 318 DM 2.2(g) and 6.3(D). We have conducted an environmental assessment and have concluded that this rule would not have a significant impact on the quality of the human environment under Section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(c), and therefore an Environmental Impact Statement is not required.

Because this rule would have no significant impacts on the environment, it will not significantly impact any of the following critical elements of the human environment as defined in Appendix 5 of the BLM National Environmental Policy Act Handbook (H–1790–1): air quality, areas of critical environmental concern, cultural resources, Native American religious concerns, threatened or endangered species, hazardous or solid waste, water quality, prime and unique farmlands, wetlands, riparian zones, wild and scenic rivers, environmental justice, and wilderness.

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

This rule is not a significant energy action. It will not have an adverse effect on energy supplies. The rule pertains primarily to non-energy minerals (exceptions being uranium and other locatable fissionable minerals), and does not impose requirements that are not statutory and imposes no new requirements. It relaxes some paperwork requirements that have long been in the regulations, removing minor burdens like required notarizations and multiple copies of filings. To this extent, the rule may have some insignificant positive effect on energy production.

Author

The principal author of this proposed rule is Roger Haskins in the Solid Minerals Group, assisted by Mrs. Pamela Stiles of the BLM Cheyenne Office, Mrs. Connie Schaff of the BLM Billings Office, and Ted Hudson in the Regulatory Affairs Group, Washington Office, BLM.

List of Subjects

43 CFR Part 3710

Administrative practice and procedure; Mines; Public lands—mineral resources.

43 CFR Part 3730

Administrative practice and procedure; Mines; Public lands—mineral resources; Reporting and recordkeeping requirements; Surety bonds.

43 CFR Part 3810

Mines; Public lands—mineral resources; Reporting and recordkeeping requirements.

43 CFR Part 3820

Mines; Monuments and memorials; National forests; National parks; Public lands—mineral resources; Reporting and recordkeeping requirements; Surety bonds; Wilderness areas.

43 CFR Part 3830

Maintenance fees; Mines; Public lands—mineral resources; Reporting and recordkeeping requirements.

43 CFR Part 3831

Mines; Public lands—mineral resources; Reporting and recordkeeping requirements.

43 CFR Part 3832

Mines; Public lands—mineral resources; Reporting and recordkeeping requirements.

43 CFR Part 3833

Mines; Public lands—mineral resources; Reporting and recordkeeping requirements.

43 CFR Part 3834

Maintenance fees; Mines; Public lands—mineral resources; Reporting and recordkeeping requirements.

43 CFR Part 3835

Mines; Public lands—mineral resources; Reporting and recordkeeping requirements.

43 CFR Part 3836

Assessment work; Mines; Public lands—mineral resources; Reporting and recordkeeping requirements.

43 CFR Part 3837

Assessment work; Mines; Public lands—mineral resources; Reporting and recordkeeping requirements.

43 CFR Part 3838

Homesteads; Mines; Public lands—mineral resources; Reporting and recordkeeping requirements.

43 CFR Part 3839

Mines; Public lands—mineral resources; Reporting and recordkeeping requirements.

43 CFR Part 3840

Mines; Public lands—mineral resources.

43 CFR Part 3850

Mines; Public lands—mineral resources.

■ For the reasons stated in the preamble, and under the authority of section (e) of the Act of October 21, 1998 (Pub. L. 105–277; 112 Stat. 2681–232, 2681–235); sections 441 and 2478 of the Revised Statutes, as amended (43 U.S.C. 1201 and 1457); section 2319 of the Revised Statutes, as amended (30 U.S.C. 22); sections 310 and 314 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1740 and 1744); and the Act of April 16, 1993 (43 U.S.C. 299(b)); parts 3730, 3810, 3820, 3830 through 3840, and 3850, Groups 3700 and 3800, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations are amended as follows:

Dated: October 9, 2003.

Rebecca W. Watson,

Assistant Secretary of the Interior.

PART 3710—PUBLIC LAW 167; ACT OF JULY 23, 1955

■ 1. Add an authority citation for part 3710 to read as follows:

Authority: 30 U.S.C. 22 *et seq.*; 30 U.S.C. 611–615; 43 U.S.C. 1201; 43 U.S.C. 1740.

■ 2. Remove subpart 3711 in its entirety.

PART 3730—PUBLIC LAW 359; MINING IN POWERSITE WITHDRAWALS: GENERAL

■ 3. Revise the authority citation for part 3730 to read as follows:

Authority: 30 U.S.C. 22 *et seq.*; 30 U.S.C. 28f–k; 30 U.S.C. 621–625; 43 U.S.C. 1201; 43 U.S.C. 1740; 43 U.S.C. 1744.

Subpart 3734—Location and Assessment Work

■ 4. Amend § 3734.1 as follows:

■ a. By removing in the first sentence of paragraph (a) the citation ''§§ 3833.1, 3833.3, 3833.4, and 3833.5 of this title'' and adding in its place the citation ''part 3833 of this chapter'';

■ b. By removing in the first sentence of paragraph (a) the citation ''subpart 3833'' and substituting the citation ''part 3830'';

■ c. By removing in the second sentence of paragraph (a) the citation ''§ 3833.5(c)'' and adding in its place the words ''part 3833'';

■ d. By revising paragraph (c) to read as follows:

§ 3734.1 Owner of claim to file notice of location and assessment work.

* * * * *

(c) The owner of any unpatented mining claim, mill site, or tunnel site located on land described in § 3730.0–1 of this chapter may either:

(1) Perform and record annual assessment work if the owner qualifies as a small miner under part 3835 of this chapter; or

(2) Pay an annual maintenance fee of $100 per unpatented mining claim, mill site, or tunnel site in lieu of the annual assessment work or notice of intention to hold, under subpart 3834 of this chapter.

PART 3810—LANDS AND MINERALS SUBJECT TO LOCATION

■ 5. The authority citation for part 3810 continues to read as follows:

Authority: 30 U.S.C. 22 *et seq.*; 43 U.S.C. 1201; 43 U.S.C. 1740.

Subpart 3812—Minerals Under the Mining Laws [Removed]

■ 6. Remove subpart 3812 in its entirety.

PART 3820—AREAS SUBJECT TO SPECIAL MINING LAWS

■ 7. Revise the authority citation for part 3820 to read as follows:

Authority: 30 U.S.C. 22 *et seq.*; 43 U.S.C. 1201; 43 U.S.C. 1740; 62 Stat. 162.

Subpart 3821—O and C Lands

§ 3821.2 [Amended]

■ 8. Amend § 3821.2 as follows:

■ a. By removing in the first sentence the citations ''§§ 3833.1, 3833.3, 3833.4, and 3833.5'' and adding in their place the citation ''part 3833 of this chapter'';

■ b. By removing from the first sentence the citation ''subpart 3833 of this title'' and adding in its place the citation ''parts 3830 through 3839 of this chapter''; and

■ c. By removing from the second sentence the phrase ''3833.5 of this title'' and adding in its place the phrase ''part 3833 of this chapter.''

■ 9. Revise § 3821.3 to read as follows:

§ 3821.3 Requirement for filing statement of assessment work.

The owner of an unpatented mining claim, mill site, or tunnel site located on O and C lands may either:

(a) Perform and record proof of annual assessment work if qualified as a small miner under part 3835 of this chapter; or

(b) Pay an annual maintenance fee of $100 per unpatented mining claim, mill site, or tunnel site under part 3834 of this chapter.

■ 10. Revise part 3830 to read as follows:

PART 3830—LOCATING, RECORDING, AND MAINTAINING MINING CLAIMS OR SITES; GENERAL PROVISIONS

Subpart A—Introduction

Sec.
3830.1 What is the purpose of parts 3830—3839?
3830.2 What is the scope of parts 3830—3839?
3830.3 Who may locate mining claims?
3830.5 Definitions.

Subpart B—Providing Information to BLM

3830.8 How will BLM use the information it collects and what does it estimate the burden is on the public?
3830.9 What will happen if I record a document with BLM that I know contains false, erroneous, or fictitious information or statements?

Subpart C—Mining Law Minerals

3830.10 Locatable minerals.
3830.11 Which minerals are locatable under the General Mining Law?
3830.12 What are the characteristics of a locatable mineral?

Subpart D—BLM Service Charge and Fee Requirements

3830.20 Payment of service charges, location fees, initial maintenance fees, annual maintenance fees, and oil shale fees.
3830.21 What are the different types of service charges and fees?
3830.22 Will BLM refund service charges or fees?
3830.23 What types of payment will BLM accept?
3830.24 How do I make payments?
3830.25 When do I pay for recording a new notice or certificate of location for a mining claim or site?

Subpart E—Failure To Comply With These Regulations

3830.90 Failure to comply with these regulations.
3830.91 What happens if I fail to comply with these regulations?
3830.92 What special provisions apply to oil placer mining claims?
3830.93 When are defects curable?
3830.94 How do I cure a defect in my compliance with parts 3830—3839?
3830.95 What if I pay only part of the service charges, location fees, or first-year maintenance fees for newly-recorded claims or sites?
3830.96 What if I pay only part of the service charges and fees for oil shale claims or previously-recorded mining claims or sites?
3830.97 What if I pay only part of the service charges for a notice of intent to locate mining claims on SRHA lands?

Subpart F—Appeals

3830.100 How do I appeal a final decision by BLM?

Authority: 43 U.S.C. 2, 1201, 1740, 1744; 30 U.S.C. 22 *et seq.*; 30 U.S.C. 611; 31 U.S.C. 9701; 43 U.S.C. 1457, 1474; 18 U.S.C. 1001, 3571; 43 U.S.C. 1212; 115 Stat 414; 44 U.S.C. 3501 *et seq.*; 30 U.S.C. 242.

Subpart A—Introduction

§ 3830.1 What is the purpose of parts 3830—3839?

In this part 3830, references to ''these regulations'' are references to parts 3830 through 3839 of this chapter.

(a) These regulations describe the steps you, as a mining claimant, must take regarding mining claims or sites on the Federal lands under Federal law, to—

(1) Locate (see part 3832 of this chapter);

(2) Maintain (see parts 3834 through 3836 of this chapter);

(3) Amend (see part 3833, subpart B, of this chapter); and

(4) Transfer (see part 3833, subpart C, and part 3835, subpart B, of this chapter) mining claims or sites on the Federal lands under Federal law.

(b) These regulations apply to—

(1) Lode and placer mining claims (see part 3832, subpart B, of this chapter);

(2) Mill sites (see part 3832, subpart C, of this chapter);

(3) Tunnel sites (see part 3832, subpart D, of this chapter);

(4) Oil shale claims (see § 3830.92);

(5) Location of uncommon varieties of mineral materials (see § 3830.12(b));

(6) Delinquent co-claimants (see part 3837 of this chapter); and

(7) Mining claims and tunnel sites on Stockraising Homestead Act lands (see part 3838 of this chapter).

(c) In addition to these regulations, there are State law requirements that apply to you. If any State law conflicts with the requirements in these regulations, you must still comply with these regulations. These regulations do not describe State law requirements.

§ 3830.2 What is the scope of these regulations?

These regulations govern locating, recording, and maintaining mining claims, mill sites, and tunnel sites on all Federal lands. These regulations do not authorize locating any new mining claims on Federal lands closed to mineral entry, including units of the National Park Service.

(a) You must follow the recording and maintenance requirements in this part even if BLM has actual knowledge of the existence of your mining claims or sites through other means.

(b) Part 3838 of this chapter describes supplemental procedures for locating mining claims or sites on land subject to the Stockraising Homestead Act, 43 U.S.C. 291–299.

(c) BLM is not the official recording office for ancillary documents concerning mining claims or sites, including but not limited to, leases, wills, judgments, liens, option agreements, and grubstake contracts.

§ 3830.3 Who may locate mining claims?

Persons qualified to locate mining claims or sites under this part include:

(a) United States citizens who have reached the age of discretion under the law of their State of residence;

(b) Legal immigrants who have filed an application for citizenship with the proper Federal agency;

(c) Business entities organized under the laws of any state, including but not limited to corporations and partnerships; or

(d) Duly constituted and appointed agents acting on behalf of locators qualified under paragraph (a), (b), or (c) of this section.

§ 3830.5 Definitions.

Aliquot part means a legal subdivision of a section of a township and range, except fractional lots, by division into halves or quarters.

Amendment means the act of making a change in a previously recorded mining claim or site as described in § 3833.21 of this chapter.

Annual FLPMA documents means either a notice of intent to hold, or an affidavit of assessment work, as prescribed in section 314(a) of FLPMA (43 U.S.C. 1744(a)). The term ''proof of labor'' (commonly used to describe this document) means the same as ''affidavit of assessment work'' as used in this part. See parts 3835 and 3836 of this chapter for further information.

Assessment year means a period of 12 consecutive months beginning at 12 noon on September 1 each year. See part 3836 of this chapter for further information.

Bench placer claim means a placer mining claim located on terraces or former floodplains made of gravel or sediment or both on the valley wall or slope above the current riverbed, and created when the river previously was at a higher topographic level than now.

BLM State Office means the Bureau of Land Management State Office listed in § 1821.10 of this chapter having jurisdiction over the land in which the mining claims or sites are situated. The Northern District Office in Fairbanks may also receive and accept documents, filings, and fees for mining claims or sites in Alaska.

Claimant means the person under state or Federal law who is the owner of all or any part of an unpatented mining claim or site.

Closed to mineral entry means the land is not available for the location of mining claims or sites because Congress, BLM, or another surface managing agency has withdrawn or otherwise segregated the lands from the operation of the General Mining Law, often subject to valid existing rights.

Control means actual control, legal control, or the power to exercise control, through or by common directors, officers, stockholders, a voting trust, or a holding company or investment company, or any other means. BLM may determine, based on evidence that we find adequate, that a stockholder who is not an officer or director, or who is not a majority shareholder, of a company or corporation exercises control as defined in these regulations.

Discovery means that a mining claimant has found a valuable mineral deposit.

Federal lands means any lands or interest in lands owned by the United States, subject to location under the General Mining Law, including, but not limited to, those lands within forest reservations in the National Forest System and wildlife refuges in the National Wildlife Refuge System.

Filed means a document is—

(a) Received by BLM on or before the due date; or

(b)(1) Postmarked or otherwise clearly identified as sent on or before the due date by a bona fide mail delivery service, and

(2) Received by the appropriate BLM state office either:

(i) Within 15 calendar days after the due date; or

(ii) On the next business day after the 15th day, if the 15th day is not a business day (see subpart 1822 of this chapter).

Final certificate means a form that BLM issues during its processing of a mineral patent application. (In 1999, BLM changed this form from two-part form to a single form that BLM completes toward the end of the patenting process.) The form indicates that BLM has reviewed the mineral patent application and conducted a validity determination and concluded that the applicant has:

(a) Met all of the paperwork requirements;

(b) Published notice of the patent application and received no adverse claims;

(c) Paid the purchase price; and

(d) Discovered a valuable mineral deposit on mining claims or located mill sites on lands that are not mineral-in-character and are properly used or occupied.

FLPMA means the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 *et seq.*).

Forfeit or *forfeiture* means the voidance or invalidation of an unpatented mining claim or site. The terms ''abandoned and void'', ''null and void,'' ''void ab initio'' and ''forfeited'' have the same effect in these regulations.

General Mining Law means the Act of May 10, 1872, as amended, (codified as 30 U.S.C. 22—54).

Gulch placer claim means a placer claim located on the bed of a river contained within steep, nonmineral canyon walls. The form of the river valley and nonmineral character of the valley walls preclude the location of the claim by aliquot parts and a metes and bounds description is necessary.

Local recording office means the county or state government office established under state law where you are usually required to record all legal documents including, but not limited to, deeds and wills.

Location fee means the one-time fee that 30 U.S.C. 28g requires you to pay for all new mining claims and sites at the time you record them with BLM. See § 3830.21 for the table of fees.

Maintenance fee means the initial or annual fee that 30 U.S.C. 28f requires you to pay to hold and maintain mining claims or sites. See § 3830.21 for the table of fees.

Metes and bounds means a method of describing a parcel of land that does not conform to the rectangular U.S. Public Land Survey System, using compass bearings and distances from a known point to a specified point on the parcel and then by using a continuous and sequential set of compass bearings and distances beginning at the point of beginning, continuing along and between the corners or boundary markers of the parcel's outer perimeter, until returning to the point of beginning.

Mineral-in-character means land that is known, or can reasonably be inferred from the available geologic evidence, to contain:

(a) Valuable minerals subject to location under the general mining law for purpose of locating mining claims or sites;

(b) Mineral materials for purposes of disposal under part 3600 of this chapter.

Mineral Leasing Acts means the Mineral Leasing Act of [February 25,] 1920, as amended (30 U.S.C. 181 *et seq.*); the Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001 *et seq.*); the Mineral Leasing Act for Acquired Lands of 1947, as amended, (30 U.S.C. 351 *et seq.*); and including all Acts referenced in 30 U.S.C. 505. The definition pertains to all minerals that BLM administers under Groups 3100, 3200, 3400, and 3500 of this chapter.

Mineral materials means those materials that—

(a) BLM may sell under the Mineral Materials Act of July 31, 1947 (30 U.S.C. 601–604), as amended by the Surface Resources Act of 1955 (30 U.S.C. 601, 603, and 611–615); and

(b) BLM administers under part 3600 of this chapter.

Multiple Mineral Development Act means the Act of August 13, 1954, as amended (30 U.S.C. 521–531).

Nonmineral land means land that is not mineral-in-character.

Open to mineral entry means that the land is open to the location of mining claims or sites under the General Mining Law.

Patent means a document conveying title to Federal surface and/or minerals.

Recording means the act of filing a notice or certificate of location with the local recording office and BLM, as required by FLPMA.

Related party means:

(a) The spouse and dependent children of the claimant as defined in section 152 of the Internal Revenue Code of 1986; or

(b) A person who controls, is controlled by, or is under common control with the claimant.

Segregate or segregation means the Department of the Interior has closed the affected lands to mineral entry or withdrawn the affected lands from mining claim location, land transactions, or other uses as specified in a statute, regulation, or public land order affecting the land in question. The land remains segregated until the statutory period has expired, BLM ends the segregation under § 2091.2–2 of this chapter, or the Department of the Interior removes the notation of segregation from its records, whichever occurs first.

Service charge means an administrative fee that BLM assesses under this part to cover the cost of processing documents.

Site means either an unpatented mill site authorized under 30 U.S.C. 42 or a tunnel site authorized under 30 U.S.C. 27.

Small miner means a claimant who, along with all related parties, holds no more than 10 mining claims or sites on Federal lands on the date annual maintenance fees are due, and meets the additional requirements of part 3835 of this chapter.

Split estate lands means that lands where United States owns the mineral estate as part of the public domain, but not the surface.

Surface Resources Act means the Act of July 23, 1955 (30 U.S.C. 601, 603, and 611–615).

Unpatented mining claim means a lode mining claim or a placer mining claim located and maintained under the General Mining Law for which BLM has not issued a mineral patent under 30 U.S.C. 29.

Subpart B—Providing Information to BLM

§ 3830.8 How will BLM use the information it collects and what does it estimate the burden is on the public?

(a) The Office of Management and Budget has approved the collections of information contained in parts 3830–3838 of this chapter under 44 U.S.C. 3501 *et seq.* and has assigned clearance number 1004–0114.

(b) BLM will use the information collected to:

(1) Keep records of mining claims or sites;

(2) Maintain ownership records to those mining claims or sites;

(3) Determine the geographic location of the mining claims or sites recorded for proper land management purposes; and

(4) Determine which mining claims or sites the claimant wishes to continue to hold under applicable Federal statutes.

(c) BLM estimates that the public reporting burden for this information averages 8 minutes per response. This burden includes time for reviewing instructions, searching existing records, gathering and maintaining the data collected, and completing and reviewing the information collected.

(d) Send any comments on information collection, including your views on the burden estimate and how to reduce the burden, to: the Information Collection Clearance Officer (WO–630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153; and the Office of Management and Budget, Paperwork Reduction Project, 1004–0114, Washington, D.C. 20503.

§ 3830.9 What will happen if I file a document with BLM that I know contains false, erroneous, or fictitious information or statements?

If you file a document that you know contains false, erroneous, or fictitious information or statements, you may be subject to criminal penalties under 18 U.S.C. 1001 and 43 U.S.C. 1212. The maximum penalty is 5 years in prison and/or a fine of $250,000.

Subpart C—Mining Law Minerals

§ 3830.10 Locatable minerals.

§ 3830.11 Which minerals are locatable under the General Mining Law?

Minerals are locatable if they are:

(a) Subject to the General Mining Law;

(b) Not leasable under the Mineral Leasing Acts; and

(c) Not salable under the Mineral Materials Act of 1947 and Surface Resources Act of 1955, 30 U.S.C. 601–615 (see parts 3600 through 3620 of this chapter).

§ 3830.12 What are the characteristics of a locatable mineral?

(a) Minerals are locatable if they meet the requirements in § 3830.11 and are:

(1) Recognized as a mineral by the scientific community; and

(2) Found on Federal lands open to mineral entry.

(b) Under the Surface Resources Act, certain varieties of mineral materials are locatable if they are uncommon because they possess a distinct and special value. As provided in *McClarty* v. *Secretary of the Interior*, 408 F.2d 907

(9th Cir. 1969), we determine whether mineral materials have a distinct and special value by:

(1) Comparing the mineral deposit in question with other deposits of such minerals generally;

(2) Determining whether the mineral deposit in question has a unique physical property;

(3) Determining whether the unique property gives the deposit a distinct and special value;

(4) Determining whether, if the special value is for uses to which ordinary varieties of the mineral are put, the deposit has some distinct and special value for such use; and

(5) Determining whether the distinct and special value is reflected by the higher price that the material commands in the market place.

(c) Block pumice having one dimension of 2 or more inches is an uncommon variety of mineral material under the Surface Resources Act, and is subject to location under the mining laws.

(d) Limestone of chemical or metallurgical grade, or that is suitable for making cement, is subject to location under the mining laws.

(e) Gypsum suitable for the manufacture of wall board or plaster, or uses requiring a high state of purity, is subject to location under the mining laws.

Subpart D—BLM Service Charge and Fee Requirements

§ 3830.20 Payment of service charges, location fees, initial maintenance fees, annual maintenance fees and oil shale fees.

§ 3830.21 What are the different types of service charges and fees?

The following table lists service charges, maintenance fees, location fees, and oil shale fees (all cross-references refer to this chapter):

Transaction	Amount due per mining claim or site	Waiver available
(a) Recording a mining claim or site location (part 3833)	(1) A total of $135, which includes: (i) A $10 service charge. (ii) A one-time $25 location fee. (iii) An initial $100 maintenance fee.	No.
(b) Amending a mining claim or site location (§ 3833.20)	A $5 service charge	No.
(c) Transferring a mining claim or site (§ 3833.30)	A $5 service charge	No.
(d) Maintaining a mining claim or site for one assessment year (part 3834).	A $100 annual maintenance fee	Yes, see part 3835.
(e) Recording an annual FLPMA filing (§ 3835.30)	A $5 service charge	No.
(f) Submitting a petition for deferment of assessment work (§ 3836.30)	A $25 service charge	No.
(g) Maintaining an oil shale placer mining claim (§ 3834.11(b))	An annual $550 fee	No.
(h) Recording a notice of intent to locate mining claims on Stockraising Homestead Act Lands (part 3838).	A $25 service charge	No.

§ 3830.22 Will BLM refund service charges or fees?

(a) BLM will not refund service charges, except for overpayments.

(b) BLM will refund maintenance and location fees if:

(1) At the time you or your predecessor in interest located the mining claim or site, the location was on land not open to mineral entry or otherwise not available for mining claim or site location; or

(2) At the time you paid the fees, the mining claim or site was void.

(c) BLM will apply maintenance and location fee overpayments to future years if you so request.

§ 3830.23 What types of payment will BLM accept?

(a) BLM will accept the following types of payments:

(1) U.S. currency;

(2) Postal money order payable in U.S. dollars to the Department of the Interior—Bureau of Land Management;

(3) Check or other negotiable instrument payable in U.S. dollars to the Department of the Interior—Bureau of Land Management;

(4) Valid credit card that is acceptable to the BLM; or

(5) An authorized debit from a declining deposit account with BLM.

(i) You may maintain a declining deposit account with the BLM State Office where your mining claims or sites are recorded.

(ii) BLM will deduct service charges and fees or add overpayments to the account only when you authorize us to do so.

(b) If the issuing institution of your check, negotiable instrument, or credit card refuses to pay and it is not because the institution made a mistake, BLM will treat the service charges and fees as unpaid.

§ 3830.24 How do I make payments?

(a) You or your representative may bring payments to the BLM State Office by close of business on or before the due date.

(b) If you use a credit card—

(1) On or before the due date, you must send or fax a written authorization, bearing your signature; or

(2) You may authorize BLM to use your credit card by telephone if you can satisfactorily establish your identity.

(c) You may send payments using a *bona fide* mail delivery service.

(1) The payment must be postmarked or clearly identified by the mail delivery service as being sent on or before the due date; and

(2) The BLM State Office must receive the payment no later than 15 calendar days after the due date.

§ 3830.25 When do I pay for recording a new notice or certificate of location for a mining claim or site?

You must pay the service charge, location fee, and initial maintenance fee, in full, as provided in § 3830.21 of this chapter, at the time you record new notices or certificates of location with BLM.

Subpart E—Failure To Comply With These Regulations

§ 3830.90 Failure to comply with these regulations.

§ 3830.91 What happens if I fail to comply with these regulations?

(a) You will forfeit your mining claims or sites if you fail to—

(1) Record a mining claim or site within 90 days after you locate it;

(2) Pay the location fee or initial maintenance fee within 90 days after you locate it;

(3) Pay the annual maintenance fee on or before the due date;

(4) Submit a small miner waiver request on or before the due date (see § 3835.1) and also fail to pay the annual maintenance fee on or before the due date;

(5) List any claims or sites that you own on your small miner waiver request and fail to pay an annual maintenance

fee for the missing claims or sites on or before the due date;

(6) Cure any defects in your timely small miner waiver request or pay the maintenance fee within the allowed time after BLM notifies you of the defects;

(7) File an annual FLPMA filing on or before the due date, as applicable; or

(8) Submit missing documentation or a complete payment after BLM notifies you that a filing or payment you made was defective, within the time allowed in the BLM notice.

(b) You will forfeit your mining claim or site if you locate your mining claim or site on lands closed to mineral entry at the time you locate it.

(c) Even if you forfeit your mining claims or sites, you remain responsible for—

(1) All reclamation and performance requirements imposed by subparts 3802, 3809, or 3814 of this chapter; and

(2) All other legal responsibilities imposed by other agencies or parties who have management authority over surface or subsurface operations.

(d) Under the circumstances described in §§ 3830.93 through 3830.97, you may cure a failure to comply with these regulations.

§ 3830.92 What special provisions apply to oil placer mining claims?

(a) Under 30 U.S.C. 188(f), you, as an oil placer mining claimant, may seek to convert an oil placer mining claim to a noncompetitive oil and gas lease under section 17(e) of the Mineral Leasing Act (30 U.S.C. 226(e)), if:

(1) BLM declared your oil placer mining claim abandoned and void under section 314 of FLPMA;

(2) Your failure to comply with section 314 of FLPMA was inadvertent, justifiable, or not due to lack of reasonable diligence;

(3) You or your predecessors in interest validly located the unpatented oil placer mining claim before February 25, 1920;

(4) The claim has been or is currently producing or is capable of producing oil or gas; and

(5) You have submitted a petition asking BLM to issue a noncompetitive oil and gas lease. Your petition must include the required rental and royalty payments, including back rental and royalty accruing from the statutory date of abandonment of the oil placer mining claim.

(b) If BLM chooses to issue a noncompetitive oil and gas lease, the lease will be effective on the date that BLM declared your unpatented oil placer mining claim abandoned and void.

§ 3830.93 When are defects curable?

(a) If there is a defect in your compliance with a statutory requirement, the defect is incurable if the statute does not give the Secretary authorit to permit exceptions (see §§ 3930.91 and 3833.91 of this chapter). If your payment, recording, or filing has incurable defects, the affected mining claims or sites are statutorily forfeited.

(b) If there is a defect in your compliance with a regulatory, but not statutory, requirement, the defect is curable. You may correct curable defects when BLM gives you notice. If you fail to cure the defect within the time BLM allows, you will forfeit your mining claims or sites.

§ 3830.94 How may I cure a defect in my compliance with these regulations?

(a)(1) When BLM determines that you have filed any document that is defective or underpaid a fee or service charge, BLM will send a notice to you by certified mail-return receipt requested at the address you gave on:

(i) Your notice or certificate of location;

(ii) An address correction you have filed with BLM; or

(iii) A valid transfer document filed with BLM.

(2) The notice provided for in paragraph (a)(1) of this section constitutes legal service even if you do not actually receive the notice or decision. See § 1810.2 of this chapter.

(b) If you have filed any defective document other than a defective fee waiver request, you must cure the defects within 30 days of receiving BLM's notification of the defects.

(c) If you have submitted a defective fee waiver request, you must cure the defects or pay the annual maintenance fees within 60 days of receiving BLM's notification of the defects.

(d) If BLM does not receive the requested information in the time allowed, or if the matter is statutorily not curable, you will receive a final decision from BLM that you forfeited the affected mining claims or sites.

§ 3830.95 What if I pay only part of the service charges, location fees, or first year maintenance fees for newly-recorded claims or sites?

(a) If you pay only part of the service charges, maintenance fees, or location fees when recording new claims or sites, BLM will—

(1) Assign serial numbers to each mining claim or site;

(2) Treat the partial payment as payment of location and maintenance fees and apply the partial payment to the mining claims or sites in serial number order until the money runs out; and

(3) Send a notice to you that you must pay any outstanding service charges as described in § 3830.94. For example, BLM will apply the money to cover the location and maintenance fees for as many mining claims or sites as possible. BLM will return any remaining certificates or notices for which we cannot apply full payment of location and maintenance fees. BLM will apply any remaining funds as service charges in serial number order until the money runs out. BLM will then notify you if you must pay any outstanding service charges for mining claims or sites for which you paid location and maintenance fees, as provided in § 3830.94.

(b) If you want to resubmit the new location notices or certificates that BLM returned to you, you must do so with the complete service charges, location fees and maintenance fees within 90 days of the original date of location of the claim or site as defined under state law, or you will forfeit the affected mining claims or sites.

(c) BLM will not record your mining claims or sites until you pay the full amount of all charges and fees for those claims or sites.

§ 3830.96 What if I pay only part of the service charges and fees for oil shale claims or previously-recorded mining claims or sites?

(a) If you pay only part of the service charges due for any document filings or only part of the annual maintenance fees, or oil shale fees, for previously-recorded mining claims or sites, or any combination of these fees and charges, absent other instructions from you, BLM will apply the partial payment in serial number order until the money runs out.

(b) For any claims or sites for which there are no funds in your partial payment to pay the maintenance fees, oil shale fees, or location fees, you will forfeit the mining claims or sites not covered by your partial payment unless you submit the additional funds necessary to complete the full payment by the due date.

(c) For any claims or sites for which there are no funds in your partial payment to pay the service charges, BLM will send a notice to you that you must pay the outstanding service charges as described in § 3830.94.

§ 3830.97 What if I pay only part of the service charges for a notice of intent to locate mining claims on SRHA lands?

For notices of intent to locate mining claims (NOITL) under the Stockraising Homestead Act (see part 3838 of this chapter for information regarding the

Stockraising Homestead Act and NOITLs), BLM will not accept a NOITL unless we receive your payment of the required service charges. BLM will return the NOITL to you without taking any further action. See § 3830.21 of this part for the amount of the service charge for a NOITL.

Subpart F—Appeals

§ 3830.100 How do I appeal a final decision by BLM?

If you are adversely affected by a BLM decision under parts 3830—3839, you may appeal the decision in accordance with parts 4 and 1840 of this title.

PART 3831—MINERAL LANDS AVAILABLE FOR LOCATING MINING CLAIMS OR SITES [RESERVED]

■ 11. Add and reserve part 3831.

■ 12. Add part 3832 to read as follows:

PART 3832—LOCATING MINING CLAIMS OR SITES

Subpart A—Locating Mining Claims or Sites

Sec.
3832.1 What does it mean to locate mining claims or sites?
3832.10 Procedures for locating mining claims or sites.
3832.11 How do I locate mining claims or sites?
3832.12 When I record a mining claim or site, how do I describe the lands I have claimed?

Subpart B—Types of Mining Claims

3832.20 Lode and placer mining claims.
3832.21 How do I locate a lode or placer mining claim?
3832.22 How much land may I include in my mining claim?

Subpart C—Mill Sites

3832.30 Mill sites.
3832.31 What is a mill site?
3832.32 How much land may I include in my mill site?
3832.33 How do I locate a mill site?
3832.34 How may I use my mill site?

Subpart D—Tunnel Sites

3832.40 Tunnel sites.
3832.41 What is a tunnel site?
3832.42 How do I locate a tunnel site?
3832.43 How may I use a tunnel site?
3832.44 What rights do I have to minerals within my tunnel site?
3832.45 How do I obtain any minerals that I discover within my tunnel site?

Subpart E—Defective Locations

3832.90 Defects in the location of mining claims and sites.
3832.91 How do I amend a mining claim or site location if it exceeds the size limitations?

Authority: 30 U.S.C. 22 *et seq.*; 43 U.S.C. 2, 1201, 1457, 1740, 1744.

PART 3832—LOCATING MINING CLAIMS OR SITES

Subpart A—Locating Mining Claims or Sites

§ 3832.1 What does it mean to locate mining claims or sites?

(a) Locating a mining claim or site means:

(1) Establishing the exterior lines of a mining claim or site on lands open to mineral entry to identify the exact land claimed; and

(2) Recording a notice or certificate of location as required by state and Federal law and by this part.

(b) You will find—

(1) Location requirements in this part;

(2) Recording requirements in part 3833 of this chapter;

(3) Requirements for transferring an interest in a mining claim or site in § 3833.30 of this chapter; and

(4) Annual fee requirements for mining claims and sites in parts 3834, 3835, and 3836 of this chapter.

§ 3832.10 Procedures for locating mining claims or sites.

§ 3832.11 How do I locate mining claims or sites?

(a) You must follow both state and Federal law.

(b) Your lode or placer claim is not valid until you make a discovery within the boundaries of the claim.

(c) To locate a claim or site, you must—

(1) Make certain that the land on which you are locating the claim or site is Federal land that is open to mineral entry

(2) Stake and monument the corners of a mining claim or site which meets applicable state monumenting requirements and the size limitations described in § 3832.22 for lode and placer claims, § 3832.32 for mill sites, and § 3832.42 for tunnel sites;

(3) Post the notice of location in a conspicuous place on the claim or site. The notice must include:

(i) The name or names of the locators;

(ii) The date of the location; and

(iii) A description of the claim or site;

(iv) The name or number of the claim or site, or both, if the claim or site has both;

(4) Record the notice or certificate of location in the local recording office and the BLM State Office with jurisdiction according to the procedures in part 3833;

(5) Follow all other relevant state law requirements; and

(6) Comply with the specific requirements for lode claims, placer claims, mill sites, or tunnel sites in this part.

§ 3832.12 When I record a mining claim or site, how do I describe the lands I have claimed?

(a) *General requirements.* (1) All claims and sites. You must describe the land by state, meridian, township, range, section and by aliquot part to the quarter section. To obtain the land description, you must use an official survey plat or other U.S. Government map that is based on the surveyed or protracted U.S. Public Land Survey System. If you cannot describe the land by aliquot part (*e.g.*, the land is unsurveyed), you must provide a metes and bounds description that fixes the position of the claim corners with respect to a specified claim corner, discovery monument, or official survey monument. In all cases, your description of the land must be as compact and regular in form as reasonably possible and should conform to the U.S. Public Land Survey System and its rectangular subdivisions as much as possible; and

(2)(i) You must file either—

(A) A topographical map published by the U.S. Geological Survey with a depiction of the claim or site; or

(B) A narrative or sketch describing the claim or site and tying the description to a natural object, permanent monument or topographic, hydrographic, or man-made feature.

(ii) You must show on a map or sketch the boundaries and position of the individual claim or site by aliquot part within the quarter section accurately enough for BLM to identify the mining claims or sites on the ground.

(iii) You may show more than one claim or site on a single map or describe more than one claim or site in a single sketch—

(A) If they are located in the same general area; and

(B) If the individual mining claims or sites are clearly identified.

(iv) You are not required to employ a professional surveyor or engineer to establish the location's position on the ground.

(b) *Lode claims.* You must describe lode claims by metes and bounds beginning at the discovery point on the claim and include a tie to natural objects or permanent monuments including:

(1) Township and section survey monuments;

(2) Official U.S. mineral survey monuments;

(3) Monuments of the National Geodetic Reference System;

(4) The confluence of streams or point of intersection of well-known gulches,

ravines, or roads, prominent buttes, and hills; or

(5) Adjoining claims or sites.

(c) *Placer claims.* (1) You must describe placer claims by aliquot part and complete lots using the U.S. Public Land Survey System and its rectangular subdivisions except when placer claims are—

(i) On unsurveyed Federal lands;

(ii) Gulch or bench placer claims; or

(iii) Bounded by other mining claims or nonmineral lands.

(2) For placer mining claims that are on unsurveyed Federal lands or are gulch or bench placer claims:

(i) You must describe the lands by protracted survey if the BLM has a protracted survey of record; or

(ii) You may describe the lands by metes and bounds, if a protracted survey is not available or if the land is not amenable to protraction.

(3) If you are describing an association placer claim by metes and bounds, you must meet the following requirements, according to the number of persons in your association, as described in *Snow Flake Fraction Placer,* 37 Pub. Lands Dec. 250 (1908), in order to keep your claim in compact form and not split Federal lands into narrow, long or irregular shapes:

(i) A location by 1 or 2 persons must fit within the exterior boundaries of a square 40-acre parcel;

(ii) A location by 3 or 4 persons must fit within the exterior boundaries of 2 square 40-acre contiguous parcels;

(iii) A location by 5 or 6 persons must fit within the exterior boundaries of 3 square contiguous 40-acre parcels; and

(iv) A location by 7 or 8 persons must fit within the exterior boundaries of 4 square contiguous 40-acre parcels.

Subpart B—Types of Mining Claims

§ 3832.20 Lode and placer mining claims.

§ 3832.21 How do I locate a lode or placer mining claim?

(a) *Lode claims.* (1) Your lode claim is not valid until you have made a discovery.

(2) *Locating a lode claim.* You may locate a lode claim for a mineral that:

(i) Occurs as veins, lodes, ledges, or other rock in place;

(ii) Contains base and precious metals, gems and semi-precious stones, and certain industrial minerals, including but not limited to gold, silver, cinnabar, lead, tin, copper, zinc, fluorite, barite, or other valuable deposits; and

(iii) Does not occur as bedded rock (stratiform deposits such as gypsum or limestone) or is not a deposit of placer, alluvial (deposited by water), eluvial (deposited by wind), colluvial (deposited by gravity), or aqueous origin.

(3) *Establishing extralateral rights.* If the minerals are contained within a vein, lode, or ledge and the vein, lode, or ledge extends through the endlines of your lode claim, you have extra-lateral rights to pursue the down-dip extension of the vein, lode, or ledge to the point where the vein, lode, or ledge intersects a vertical plain projected parallel to the end lines and outside the sideline boundaries of your lode claim if—

(i) The top or apex of the vein, lode, or ledge lies on or under the surface within the interior boundaries of the lode claim; and

(ii) The long axis, and therefore the side lines, of the lode claim are substantially parallel to the course of the vein, lode, or ledge.

(4) *Preserving extralateral rights.* In order to preserve your extralateral rights, you should determine, if possible, the general course of the vein in either direction from the point of discovery in order to mark the correct boundaries of the claim. You should expose the vein, lode, or ledge by—

(i) Tracing the vein or lode on the surface; or

(ii) Drilling a hole, sinking a shaft, or running a tunnel or drift to a sufficient depth.

(b) *Placer claims.* (1) Your placer claim is not valid until you have made a discovery.

(2) Each 10-acre aliquot part of your placer claim must be mineral-in-character.

(3) You may locate a placer claim for minerals that are—

(i) River sands or gravels bearing gold or valuable detrital minerals;

(ii) Hosted in soils, alluvium (deposited by water), eluvium (deposited by wind), colluvium (deposited by gravity), talus, or other rock not in its original place;

(iii) Bedded gypsum, limestone, cinders, pumice, and similar mineral deposits; or

(iv) Mineral-bearing brine (water saturated or strongly impregnated with salts and containing ancillary locatable minerals) not subject to the mineral leasing acts where a mineral subject to the General Mining Law can be extracted as the primary valuable mineral.

(4) Building stone deposits must by law be located as placer mining claims (30 U.S.C. 161). If you have located a building stone placer claim, the lands on which you located the claim must be chiefly valuable for mining building stone.

§ 3832.22 How much land may I include in my mining claim?

(a) *Lode claims.* Lode claims must not exceed 1,500 by 600 feet. If there is a vein, lode, or ledge, each lode claim is limited to a maximum of 1,500 feet along the course of the vein, lode, or ledge and a maximum of 300 feet in width on each side of the middle of the vein, lode, or ledge.

(b) *Placer claims.* (1) An individual placer claim may not exceed 20 acres in size.

(2) An association placer claim may not exceed 160 acres. Within the association, each person or business entity may locate up to 20 acres. To obtain the full 160 acres, the association must consist of at least eight co-locators. You may locate smaller association claims. Thus, three co-locators may jointly locate an association placer claim no larger than 60 acres. You may not use the names of other persons as dummy locators (fictitious locators) to locate an association placer claim for your own benefit.

Subpart C—Mill Sites

§ 3832.30 Mill sites.

§ 3832.31 What is a mill site?

A mill site is a location of nonmineral land not contiguous to a vein or lode that you can use for activities reasonably incident to mineral development on, or production from, the unpatented or patented lode or placer claim with which it is associated.

(a) A dependent mill site is used for activities that support a particular patented or unpatented lode or placer mining claim or group of mining claims.

(b) An independent or custom mill site—

(1) Is not dependent on a particular mining claim but provides milling or reduction processing for nearby lode mines or a lode mining district;

(2) Is used to mill, process, and reduce either—

(i) Ores for other miners on a contractual basis; or

(ii) Ores that are purchased by the independent or custom mill site owner.

(3) You may not have a custom or independent mill site for processing materials from placer mining claims.

§ 3832.32 How much land may I include in my mill site?

The maximum size of an individual mill site is 5 acres. You may locate more than one mill site per mining claim if you use each site for at least one of the purposes described in § 3832.34 of this part. You may locate only that amount of mill site acreage that is reasonably necessary to be used or occupied for

efficient and reasonably compact mining or milling operations.

§ 3832.33 How do I locate a mill site?

(a) You may locate a mill site in the same manner as a lode or placer mining claim, except that—

(1) It must be on land that is not mineral-in-character; and

(2) You must use or occupy each two and a half acre portion of a mill site in order for that portion of the mill site to be valid.

(b) If the United States does not own the surface estate of a particular parcel of land, you may not locate a mill site on that land under the General Mining Law or the Stockraising Homestead Act (see part 3838 of this chapter).

§ 3832.34 How may I use my mill site?

(a) Upon obtaining authorization under the surface management regulations of the surface managing agency, you may use and occupy dependent mill sites for:

(1) Placement of grinding, crushing, or milling facilities (such as rod and ball mills, cone crushers, and floatation cells) and reduction facilities (such as smelting, electro-winning, roasters, autoclaves, and leachate recovery);

(2) Mine administrative and support buildings, warehouses and maintenance buildings, electrical plants and substations;

(3) Tailings ponds and leach pads;

(4) Rock and soil dumps;

(5) Water and process treatment plants; and

(6) Any other use that is reasonably incident to mine development and operation, except for uses exclusively supporting reclamation or mine closure.

(b) Upon obtaining authorization under the surface management regulations of the surface managing agency, you may use and occupy independent mill sites for processing metallic minerals from lode claims using:

(1) Quartz or stamp mills; or

(2) Reduction works, including placement of grinding, crushing, or milling facilities (such as rod and ball mills, cone crushers, and floatation cells), reduction facilities (such as smelting, electro-winning, roasters, autoclaves, and leachate recovery), tailings ponds, and leach pads.

Subpart D—Tunnel Sites

§ 3832.40 Tunnel sites.

§ 3832.41 What is a tunnel site?

A tunnel site is a subsurface right-of-way under Federal land open to mineral entry. It is used for access to lode mining claims or to explore for blind or undiscovered veins, lodes, or ledges not currently claimed or known to exist on the surface.

§ 3832.42 How do I locate a tunnel site?

You may locate a tunnel site by:

(a) Erecting a substantial post, board, or monument at the face of the tunnel, which is the point where the tunnel enters cover;

(b) Placing a location notice or certificate on the post, board, or monument that includes:

(1) The names of the claimants;

(2) The actual or proposed course or direction of the tunnel;

(3) The height and width of the tunnel; and

(4) The course and distance from the face or starting point to some permanent well-known natural objects or permanent monuments, in the same manner as required to describe a lode claim (see § 3832.28(c) of this part); and

(c) Placing stakes or monuments on the surface along the boundary lines of the tunnel at proper intervals as required under state law from the face of the tunnel for 3,000 feet or to the end of the tunnel, whichever is shorter.

§ 3832.43 How may I use a tunnel site?

You may use the tunnel site for subsurface access to a lode claim or to explore for and acquire previously unknown lodes, veins, or ledges within the confines of the tunnel site.

§ 3832.44 What rights do I have to minerals within my tunnel site?

(a) If you located your tunnel site in good faith, you may acquire the right to any blind veins, ledges, or lodes cut, discovered, or intersected by your tunnel, by locating a lode claim, if they—

(1) Are located within a radius of 1,500 feet from the tunnel axis; and

(2) Were not previously known to exist on the surface and within the limits of your tunnel.

(b) Your site is protected from other parties making locations of lodes within the sidelines of the tunnel and within the 3,000-foot length of the tunnel, unless such lodes appear upon the surface or were previously known to exist.

(c) You must diligently work on the tunnel site. If you cease working on it for more than 6 consecutive months, you will lose your right to possess all unknown, undiscovered veins, lodes, or ledges that your tunnel may intersect.

§ 3832.45 How do I obtain any minerals that I discover within my tunnel site?

(a) Even if you have located the tunnel site, you must separately locate a lode claim to acquire the possessory right to a blind vein, lode, or ledge you have discovered within the boundaries of the tunnel site sidelines.

(b) The date of location of your lode claim is retroactive to the date of location of your tunnel site.

Subpart E—Defective Locations

§ 3832.90 Defects in the location of mining claims and sites.

§ 3832.91 How do I amend a mining claim or site location if it exceeds the size limitations?

(a) You may correct defects in your location of a mining claim, mill site, or tunnel site by filing an amended notice of location (see § 3833.20 of this chapter on conditions allowing amendments and how to record them.)

(b) For placer claims or mill sites that you located using an irregular survey or lotting of irregular sections, you may use the ''Rule of Approximation'' to determine allowable acreage. The Rule of Approximation applies only to surveyed public lands. It was developed to determine maximum allowable acreage for land entries (placer claims in this part) where the excess acreage is less than the difference would be if the smallest legal subdivision is excluded from the location or entry. In no case may you use the rule to obtain more acreage than allowed under the applicable law. (See *Henry C. Tingley*, 8 Pub. Lands Dec. 205 (1889)).

■ 13. Add part 3833 to read as follows:

PART 3833—RECORDING MINING CLAIMS AND SITES

Sec.

Subpart A—Recording Process

3833.1 Why must I record mining claims and sites?
3833.10 Procedures for recording mining claims and sites.
3833.11 How do I record mining claims and sites?

Subpart B—Amending Mining Claims and Sites

3833.20 Amending mining claims and sites.
3833.21 When may I amend a notice or certificate of location?
3833.22 How do I amend my location?

Subpart C—Filing Transfers of Interest

3833.30 Filing transfers of interest in mining claims or sites.
3833.31 What is a transfer of interest?
3833.32 How do I transfer a mining claim or site?
3833.33 How may I transfer, sell, or otherwise convey an association placer mining claim?

Subpart D—Defective Filings

3833.90 Defects in recordings or filings for mining claims and sites.

3833.91 What defects cannot be cured under this part?
3833.92 What happens if I do not file a transfer of interest?

Authority: 43 U.S.C. 2, 1201, 1457, 1740, 1744; 30 U.S.C. 22 *et seq.*; 30 U.S.C. 621–625; 62 Stat. 162; 115 Stat 414.

Subpart A—Recording Process

§ 3833.1 Why must I record mining claims and sites?

FLPMA requires you to record all mining claims and sites with BLM and the local recording office in order to maintain a mining claim or site under the General Mining Law.

(a) If you fail to record a mining claim or site with the BLM and the local recording office by the 90th day after the date of location, it is abandoned and void by operation of law.

(b) Recording a mining claim or site, filing any other documents with BLM, or paying fees or service charges, as this part requires, does not make a claim or site valid if it not otherwise valid under applicable law.

§ 3833.10 Procedures for recording mining claims and sites.

§ 3833.11 How do I record mining claims and sites?

(a) You must record in the proper BLM State Office a copy of the notice or certificate of location that you recorded or will record in the local recording office by the 90th day after the date of location. If there is no recording requirement under state law (as in Arkansas), you still must record a document with BLM and the local recording office that contains the information required by this part.

(b) Your notice or certificate of location must include:

(1) The name or number, or both, of the claim or site;

(2) The names and current mailing addresses of the locators of the claim;

(3) The type of claim or site;

(4) The date of location; and

(5) A complete description of the lands you have claimed as required in part 3832 of this chapter.

(c) When you record a notice or certificate of location, you must pay a non-refundable service charge, location fee, and initial maintenance fee as provided in § 3830.21 of this chapter.

(d) When you record a mining claim or site under this part, you still must comply with any other separate recording requirements existing under other Federal law. However, notices or certificates of location that you mark as being recorded under the Act of April 8, 1948, or the Act of August 11, 1955, satisfy the additional filing requirements of those Acts under subpart 3821 of this chapter for Oregon and California Revested Wagon Road Grant Lands (O & C Lands) and part 3730 of this chapter for Powersite Withdrawals.

Subpart B—Amending Mining Claims and Sites

§ 3833.20 Amending mining claims and sites.

§ 3833.21 When may I amend a notice or certificate of location?

(a) You may amend a notice or certificate of location if—

(1) BLM recognizes the original location as a properly recorded and maintained mining claim or site; and

(2) There are omissions or other defects in the original notice or certificate of location that you need to correct or clarify; or

(3) You need to correct the legal land description of the claim or site, the mining claim name, or accurately describe the position of discovery or boundary monuments or similar items; or

(4) You need to reposition the sidelines of your lode claim so that they are parallel to the discovered lode, ledge, or vein, if there are no intervening rights to the land; or

(5) You are reducing the size of the mining claim or site.

(b) You may not amend a notice or certificate of location to—

(1) Transfer any interest or add owners;

(2) Relocate or re-establish mining claims or sites you previously forfeited or BLM declared void for any reason;

(3) Change the type of claim or site; or

(4) Enlarge the size of the mining claim or site.

(c) You may not amend legal descriptions of mining claims or sites after the land is closed to mineral entry, unless —

(1) You are reducing the size of the mining claim or site;

(2) You need to correct or clarify defects or omissions in the original notice or certificate of location;

(3) You need to correct the legal land description of the claim or site, the mining claim name; or

(4) You need to submit an accurate description of the position of discovery or boundary monuments or similar items.

§ 3833.22 How do I amend my location?

(a) You must record an amended location certificate or notice with BLM within 90 days after you record the amended notice or certificate in the local recording office. BLM will not recognize any amendment to your mining claim until you file it properly.

(b) You must pay a non-refundable service charge for each claim or site you amend. See the table of fees and service charges in § 3830.21 of this chapter.

(c) An amended location notice or certificate relates back to the original location date. The amendment takes effect when you record it with the local recording office under state law or such other time as provided by state law.

Subpart C—Filing Transfers of Interest

§ 3833.30 Filing transfers of interest in mining claims or sites.

§ 3833.31 What is a transfer of interest?

A transfer of interest is a sale, assignment, transfer through inheritance, or conveyance of total or partial ownership or legal interest in a mining claim or site.

§ 3833.32 How do I transfer a mining claim or site?

(a) State law governs transferring mining claims or sites. A transfer is effective in the manner and on the date provided by state law, not the date you file it with BLM.

(b) You must file in the BLM State Office a notice of the transfer that includes:

(1) The name and, if available, the serial number BLM assigned to the claim or site when the notice or certificate of location was originally recorded (the person who transferred you ownership or legal interest should have this number);

(2) Your name and current mailing address; and

(3) A copy of the legal instrument or document that you used to transfer the interest in the claim or site under state law.

(c) You as transferee must pay a non-refundable service charge per mining claim or site you were transferred. See the table of fees and service charges in § 3830.21 of this chapter.

(d) BLM will notify the claimant of record with BLM of any action it takes regarding a mining claim or site. If BLM is required by law to give a claimant notice of any new legal requirements, BLM has properly given notice by sending the notice to the claimant of record with BLM.

§ 3833.33 How may I transfer, sell, or otherwise convey an association placer mining claim?

You may transfer, sell, or otherwise convey an association placer mining claim at any time to an equal or greater number of mining claimants. If you

want to transfer an association placer claim to an individual or an association that is smaller in number than the association that located the claim, you—

(a) Must have discovered a valuable mineral deposit before the transfer; or

(b) Upon notice from BLM, you must reduce the acreage of the claim, if necessary, so that you meet the 20-acre per locator limit.

Subpart D—Defective Filings

§ 3833.90 Defects in recordings or filings for mining claims and sites.

§ 3833.91 What defects cannot be cured under this part?

Defects or other problems that cannot be cured and therefore result in forfeiture of your mining claims or sites are:

(a) Failing to record a mining claim or site within 90 days after you locate it;

(b) Failing to pay the location fee or initial maintenance fee within 90 days after you locate it; and

(c) Locating a mining claim or site on lands withdrawn from mineral entry at the time you locate it.

§ 3833.92 What happens if I do not file a transfer of interest?

Even if you record your transfer or amendment with the local recording office, BLM will not recognize the interest you acquire, or send you notice of any BLM action, decision, or contest, regarding the mining claim or site until you file the transfer with BLM (see § 1810.2 of this chapter). The Department will treat the last owner of record as the responsible party for maintaining the mining claim or site until you file a transfer notice. You cannot claim that BLM failed to give you notice of any BLM action, decision, or contest regarding a mining claim or site if you failed to file a transfer notice showing that you have an interest in the mining claim or site, before BLM took the action, made the decision, or issued a contest complaint.

■ 14. Add part 3834 to read as follows:

PART 3834—REQUIRED FEES FOR MINING CLAIMS OR SITES

Subpart A—Fee Payment

Sec.
3834.10 Paying maintenance, location, and oil shale fees.
3834.11 Which fees must I pay to maintain a mining claim or site and when do I pay them?
3834.12 How will BLM know for which mining claims or sites I am paying the fees?
3834.13 Will BLM prorate annual maintenance or oil shale fees?
3834.14 May I obtain a waiver from these fees?

Subpart B—Fee Adjustment

3834.20 Adjusting location and maintenance fees.
3834.21 How will BLM adjust the location and maintenance fees?
3834.22 How will I know that BLM has adjusted location and maintenance fees?
3834.23 When do I start paying the adjusted fees?

Authority: 43 U.S.C. 1201, 1740; 30 U.S.C. 28f; 115 Stat 414; 30 U.S.C. 242.

Subpart A—Fee Payment

§ 3834.10 Paying maintenance, location, and oil shale fees.

§ 3834.11 Which fees must I pay to maintain a mining claim or site and when do I pay them?

(a) *All mining claims or sites (except oil shale placer claims).* Paying the maintenance fee(s) in lieu of performing assessment work satisfies the requirements of the mining law and FLPMA. See § 3830.21 for fee amounts.

(1) *Location fee and initial maintenance fee.* When you first record a mining claim or site with BLM, you must pay a location fee and an initial maintenance fee for the assessment year in which you located the mining claim or site.

(2) *Annual maintenance fee.* You must pay an annual maintenance fee on or before September 1st of each year in order to maintain a mining claim or site for the upcoming assessment year.

(b) *Oil shale placer claims.* (1) Under the Energy Policy Act of 1992, 30 U.S.C. 242, if you own an oil shale placer claim, you must pay an annual $550 fee and file a notice of intent to hold, with the applicable service charge, each calendar year on or before December 30—

(i) If you elected to maintain an oil shale placer claim;

(ii) If you elected to apply for limited patent; or

(iii) If you filed a patent application for an oil shale placer claim but did not receive a first half final certificate on or before October 24, 1992.

(2) See part 3835 of this chapter for notice of intent to hold requirements, and the table of fees and service charges in § 3830.21 of this chapter.

(3) You need not pay the annual $550 fee, or file a notice of intent to hold, if you filed a patent application and received a first half of the mineral entry final certificate on or before October 24, 1992.

§ 3834.12 How will BLM know for which mining claims or sites I am paying the fees?

When you pay any fees to BLM, you must include a list of the mining claims or sites that you are paying for by claim name, and by the BLM serial number if BLM has notified you what the serial numbers are.

§ 3834.13 Will BLM prorate annual maintenance or oil shale fees?

BLM will not prorate annual maintenance or oil shale fees if you hold a mining claim or site for only part of a year. You must pay the full annual fee even if you hold the claim or site for just one day in an assessment year.

§ 3834.14 May I obtain a waiver from these fees?

(a) No waivers are available for the initial maintenance fee or the annual $550 oil shale fee.

(b) You may request a waiver from annual maintenance fees under certain circumstances. See part 3835 of this chapter.

Subpart B—Fee Adjustment

§ 3834.20 Adjusting location and maintenance fees.

§ 3834.21 How will BLM adjust the location and maintenance fees?

BLM will adjust the location and maintenance fees at least every 5 years, based upon the Consumer Price Index (CPI).

§ 3834.22 How will I know that BLM has adjusted location and maintenance fees?

BLM will publish a notice in the **Federal Register** about the adjustment on or before July 1st of a given year in order to make the adjusted fees due on September 1st of the same year.

§ 3834.23 When do I start paying the adjusted fees?

(a) You must pay the adjusted initial maintenance and location fees when you record a new mining claim or site located on or after the September 1st immediately following the date BLM published its notice about the adjustment.

(b) For previously recorded mining claims and sites, you must pay the adjusted maintenance fee on or before the September 1st immediately following the date BLM published its notice about the adjustment.

■ 15. Add part 3835 to read as follows:

PART 3835—WAIVERS FROM ANNUAL MAINTENANCE FEES

Subpart A—Filing Requirements

Sec.
3835.1 How do I qualify for a waiver?
3835.10 How do I request a waiver?
3835.11 What special filing and reporting requirements pertain to the different types of waivers?
3835.12 What are my obligations once I receive a waiver?

3835.13 How long do the waivers last and how do I renew them?
3835.14 How do I submit a small miner waiver request for newly-recorded mining claims?
3835.15 If I qualify as a small miner, how do I apply for a waiver if I paid the maintenance fee in the last assessment year?
3835.16 If I am a qualified small miner, and I obtained a waiver in one assessment year, what must I do if I want to pay the maintenance fee for the following assessment year?
3835.17 What additional requirements must I fulfill to obtain a small miner waiver for my mining claims or sites on National Park System lands?

Subpart B—Conveying Mining Claims or Sites Under Waiver

3835.20 Transferring, selling, inheriting, or otherwise conveying mining claims or sites already subject to a waiver.

Subpart C—Annual FLPMA Documents

3835.30 Annual FLPMA documents.
3835.31 When do I file an annual FLPMA document?
3835.32 What should I include when I submit an affidavit of assessment work?
3835.33 What should I include when I submit a notice of intent to hold?

Subpart D—Defective Waivers and FLPMA Filings

3835.90 Failure to comply with this part.
3835.91 What if I fail to file annual FLPMA documents?
3835.92 What if I fail to submit a timely waiver request?
3835.93 What happens if BLM finds a defect in my waiver request?

Authority: 115 Stat 414; 30 U.S.C. 22, 28, 28f-28k; 43 U.S.C. 2, 1201, 1457, 1740, 1744; 50 U.S.C. App. 501, 565.

Subpart A—Filing Requirements

§ 3835.1 How do I qualify for a waiver?

(a) Under certain conditions, you may qualify for a waiver from the annual maintenance fee requirements. You cannot obtain a waiver from service charges, the location fee, the initial maintenance fee, or the $550 oil shale fee.

(b) The following table lists the types of waivers available and how you qualify for them (detailed requirements for each category appear in § 3835.10):

Type of waiver	Qualifications
(a) Small Miner.	All related parties must hold no more than a total of 10 mining claims or sites nationwide, not including oil shale claims; and All co-claimants must qualify for the small miner waiver.
(b) Soldiers' and Sailor's Civil Relief Act.	You and all co-claimants must be military personnel on active duty status.
(c) Reclamation.	Maintenance fees are waived for your mining claims or sites that are undergoing final reclamation under subparts 3802, 3809, or 3814, if you do not intend to continue mining, milling, or processing operations on those sites.
(d) Denial of Access.	You have received a declaration of taking or a notice of intent to take from the National Park Service (NPS) or other Federal agency; or the United States has otherwise denied you access to your mining claim or site.
(e) Mineral Patent Application.	You have submitted an application for a mineral patent under part 3860 and the Secretary has granted you a final certificate.

§ 3835.10 How do I request a waiver?

(a) You must submit BLM's waiver certification form on or before September 1 of each assessment year for which you are seeking a waiver. You must submit your waiver on or before September 1 for BLM to exempt your claims or sites from the annual maintenance fee requirement that is due on the same date. You may have an agent submit a waiver form on your behalf if you file or have filed with BLM a power of attorney or other legal documentation which shows that the agent is acting on your behalf.

(b) All waiver requests must include:

(1) The names and addresses of all claimants who maintain an interest in the mining claims or sites listed on the waiver document;

(2) The original signatures of the claimants of the mining claims or sites who are requesting the waiver, or the original signature of the authorized agent of the owner or owners of those mining claims or sites;

(3) The names of the mining claims or sites for which you request a waiver;

(4) The serial numbers, if available, that BLM assigned to the mining claims or sites; and

(5) The date the maintenance fee was due from which you are seeking a waiver.

§ 3835.11 What special filing and reporting requirements pertain to the different types of waivers?

(a) *Small miner waivers.* Small miner waiver requests must include a declaration that:

(1) You and all related parties hold no more than a total of 10 mining claims and sites nationwide;

(2) You have completed or will complete all assessment work required by the General Mining Law and part 3836 of this chapter to maintain your claims by the end of the applicable assessment year.

(3) If you were not required to perform assessment work in the previous assessment year, you must include the reason why assessment work was not required in your certification, whether it is because:

(i) Your claim was located in that assessment year;

(ii) You paid a maintenance fee to maintain your claim during that assessment year;

(iii) Assessment work was deferred for that year; or

(iv) Any other reason recognized under Federal law.

(b) *Soldiers' and Sailors' Civil Relief Act waivers.* Your application for waiver must include a notice of active military service or entry into active military service. You must also notify BLM in writing when you leave active duty status.

(c) *Reclamation waivers.* Your application must include a certified and/or notarized statement that:

(1) States that you are reclaiming the mining claims or sites;

(2) States your intent to end mining operations on the claims or sites permanently; and

(3) References a reclamation plan that you submitted to BLM or that BLM approved; or references a reclamation plan approved by a surface managing agency other than BLM.

(d) *Denial-of-access waivers.* (1) Your application must include a statement that you have received a declaration of taking or a notice of intent to take from the National Park Service or other Federal agency or have otherwise been denied access to your mining claim or site in writing by the surface management agency or a court.

(2) You must submit copies of all official documents you have received that demonstrate the declaration of taking, notice of intent to take, or denial of access.

(3) Applying for National Park Service (NPS) approval of a complete plan of operations does not justify your denial-of-access waiver. While the NPS is reviewing your plan of operations, or if the NPS disapproves it but has not denied you access, or issued a declaration of taking or a notice of intent to take, you must pay the annual maintenance fee.

(e) *Contest actions.* If the Secretary contests your mining claim or site under part 4 of this title, you must maintain the mining claim or site until the

Department of the Interior issues a final decision.

(f) *Appeals.* If you forfeit your mining claim or site and you file an appeal under part 4 of this title and the Interior Board of Land Appeals stays BLM's voidance decision, you must maintain your mining claim or site through the appeals process.

§ 3835.12 What are my obligations once I receive a waiver?

If BLM allows you the waiver, you must then perform annual assessment work on time and file annual FLPMA documents. You will find more information about annual FLPMA documents in § 3835.30 of this part, and about assessment work in part 3836 of this chapter.

3835.13 How long do the waivers last and how do I renew them?

The following table states how long waivers last and explains how to renew them:

Type of waiver	Duration	Renewal requirements
(a) Small Miner	One assessment year	Apply for a small miner waiver by each September 1.
(b) Soldiers' and Sailors' Civil Relief Act.	Until six months after you are released from active duty status or from a military hospital, whichever is later.	Your waiver is automatically renewed if you continue to meet the qualifications. You must notify BLM when you leave active duty status.
(c) Reclamation	One assessment year	Apply for a reclamation waiver by each September 1.
(d) Denial of Access	One assessment year	Apply for waiver certification by each September 1.
(e) Mineral Patent Application with Final Certificate.	Until patent issues or the final certificate is canceled. BLM will not refund previously deposited annual maintenance fees to a mineral patent applicant.	None. If the final certificate is canceled, you must pay the required fees beginning on the September 1 immediately following the cancellation or file a different form of waiver if you qualify.

§ 3835.14 How do I submit a small miner waiver request for newly-recorded mining claims?

In order to obtain a small miner waiver for newly-recorded mining claims, you must—

(a)(1) Submit the waiver request on or before September 1; or

(2) If the mining claim or site was located before September 1 and recorded after September 1 in a timely manner, you must submit the waiver request at the time of recording the mining claim or site with BLM, and

(b) File on or before the December 30 immediately following the September 1st for which you applied for a waiver a notice of intent to hold the mining claim or site. The Mining Law does not require you to perform assessment work in the assessment year in which you locate a mining claim. The notice of intent to hold must conform to §§ 3835.31 through 3835.34.

§ 3835.15 If I qualify as a small miner, how do I apply for a waiver if I paid the maintenance fee in the last assessment year?

You must submit a waiver request complying with § 3835.10 before the assessment year begins for which you wish to obtain a waiver. In addition, you must—

(a) Make a FLPMA filing, in the form of a notice of intent to hold under §§ 3835.31 and 3835.34 of this part on or before December 30th immediately following the submission of a waiver request;

(b) Perform your assessment work in the assessment year for which BLM waived the maintenance fee; and

(c) Make a FLPMA filing in the form of an affidavit of assessment work under §§ 3835.31 and 3835.33 of this part on or before the December 30th immediately following the close of the assessment year in which you performed assessment work.

§ 3835.16 If I am a qualified small miner, and I obtained a waiver in one assessment year, what must I do if I want to pay the maintenance fee for the following assessment year?

(a) You must perform the required assessment work in the assessment year for which you obtained a waiver from payment of the annual maintenance fee, and file the annual FLPMA document required by the December 30th immediately following the payment of the maintenance fee; and

(b) You must pay the maintenance fee by the proper deadline for the following assessment year.

§ 3835.17 What additional requirements must I fulfill to obtain a small miner waiver for my mining claims or sites on National Park System lands?

(a) Before performing assessment work on National Park System lands, you must submit and obtain the National Park Service (NPS)'s approval of a complete plan of operations in compliance with regulations at 36 CFR parts 6 and 9. Your proposed activities must further the ultimate commercial mineral development of each claim, such as delineation of the mineral deposit or commencement of production. Once you submit a proposed plan, NPS will evaluate the plan, conduct a validity exam if necessary, and either approve or disapprove the plan.

(b)(1) If NPS approves your plan of operations, by the September 1 on which you want to submit a small miner waiver request you must:

(i) Post a reclamation bond with NPS;

(ii) Begin the approved activity; and

(iii) Submit a waiver request complying with § 3835.10 before the assessment year begins for which you wish to obtain a waiver.

(2) By December 30, you must file your affidavit of assessment work for the mining claims and a notice of intent to hold for your mill or tunnel sites.

(c) If NPS does not approve your proposed plan of operations by July 1, to allow you sufficient time to conduct assessment work before September 1, you may—

(1) Pay BLM the maintenance fees by September 1;

(2) Petition BLM before September 1 for a deferment of assessment work; or

(3) Submit a request for a lack of access waiver.

Subpart B—Conveying Mining Claims or Sites Under Waiver

§ 3835.20 Transferring, selling, inheriting, or otherwise conveying mining claims or sites already subject to a waiver.

(a) If you purchase, inherit, or otherwise obtain mining claims or sites that are subject to a waiver, you must also qualify for the waiver in order for BLM to continue to apply the waiver to the mining claims you have received in the transfer; or

(b) If you purchase, inherit, or otherwise obtain mining claims or sites that are subject to a waiver and you do not qualify for the waiver, you must pay the annual maintenance fee by the September 1 following the date the transfer became effective under state law.

Subpart C—Annual FLPMA Documents

§ 3835.30 Annual FLPMA documents.

§ 3835.31 When do I file an annual FLPMA document?

(a) If you must file an annual FLPMA document as required in paragraph (d) of this section, you must file your annual FLPMA documents with BLM on or before the December 30th of the calendar year in which the assessment year ends. (For example, if the assessment year ends on September 1, 2003, you must file your annual FLPMA document no later than December 30, 2003.)

(b) If part 3836 of this chapter requires you to perform assessment work, you must file an affidavit of assessment work. You do not need to complete assessment work in the assessment year when you located your claim. (For example, if you locate a claim on September 2, 2002, you first need to perform assessment work sometime between September 2, 2003, and September 1, 2004.)

(c) If part 3836 of this chapter does not require you to perform assessment work, either because you located the claim during the current assessment year or because BLM has deferred assessment work, you must submit a notice of intent to hold under §§ 3835.32 and 3835.34 of this part as an annual FLPMA document filing. You must state in the notice of intent to hold either that BLM has deferred the assessment work requirement or that you located the claim during the current assessment year.

(d) The following table describes the circumstances under which you must file annual FLPMA documents:

Your situation	Affidavit of assessment work required	Notice of intent to hold required
(1) You have paid annual maintenance fees	No	No.
(2) You have an oil shale placer claim	No	Yes, by December 30 of each year you must pay the $550 oil shale fee.
(3) You have a small miner waiver that covers mining claims.	Yes, by December 30 for each assessment year you obtained a small miner waiver.	Yes, but only as described in paragraph (c) of this section.
(4) You have a small miner waiver that covers mill or tunnel sites.	No affidavit assessment work is required for mill or tunnel sites.	Yes, notices of intent to hold are required for mill and tunnel sites.
(5) You have a Soldiers and Sailor's Civil Relief Act Waiver.	No	No.
(6) You have a reclamation waiver	No	Yes.
(7) You have a waiver because you have been denied access.	No	Yes.
(8) You have a deferment of assessment work	No	Yes, but only as described in paragraph (c) of this section.
(9) You have applied for a mineral patent and BLM has issued a final certificate.	No	No.

§ 3835.32 What should I include when I submit an affidavit of assessment work?

When you submit an affidavit of assessment work as required in § 3835.31(d), you must include the following:

(a) The name and, if available, the BLM serial number of the claim for which you did assessment work;

(b) Any known changes in the mailing addresses of the claimants;

(c) A non-refundable service charge for each mining claim or site affected (see the table of charges in § 3830.21 of this chapter); and

(d) An exact legible reproduction or duplicate, other than microfilm or other electronic media, of either:

(1) The affidavit of assessment work that you filed or will file in the county where the claim is located; or

(2) The report of geological, geochemical, and geophysical surveys you filed in the county where the claim is located, as provided for in part 3836 of this chapter.

§ 3835.33 What should I include when I submit a notice of intent to hold?

When you submit a notice of intent to hold as required in § 3835.31(d), you must include the following:

(a) An exact legible reproduction or duplicate of a letter or other notice with signatures of one or more of the claimants or their agent that states your intention to hold the mining claims or sites for the calendar year in which the assessment year ends, and that you filed or will file a notice of intent to hold in the county where the claim is located;

(b) If applicable:

(1) A copy of a BLM decision granting a deferment of the annual assessment work;

(2) A copy of a pending petition for deferment of the annual assessment work including the date you submitted the petition; or

(3) Any other documentation in the notice of intent to hold supporting why you are filing a notice of intent to hold instead of an assessment work filing;

(c) The name and, if available, the BLM serial number of the mining claim or site;

(d) Any known changes in the mailing addresses of the claimants; and

(e) A non-refundable service charge for each mining claim or site affected. (See the table of service charges in § 3830.21 of this chapter.)

Subpart D—Defective Waivers and FLPMA Filings

§ 3835.90 Failure to comply with this part.

§ 3835.91 What if I fail to file annual FLPMA documents?

If you fail to file an annual FLPMA document by December 30, as required in § 3835.31(d), you forfeit the affected mining claims or sites.

§ 3835.92 What if I fail to submit a timely waiver request?

(a) If you fail to submit a qualified waiver request (see § 3835.1) and also fail to pay an annual maintenance fee by September 1st, you forfeit the affected mining claims or sites.

(b) If you fail to list any mining claims or sites that you and all related parties own on your small miner waiver request and fail to pay an annual maintenance fee by September 1st, you forfeit the unlisted mining claims or sites.

(c) If you fail to cure any defects in your timely waiver request or pay the maintenance fee within the allowed time after BLM notifies you of the defects, you forfeit the affected mining claims or sites.

(d) If you, a co-claimant, or any related parties, submit small miner waiver requests for more than 10 mining

claims or sites and fail to pay the $100 maintenance fee for each claim on or before the due date, you forfeit the mining claims and sites and you may be subject to criminal penalties under 18 U.S.C. 1001.

§ 3835.93 What happens if BLM finds a defect in my waiver request?

(a) BLM will send you a notice describing the defect by certified mail-return receipt requested at the most recent address you gave us on—

(1) Your notice or certificate of location;

(2) An address correction you have filed with BLM;

(3) A valid transfer document filed with BLM; or

(4) The waiver request form.

(b) If the certified mail is delivered to your most recent address of record, this constitutes legal service even if you do not actually receive the notice or decision. (See 43 CFR 1810.2.)

(c) You must cure the defective waiver or pay the annual maintenance fees within 60 days of receiving BLM notification of the defects, or forfeit the claim or site.

■ 16. Add part 3836 to read as follows:

PART 3836—ANNUAL ASSESSMENT WORK REQUIREMENTS FOR MINING CLAIMS

Subpart A—Performing Assessment Work

Sec.
3836.10 Performing assessment work.
3836.11 What are the general requirements for performing assessment work?
3836.12 What work qualifies as assessment work?
3836.13 What are geological, geochemical, or geophysical surveys?
3836.14 What other requirements must geological, geochemical, or geophysical surveys meet to qualify as assessment work?
3836.15 What happens if I fail to perform required assessment work?

Subpart B—Deferring Assessment Work

3836.20 Deferring assessment work.
3836.21 How do I qualify for a deferment of assessment work on my mining claims?
3836.22 How do I qualify for a deferment of assessment work on my mining claims that are on National Park System (NPS) lands?
3836.23 How do I petition for deferment of assessment work?
3836.24 If BLM approves my petition, what else must I do to obtain a deferment of assessment work?
3836.25 What if BLM denies my petition for deferment of assessment work?
3836.26 How long may a deferment of assessment work last?
3836.27 When must I complete my deferred assessment work?

Authority: 30 U.S.C. 22, 28, 28b–28e; 50 U.S.C. App. 501, 565; 43 U.S.C. 2, 1201, 1457, 1740.

Subpart A—Performing Assessment Work

§ 3836.10 Performing assessment work.

§ 3836.11 What are the general requirements for performing assessment work?

(a) Beginning in the assessment year that begins after you locate your mining claim, you must expend $100 in labor or improvements for each claim for each assessment year preceding the date on which you file for a small miner waiver.

(b) You may perform assessment work on:

(1) Each individual claim;

(2) One or more claims in a group of contiguous lode or placer claims that you own or hold an interest in and that cover the same mineral deposit; or

(3) Adjacent or nearby lands if the work supports development of the minerals on the claim(s).

(c) Your total expenditure must equal at least $100 per claim.

§ 3836.12 What work qualifies as assessment work?

Assessment work includes, but is not limited to—

(a) Drilling, excavations, driving shafts and tunnels, sampling (geochemical or bulk), road construction on or for the benefit of the mining claim; and

(b) Geological, geochemical, and geophysical surveys.

§ 3836.13 What are geological, geochemical, or geophysical surveys?

(a) Geological surveys are surveys of the geology of mineral deposits. These are done by, among other things, taking mineral samples, mapping rock units, mapping structures, and mapping mineralized zones.

(b) Geochemical surveys are surveys of the chemistry of mineral deposits. They are done by, among other things, sampling soils, waters, and bedrock to identify areas of anomalous mineral values and quantities that may in turn identify mineral deposits.

(c) Geophysical surveys are surveys of the physical characteristics of mineral deposits to measure physical differences between rock types or physical discontinuities in geological formations. These surveys include, among other things, magnetic and electromagnetic surveys, gravity surveys, seismic surveys, and multispectral surveys.

§ 3836.14 What other requirements must geological, geochemical, or geophysical surveys meet to qualify as assessment work?

(a) Qualified experts must conduct the surveys and verify the results in a detailed report filed in the county or recording district office where the claim is recorded. A qualified expert is a geologist or mining engineer qualified by education and experience to conduct geological, geochemical, or geophysical surveys.

(b) You must record the report on the surveys with BLM and the local recording office, as provided in part 3835 of this chapter. This report must set forth fully the following:

(1) The location of the work performed in relation to the point of discovery and boundaries of the claim;

(2) The nature, extent, and cost of the work performed;

(3) The basic findings of the surveys; and

(4) The name, address, and professional background of persons conducting the work and analyzing the data.

(c) You may not count these surveys as assessment work for more than 2 consecutive years or for more than a total of 5 years on any one mining claim.

(d) No survey may repeat any previous survey of the same claim and still qualify as assessment work.

§ 3836.15 What happens if I fail to perform required assessment work?

If you are required to perform assessment work and—

(a) You fail to perform the assessment work as required in this part, your claim is open to relocation by a rival claimant as if no location had ever been made; or

(b) You fail substantially to perform the assessment work as required in this part and the land is withdrawn from mineral entry or the mineral for which the claim was located is no longer subject to the Mining Law, BLM may declare your claim forfeited.

Subpart B—Deferring Assessment Work

§ 3836.20 Deferring assessment work.

(a) Under some circumstances, you may obtain a temporary deferment that relieves you from performing annual assessment work on your mining claims. You may include more than one mining claim in one deferment petition if the claims are contiguous.

(b) If BLM grants you a deferment, you have merely deferred doing the assessment work. You still must complete that assessment work for that

assessment year after the deferment period ends, as provided in § 3836.27.

§ 3836.21 How do I qualify for a deferment of assessment work on my mining claims?

You qualify for a deferment of assessment work if—

(a) You have a mining claim or group of mining claims that you cannot enter or gain access to because—

(1) The claims are surrounded by lands owned by others, including BLM, and the land owner has refused to give you a right-of-way or you are in litigation regarding the right-of-way or in the process of acquiring the right-of-way under state law; or

(2) Some other legal impediment prevents your access.

(b) You have received a declaration of taking or notice of intent by the Federal Government to take the claim.

§ 3836.22 How do I qualify for a deferment of assessment work on my mining claims that are on National Park System (NPS) lands?

Correspondence from NPS merely denying your Plan of Operations for incompleteness or inadequacy will not suffice for a deferment of assessment work. To qualify for a deferment of assessment work on claims situated on NPS lands—

(a) You must obtain a letter from NPS stating that—

(1) NPS received and found your proposed Plan of Operations to be complete;

(2) NPS cannot act on the plan until it conducts a validity exam; and

(3) NPS anticipates completing the validity exam after the assessment year ends.

(b) You must send NPS's letter to BLM, along with other documents and information that BLM requires (see § 3836.23) to support your petition for deferment of assessment work.

§ 3836.23 How do I petition for deferment of assessment work?

In order to apply for deferment—

(a) You must submit a petition with the BLM State Office that includes:

(1) The names of the claims;

(2) The BLM serial numbers assigned to the claims;

(3) The starting date of the one-year period of the requested deferment; and

(4) A statement that you plan to file a small miner waiver form by September 1st.

(b) If you are submitting the petition because BLM or another party has denied you a right-of-way, you must also describe—

(1) The ownership and nature of the land, including topography, vegetation, surface water, and existing roads, over which you were seeking a right-of-way to reach your claims;

(2) The land over which you are seeking a right-of-way by legal subdivision if the land is surveyed;

(3) Why present use of the right-of-way is denied or prevented;

(4) The steps you have taken to acquire the right to cross the lands; and

(5) Whether any other right-of-way is available and if so, why it is not feasible to use that right-of-way.

(c) If you are submitting the petition because of other legal impediments to your access to the claim, you must describe the legal impediments and submit copies of any documents you have that evidence the legal impediments.

(d) You must record in the local recording office a notice that you are petitioning BLM for a deferment of assessment work.

(e) You must attach a copy of the notice required by paragraph (d) of this section to the petition you submit to BLM.

(f) At least one of the claimants of each of the mining claims for which you request a deferment must sign:

(1) The petition you submit to BLM; and

(2) The original notice you record with the local recording office.

(g) You must pay a non-refundable service charge with each petition. (See the table of fees and charges in § 3830.21 of this chapter.)

§ 3836.24 If BLM approves my petition, what else must I do to obtain a deferment of assessment work?

You must record a copy of BLM's decision regarding your petition in the local recording office.

§ 3836.25 What if BLM denies my petition for deferment of assessment work?

If BLM denies your petition for deferment of assessment work, and the assessment year has ended, BLM will give you 60 days from the date you receive the BLM decision denying the petition in which to pay the maintenance fee to maintain your claim.

§ 3836.26 How long may a deferment of assessment work last?

(a) BLM may grant a deferment for up to one assessment year. However, the deferment ends automatically if the reason for the deferment ends.

(b) The deferment period will begin on the date you request in the petition unless BLM's approval sets a different date.

(c) You may petition to renew the deferment for one additional assessment year if a valid reason for a deferment continues. BLM cannot renew your deferment of assessment work more than once.

§ 3836.27 When must I complete my deferred assessment work?

(a) You may begin the deferred assessment work any time after the deferment ends. However, you must complete it before the end of the following assessment year. For example, if your deferment ends on July 15, 2008, you must complete all the deferred assessment work by September 1, 2009, in addition to completing the regular assessment work due on that date.

(b) You may also choose to pay the annual maintenance fees for the years deferred instead of performing the deferred assessment work.

■ 17. Add part 3837 to read as follows:

PART 3837—ACQUIRING A DELINQUENT CO-CLAIMANT'S INTERESTS IN A MINING CLAIM OR SITE

Subpart A—Conditions for Acquiring a Delinquest Co-Claimant's Interests in a Mining Claim or Site

Sec.
3837.10 Conditions for acquiring a delinquent co-claimant's interests.
3837.11 When may I acquire a delinquent co-claimant's interest in a mining claim or site?

Subpart B—Acquisition Procedures

3837.20 Acquisition.
3837.21 How do I notify the delinquent co-claimant that I want to acquire his or her interests?
3837.22 How long does a delinquent co-claimant have after notification to contribute a proportionate share of the assessment work, expenditures, or maintenance fees?
3837.23 How do I notify BLM that I have acquired a delinquent co-claimant's interests in a mining claim or site?
3837.24 What kind of evidence must I submit to BLM to show I have properly notified the delinquent co-claimant?

Subpart C—Resolving Co-Claimant Disputes About Acquiring a Delinquest Co-Claimant's Interests

3837.30 Disputes about acquiring a delinquent co-claimant's interests.

Authority: 43 U.S.C. 2, 1201, 1457; 50 U.S.C. App. 501, 565; 30 U.S.C. 28.

Subpart A—Conditions for Acquiring a Delinquest Co-Claimant's Interests in a Mining Claim or Site

§ 3837.10 Conditions for acquiring a delinquent co-claimant's interests.

§ 3837.11 When may I acquire a delinquent co-claimant's interests in a mining claim or site?

(a) You may acquire a co-claimant's interest in a mining claim or site under the following circumstances:

(1) You are a co-claimant who has performed the assessment work, made improvements, or paid the maintenance fees required under parts 3834 and 3836 of this chapter;

(2) Your co-claimant fails to contribute a proportionate share of the assessment work, expenditures, or maintenance fees by the end of the assessment year concerned;

(3) You notify the delinquent co-claimant of the alleged delinquency as provided in § 3837.21; and

(4) If, within 90 days following the date the delinquent co-claimant received the notice provided for under § 3837.21 or 90 days following the end of the publication period described in § 3837.21, the delinquent co-claimant fails or refuses to contribute a proportionate share of the assessment work, expenditures, or maintenance fees, the remaining co-claimants acquire the delinquent co-claimant's share in the mining claim or site.

(b) You may not acquire a co-claimant's interest in a mining claim or site if the co-claimant is on active military duty.

Subpart B—Acquisition Procedures

§ 3837.20 Acquisition.

§ 3837.21 How do I notify the delinquent co-claimant that I want to acquire his or her interests?

(a) You must give the delinquent co-claimant written notice by mail using registered or certified mail, return receipt requested, or by personal service; or

(b) If, after diligent search, you cannot locate the delinquent co-claimant, you must publish notification in a newspaper nearest the location of the claims or sites at least once a week for 90 days.

§ 3837.22 How long does a delinquent co-claimant have after notification to contribute a proportionate share of the assessment work, expenditures, or maintenance fees?

The delinquent co-claimant must contribute a proportionate share of the assessment work, expenditures, or maintenance fees within 90 days after the date on which—

(a) The co-claimant received written notice by mail or personal service; or

(b) The 90-day newspaper publication period ended.

§ 3837.23 How do I notify BLM that I have acquired a delinquent co-claimant's interests in a mining claim or site?

If you acquire a delinquent co-claimant's interests in a mining claim or site, you must submit—

(a) Evidence that you properly notified the delinquent co-claimant;

(b) An originally signed and dated statement by all the compliant co-claimants that the delinquent co-claimant failed to contribute the proper proportion of assessment work, expenditures, or maintenance fees within the period fixed by the statute; and

(c) A non-refundable service charge for a transfer of interest, as found in the table of fees in § 3830.21 of this chapter.

§ 3837.24 What kind of evidence must I submit to BLM to show I have properly notified the delinquent co-claimant?

(a) If you gave written notice to the delinquent co-claimant by personal service, you must sign and submit a notarized affidavit explaining how and when you delivered the written notice to the delinquent co-claimant.

(b) If you gave written notice to the delinquent co-claimant by mail, you must submit:

(1) A copy of the notice you mailed to the delinquent co-claimant; and

(2) A copy of the signed U.S. Postal Service return receipt from the registered or certified envelope in which you sent the notice to the delinquent co-claimant.

(c) If you published the notice in a newspaper, you must submit:

(1) A statement from the newspaper publisher or the publisher's authorized representative describing the publication, including the beginning and ending dates of publication;

(2) A printed copy of the published notice; and

(3) A notarized affidavit attesting that you conducted a diligent search for the delinquent co-claimant, you could not locate the delinquent co-claimant, and therefore notification by publication was necessary.

Subpart C—Resolving Co-Claimant Disputes About Acquiring a Delinquent Co-Claimant's Interests

§ 3837.30 Disputes about acquiring a delinquent co-claimant's interests.

If co-claimants are engaged in a dispute regarding the acquisition of a delinquent co-claimant's interests—

(a) The co-claimants must resolve the dispute, without BLM involvement, in a court of competent jurisdiction or proceeding as permitted within the state where the disputed claims are located.

(b) The co-claimants must file with BLM a certified copy of the judgment, decree, or settlement agreement resolving the dispute before BLM will update its records.

■ 18. Add part 3838 to read as follows:

PART 3838—SPECIAL PROCEDURES FOR LOCATING AND RECORDING MINING CLAIMS AND TUNNEL SITES ON STOCKRAISING HOMESTEAD ACT (SRHA) LANDS

Subpart A—General Provisions

Sec.
3838.1 What are SRHA lands?
3838.2 How are SRHA lands different from other Federal lands?
3838.3 What rules must I follow to explore for minerals and locate mining claims on SRHA lands?

Subpart B—Locating and Recording Mining Claims and Tunnel Sites on SRHA Lands

3838.10 Procedures for locating and recording a mining claim or tunnel site on SRHA lands.
3838.11 How do I locate and record mining claims or tunnel sites on SRHA lands?
3838.12 What must I include in a NOITL on SRHA lands?
3838.13 What restrictions are there on submitting a NOITL on SRHA lands?
3838.14 What will BLM do when I submit a NOITL for SRHA lands?
3838.15 How do I benefit from properly submitting a NOITL on SRHA lands?
3838.16 What happens if the surface owner of the SRHA lands changes?
3838.17 How do I locate mining claims or tunnel sites after I follow the NOITL Procedures?

Subpart C—Compliance Problems

3838.90 Failure to comply with this part.
3838.91 What if I fail to comply with this part?

Authority: 43 U.S.C. 299(b), 1201, 1457, 1740, 1744; 30 U.S.C. 22 *et seq.*

Subpart A—General Provisions

§ 3838.1 What are SRHA lands?

SRHA lands are lands that were—

(a) Patented under the Stockraising Homestead Act of 1916, as amended (30 U.S.C. 54 and 43 U.S.C. 299); or

(b) Originally entered under the Homestead Act of 1862, as amended, and patented under the SRHA after December 29, 1916.

§ 3838.2 How are SRHA lands different from other Federal lands?

SRHA lands are different from other Federal lands in that the United States owns the mineral estate of SRHA lands, but not the surface estate. Patents issued under the SRHA, and Homestead Act entries patented under the SRHA, reserved the mineral estate to the United States along with the right to enter, mine, and remove any reserved minerals that may be present in the mineral estate.

§ 3838.3 What rules must I follow to explore for minerals and locate mining claims on SRHA lands?

(a) The regulations in this part describe how to notify the surface owner before exploring for minerals or locating a mining claim on the mineral estate of SRHA lands.

(b) If you own the surface estate of SRHA lands and want to explore for minerals or locate a mining claim on the Federally-reserved mineral estate, you do not need to follow the requirements in this part, but you must follow the requirements in parts 3832, 3833, 3834 and 3835 of this chapter.

Subpart B—Locating and Recording Mining Claims and Tunnel Sites on SRHA Lands

§ 3838.10 Procedures for locating and recording a mining claim or tunnel site on SRHA lands.

§ 3838.11 How do I locate and record mining claims or tunnel sites on SRHA lands?

(a) You must—

(1) Submit a notice of intent to locate mining claims form (NOITL), which you may obtain from BLM, with the proper BLM State Office and submit a non-refundable service charge for processing the NOITL (see the table of fees in § 3830.21 of this chapter);

(2) Serve a copy of the NOITL on the surface owner(s) of record, by registered or certified mail, return receipt requested; and

(3) Submit proof to BLM that you served a copy of the NOITL on the surface owner(s) to complete submission of a NOITL with BLM.

(b) You can submit the NOITL to BLM and serve a copy of the NOITL on the surface owner(s) at the same time.

(c) If you want to explore parcels of land that are owned by different people, you must submit a separate NOITL for each parcel of land.

(d) You must—

(1) Wait 30 days after you serve the surface owner(s) with the NOITL before entering the lands to explore for minerals or locate a mining claim or tunnel site; and

(2) Follow procedures for locating mining claims and tunnel sites in part 3832, recording mining claim and tunnel sites in part 3833, and annual maintenance of mining claims in parts 3834 and 3835 of this chapter.

§ 3838.12 What must I include in a NOITL on SRHA lands?

A NOITL must include:

(a) The names, mailing address, and telephone numbers of everyone who is filing the NOITL. An agent may file the NOITL on behalf of others as long as the NOITL is accompanied with proof that the agent is authorized to act on behalf of the others.

(b) Information about the surface owners, including:

(1) The names, mailing addresses, and telephone numbers of all known surface owners of the parcel of land you want to enter;

(2) Evidence of surface ownership of all parcels covered by the NOITL obtained from the tax records of the local government. The evidence must show the name of the persons paying the taxes, and must contain a legal description of the taxed parcel.

(3) A description of the lands covered by the NOITL, including:

(i) The total number of acres to the nearest whole acre; and

(ii) A map and legal land description to the nearest 5-acre subdivision or lot based on a U.S. Public Land Survey of the lands covered by the NOITL, including access routes; and

(4) A brief description of the proposed mineral activities, including:

(i) The name, mailing address, and telephone number of the person who will be managing the activities, and

(ii) A list of the dates on which the activities will take place.

§ 3838.13 What restrictions are there on submitting a NOITL on SRHA lands?

(a) At any one time, you or your affiliates may not hold NOITLs for more than 1,280 acres of land owned by a single surface owner in any one state.

(b) At any one time, you or your affiliates may not hold NOITLs for more than 6,400 acres of land in any one state.

(c) Your NOITL will expire 90 days after you submit it with BLM, unless you submit to BLM a plan of operations that complies with part 3809 of this chapter within the 90-day period.

(d) After your NOITL expires, you are not allowed to submit another NOITL for the same lands until 30 days after the expiration of the previously-filed NOITL.

(e) Only those persons whose names are listed on the properly-submitted NOITL, or their agents, will be allowed to explore for minerals or locate mining claims or tunnel sites on the lands covered by the NOITL.

(f) For purposes of this section, the term ''affiliates'' means, with respect to any person, any other person which controls, is controlled by, or is under common control with, such person.

§ 3838.14 What will BLM do when I submit a NOITL for SRHA lands?

When BLM accepts a properly completed and executed NOITL, we will note the official land status records. The 90-day segregation period begins the day we receive a complete NOITL.

§ 3838.15 How do I benefit from properly submitting a NOITL on SRHA lands?

(a) For a 90-day period after you submit a NOITL with BLM and 30 days after you give notice to the surface owner:

(1) You may enter the lands covered by the NOITL to explore for minerals and locate mining claims (see § 3838.10 for location procedures);

(2) You may cause only minimal disturbance of the surface resources on the lands covered by the NOITL;

(3) You must not use mechanized earthmoving equipment, explosives, or toxic or hazardous materials; and

(4) You must not construct roads or drill pads.

(b) For 90 days after BLM accepts your NOITL, no other person, including the surface owner, may—

(1) Submit a NOITL for any lands included in your NOITL;

(2) Explore for minerals or locate a mining claim on the lands included in your NOITL; or

(3) File an application to acquire any interest under section 209 of FLPMA and part 2720 of this chapter in the lands included in your NOITL.

(c) If you file a plan of operations under subpart 3809 of this chapter with BLM, as provided in Section 1 of the Act of April 16, 1993, 43 U.S.C. 299(b), within the 90-day period, BLM will extend the effects of the 90-day period until BLM approves or denies the plan of operations under subpart 3809.

(d) Before you conduct mineral activities, you must post a bond or other financial guarantee to cover completion of reclamation (see subpart 3809 of this chapter), compensation to the surface owner for permanent damages to the surface and loss or impairment of the surface, and to cover permanent loss of income due to reduction in the owner's use of the land.

§ 3838.16 What happens if the surface owner of the SRHA lands changes?

If the surface owner transfers all or part of the surface to a new owner after you have recorded a NOITL and served it on the surface owner, you do not have to serve a copy of the NOITL on the new surface owners.

Subpart C—Compliance Problems

§ 3838.90 Failure to comply with this part.

§ 3838.91 What if I fail to comply with this part?

If you fail to comply with the requirements in this part, the NOITL is

void. Mining claims or tunnel sites located under a void NOITL are null and void from the beginning and we will cancel them.

PART 3839—SPECIAL LAWS, IN ADDITION TO FLPMA, THAT REQUIRE RECORDING OR NOTICE [RESERVED]

■ 19. Add and reserve part 3839.

PART 3840—NATURE AND CLASSES OF MINING CLAIMS [REMOVED]

■ 20. Remove part 3840 in its entirety.

PART 3850—ASSESSMENT WORK [REMOVED]

■ 21. Remove part 3850 in its entirety.

[FR Doc. 03–26673 Filed 10–23–03; 8:45 am]

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Federal Register

Friday,
October 24, 2003

Part III

Environmental Protection Agency

Standards for the Use or Disposal of Sewage Sludge: Decision Not To Regulate Dioxins in Land-Applied Sewage Sludge; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7577–9]

Standards for the Use or Disposal of Sewage Sludge: Decision Not To Regulate Dioxins in Land-Applied Sewage Sludge

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) is giving final notice of its determination that neither numerical limitations nor requirements for management practices are currently needed to protect human health and the environment from reasonably anticipated adverse effects from dioxin and dioxin-like compounds in land-applied sewage sludge.

DATES: In accordance with 40 CFR 23.2, this final decision is promulgated for purposes of judicial review as of 1 p.m. Eastern Time on November 7, 2003. Under section 509(b)(1) of the Clean Water Act, judicial review of this final action can be obtained only by filing a petition for review in the United States Court of Appeals within 120 days after the final action is considered promulgated for purposes of judicial review.

FOR FURTHER INFORMATION CONTACT: Robert Cantilli, U.S. Environmental Protection Agency, Office of Water, Office of Science and Technology, Health and Ecological Criteria Division (4304T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (202) 566–1091. *cantilli.robert@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Interested Entities

Entities typically regulated by Standards for the Use or Disposal of Sewage Sludge are those that prepare sewage sludge (also called ''biosolids'') and/or use or dispose of the sewage sludge through application to the land, placement in a surface disposal unit, or incineration in a sewage sludge incinerator. Entities potentially interested by today's notice include those that prepare and/or use sewage sludge for land-application purposes. Categories and entities interested in today's action include:

Category	Examples of affected entities
State/Local/Tribal Government	Publicly owned treatment works and other treatment works that treat domestic sewage, prepare sewage sludge, and/or apply sewage sludge to the land.
Federal Government	Federal Agencies with treatment works that treat domestic sewage, prepare sewage sludge, and/or apply sewage sludge to the land.
Farmers and ranchers	Individuals who apply sewage sludge to land.
Industry	Privately-owned treatment works that treat domestic sewage, and persons who receive sewage sludge and change the quality of the sewage sludge before it is applied to the land.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be interested in this action. This table lists the types of entities that EPA is now aware could potentially be interested in this action. Other types of entities not listed in the table could also be interested. To determine whether your facility is affected by this action, you should carefully examine today's notice. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OW–2002–0019. 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 docket is the collection of materials that are available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''Federal Register'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to 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. 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 B.1.

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I. Abbreviations and Acronyms Used

AMSA—Association of Metropolitan Sewerage Agencies
CFR—Code of Federal Regulations

CWA—Clean Water Act
DMT—dry metric tons
EFH—Exposure Factors Handbook
EMS—Environmental Management System
EPA—U.S. Environmental Protection Agency
HQ—hazard quotient
HEI—highly exposed individual
LADD—lifetime average daily dose
MGD—million gallons per day
NBP—National Biosolids Partnership
ng TEQ/kg—nanograms toxic equivalence per kilogram body weight
NODA—Notice of Data Availability
NSSS—National Sewage Sludge Survey
PCBs—polychlorinated biphenyls
PCDDs—polychlorinated dibenzo-p-dioxins
PCDFs—polychlorinated dibenzofurans
pg TEQ/day—picograms toxic equivalence per day
pg TEQ/kg-d—picograms toxic equivalence per kilogram body weight per day
POTWs—Publicly Owned Treatment Works
ppt—parts per trillion
Q1*—cancer slope factor
RfD—reference dose
SAB—Science Advisory Board
SERA—screening ecological risk analysis
TBD—Technical Background Document
TCDD—2,3,7,8-tetrachlorodibenzo-p-dioxin
TEF—toxicity equivalency factor
TEQ—toxic equivalence
WHO—World Health Organization

II. What Is the Legal History of the Standards for the Use or Disposal of Sewage Sludge?

EPA promulgated Standards for the Use or Disposal of Sewage Sludge (40 CFR part 503) under section 405(d) and (e) of the Clean Water Act (CWA), 33 U.S.C. 1345(d), (e), as amended by the Water Quality Act of 1987. In these amendments to section 405 of the CWA, Congress, for the first time, set forth a comprehensive program for reducing the potential environmental risks and maximizing the beneficial use of sewage sludge. As amended, section 405(d) of the CWA requires EPA to establish numerical limitations and management practices, when appropriate, that protect public health and the environment from the reasonably anticipated adverse effects of toxic pollutants in sewage sludge. Section 405(e) prohibits any person from disposing of sewage sludge from a publicly owned treatment works (POTWs) or other treatment works treating domestic sewage for any use except in compliance with regulations promulgated under section 405.

Section 405(d) calls for two rounds of sewage sludge regulations and sets deadlines for promulgation. In the first round, EPA was to establish numerical limits and management practices for those toxic pollutants which, based on ''available information on their toxicity, persistence, concentration, mobility, or potential for exposure, may be present in sewage sludge in concentrations which may adversely affect public health or the environment.'' CWA section 405(d)(2)(A). The second round is to address toxic pollutants not regulated in the first round ''which may adversely affect public health or the environment.'' CWA section 405(d)(2)(B).

EPA did not meet the timetable in section 405(d) for promulgating the first round of regulations, and a citizen's suit was filed to require EPA to fulfill this mandate, (*Gearhart* v. *Reilly,* Civ. No. 89–6266–HO (D. Ore.)). A consent decree was entered by the court in that case, establishing schedules for both rounds of sewage sludge rules. EPA promulgated the first rule, codified at 40 CFR part 503, in 1993 at 58 FR 9248 (February 19, 1993) (''Round One''). For the second round (''Round Two''), EPA identified 31 pollutants and pollutant categories not regulated in Round One that EPA was considering for regulation. In November 1995, EPA narrowed the original list of 31 pollutants to polychlorinated dibenzo-p-dioxins (PCDDs), polychlorinated dibenzofurans (PCDFs) and dioxin-like coplanar polychlorinated biphenyls (PCBs) for the second round of rulemaking (USEPA, 1996). The consent decree required the Administrator to sign a notice for publication proposing Round Two regulations no later than December 15, 1999, and to sign a notice taking final action on the proposal no later than December 15, 2001.

On December 15, 1999, the Administrator signed a proposal to establish numerical limits for dioxins, dibenzofurans, and co-planar PCBs (''dioxins'') in sewage sludge that is applied to the land and proposed not to regulate dioxins in sewage sludge that is disposed of in a surface disposal unit or fired in a sewage sludge incinerator (December 23, 1999, 64 FR 72045). On December 15, 2001, the Administrator signed a final notice of EPA's determination that numerical limitations or management practices are not warranted for dioxins in sewage sludge that are disposed of in a surface disposal unit or incinerated in a sewage sludge incinerator (66 FR 66228). In that notice, EPA also announced that a final action on the Round Two proposal to amend the Standards for the Use or Disposal of Sewage Sludge for sewage sludge that is applied to the land would be published at a later date. The consent decree in Gearhart was amended to extend the deadline for final action on the land application Round Two rulemaking from the original date of December 15, 2001, to a new date of October 17, 2003.

On June 12, 2002, EPA published a Notice of Data Availability (NODA) containing new information relating to dioxins in land-applied sewage sludge and requested public comments (67 FR 40554). The NODA provided a revised cancer risk assessment for dioxins in land-applied sewage sludge, newly collected data regarding concentration of dioxins in sewage sludge, and a new ecological screening risk analysis and solicited public comments.

III. What Did EPA Propose for Dioxins in Land-Applied Sewage Sludge?

A. Proposed Rule

EPA proposed a numeric limitation of 300 part per trillion (ppt) for ''dioxins'' measured as toxic equivalence (TEQ) in land-applied sewage sludge, and related monitoring, record-keeping and reporting requirements. EPA proposed a definition of ''dioxins'' to mean 29 specific congeners of PCDDs, PCDFs, and coplanar PCBs that have been found in sewage sludge. The proposed definition of ''dioxins'' specified seven 2,3,7,8-substituted congeners of PCDDs, ten 2,3,7,8-substituted congeners of PCDFs, and twelve coplanar PCB congeners.

The December 1999 proposal included a monitoring schedule for dioxins in land-applied sewage sludge that would have required wastewater treatment plants to monitor for dioxins in their sewage sludge for two consecutive years. EPA also proposed a modified frequency of monitoring based on analytical results from the first two years of monitoring.

EPA also proposed to exclude from the proposed numeric limit and monitoring requirements those treatment works having a flow rate equal to or less than one million gallons per day (MGD) and certain sewage sludge-only entities that receive sewage sludge for further processing prior to land application. This proposed exclusion was based on the relatively small amount of sewage sludge that is prepared by these facilities and entities and, therefore, the low probability that land application of these materials could significantly increase risk from dioxins to human health or the environment.

EPA's proposal was based on a deterministic risk assessment and data regarding dioxins in sewage sludge

collected in the 1988–1989 National Sewage Sludge Survey (NSSS). See 64 FR 72045, 72048–72051 (December 23, 1999) and the National Sewage Sludge Survey (USEPA, 1990) for a full discussion of the proposed rule and supporting documentation.

In addition, unrelated to dioxins in sewage sludge, EPA proposed technical amendments to the frequency of monitoring requirements for pollutants other than dioxins. These amendments were intended to clarify but, with one exception, not alter the monitoring schedule in the existing sewage sludge rule. The one exception would require preparers of material derived from sewage sludge to determine the appropriate monitoring schedule based on quantity of material derived rather than quantity of sewage sludge received for processing.

B. Notice of Data Availability (NODA)

Based on comments critical of both the proposal's use of a deterministic risk assessment and its use of more than decade-old data on dioxins concentrations in sewage sludge, in 2001 EPA collected and analyzed samples of sewage sludge nationwide in order to obtain new information on the levels of dioxins in sewage sludge. EPA also substantially revised the cancer risk assessment for dioxins associated with land application of sewage sludge. EPA used new dioxins concentration data in the revised risk assessment and conducted statistical analyses to better understand the fluctuation of dioxins concentrations in sewage sludge samples over time. In the NODA, EPA summarized the new sewage sludge data, the revised risk assessment, and presented an approach to assess potential non-cancer health effects of exposure to dioxins associated with land application of sewage sludge. EPA also presented a screening ecological risk analysis (SERA) of the effects of dioxins in land-applied sewage sludge on ecological species. EPA requested comments on the new data and risk analyses, additional dioxins exposure information, and comments on any impact the data and information might have on the 1999 proposed rule with respect to land application of sewage sludge. EPA also requested comment on whether monitoring requirements to measure dioxins in land-applied sewage sludge should be promulgated in lieu of a numerical limitation.

In the NODA, EPA also presented information from EPA's draft dioxin reassessment document, Exposure and Human Health Reassessment of 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD) and Related Compounds. EPA described implications of the draft dioxin reassessment for the final determination regarding regulation of dioxins in land-applied sewage sludge and requested public comment. EPA included this information in the NODA in order to be in a position to fulfill its obligations under the *Gearhart* v. *Whitman* consent decree. The consent decree requires EPA to take final action on or before October 17, 2003, regardless of whether EPA issues a final dioxin reassessment document, with some schedule adjustment allowed depending on the timing of EPA's issuance of a final dioxin reassessment document prior to October 17, 2003. EPA has not issued a final dioxin reassessment document; thus, the October 17, 2003 deadline applies. Regarding the draft dioxin reassessment documents discussed in the NODA, EPA has continued to revise these documents, and the science continues to be under review. Review by the National Academy of Sciences is the next review to be undertaken, as specified by Congress in the Conference Report accompanying EPA's fiscal year 2003 appropriation. H.R. Conf. Rep. No. 108–10, at 1445–46 (2003).

IV. What Final Action Is EPA Taking Today?

EPA has determined that no further regulation of land-applied sewage sludge is needed to protect public health and the environment from reasonably anticipated adverse effects from exposure to dioxins in land-applied sewage sludge. Therefore, no numeric limitations, monitoring, operational standards, or management practices are being established in 40 CFR part 503 for dioxins in land-applied sewage sludge.

While monitoring data could be useful to a local community to discover whether a significant increase is occurring in the dioxin concentration and assist in identifying the source of any such significant increase (see later discussion), the data indicate that such increases are short-term in nature, and the risk assessment showing low risk to the HEI takes these spikes into account. Therefore, EPA has determined that monitoring in lieu of a numerical limit is not warranted.

With respect to revisions to the existing requirements pertaining to frequency of monitoring of pollutants other than dioxins in land-applied sewage sludge, EPA is not taking final action at this time. Therefore, any comments on the proposed amendment to the footnote to Table 1 in 40 CFR 503.16 are not being addressed today. EPA may take final action on this proposed amendment in a subsequent rulemaking.

V. What Is the Basis for This Final Action for Dioxins in Land-Applied Sewage Sludge?

A. Overview

Sewage sludge is a residual mixture of solids and water as a result of wastewater treatment. Generally, sewage sludge consists of 2 to 28 percent solids in a water matrix. The solids component of sewage sludge typically contains microbial residue, microbes and trace quantities of chemicals such as metals and organic compounds, including dioxin and dioxin-like compounds. In the United States, approximately 8 million dry metric tons (DMT) of sewage sludge are produced annually by 16,000 wastewater treatment plants. Approximately 54 percent (4.32 million DMT) are applied to land to fertilize and condition soils; 28 percent (2.24 million DMT) are disposed of at municipal solid waste landfills; 17 percent (1.36 million DMT) are incinerated; and 1 percent (0.08 million DMT) is disposed of in lagoons or sewage sludge-only landfills. Of the total amount land-applied, an estimated 85 percent (3.7 million DMT) are applied to agricultural lands used to raise crops for human or animal consumption. Sewage sludge is applied to some 0.1 percent of available agricultural land in the United States. Other land application sites include forests, reclamation sites such as strip mines, and public-contact sites, such as parks, golf courses, highway median strips, and lawns.

EPA has decided not to regulate dioxins in land-applied sewage sludge because EPA considers the predicted risks to human health and the environment from dioxin and dioxin-like compounds in land-applied sewage sludge to be low. Based on recently collected data and assessment of risk, EPA has concluded that the existing regulation of sewage sludge in 40 CFR part 503 is adequate to protect human health and the environment from the reasonably anticipated adverse effects of dioxins in land-applied sewage sludge.

Risk is determined based on both toxicity and exposure. Regarding toxicity, dioxins have been shown to elicit both cancer and a variety of non-cancer effects in animals, and there is strong evidence to indicate that humans are susceptible to the same toxic effects. Although dioxins are found in extremely small quantities in water and soil, they persist in the environment and accumulate in the food chain. However, regarding exposure, EPA's evaluation of the effects on human health due to

exposure to dioxins in land-applied sewage sludge shows the risks to be minimal.

This evaluation looked at the segment of the U.S. population that EPA identified as the most exposed to dioxins in land-applied sewage sludge: farmers (and their families) who apply sewage sludge to their land and consume a high percentage of their own products. This population was selected in part because of their proximity to the land where sewage sludge is applied and, more importantly, because of the portion of their diet grown on land where sewage sludge is applied. EPA's risk assessment shows that even these ''highly exposed individuals'' (HEI) are at low risk of cancer from dioxins in land-applied sewage sludge.

The risk assessment analyzed cancer risk from exposure to dioxins in land-applied sewage sludge. The risk assessment predicted an excess lifetime cancer risk to members of the highly exposed farm family that is in the range of cancer risks that does not warrant additional regulation of land-applied sewage sludge. Indeed, the number of cancer cases for this farm family population is extremely low, less than one cancer case per year.

Because the general population of the U.S. has lower exposure to dioxins from land-applied sewage sludge than the modeled farm family, the incremental cancer risk from exposure to dioxins in land-applied sewage sludge for the general population (*i.e.*, those not members of a highly exposed farm family) is lower than the risk to the HEI. Therefore, having found that the existing sewage sludge land-application regulations (*e.g.*, grazing restrictions, agronomic rate application limitation) are adequate to protect the highly exposed population from the cancer risks due to dioxins in land applied sewage sludge, EPA concludes that the existing regulations are adequate to protect the general population, which is subject to lower exposures.

With respect to non-cancer effects, EPA does not yet have a method to calculate the non-cancer risks that may occur to either the highly exposed modeled population or the general population. EPA used a model to predict the increased dioxin body burden over prolonged exposure to dioxins in land-applied sewages sludge. However, in the absence of an acceptable daily dose for dioxins (also referred to also as a reference dose, or RfD) or other measurement, EPA is not able to estimate the potential development of non-cancer effects in the modeled HEI population from the increases in dioxins body burdens. *See* section VII.B. for a discussion of the evolving science with respect to assessing non-cancer health risks from exposure to dioxins.

EPA also performed a Screening Ecological Risk Analysis (SERA) on the risks to wildlife due to exposure to dioxins from land-applied sewage sludge. The screen calculated the ratio of estimated doses of dioxins to wildlife as a result of the land application of sewage sludge to acceptable dioxin doses to wildlife (dioxin wildlife benchmarks). While not definitive risk estimates, the results of the SERA indicate that wildlife species should not be significantly impacted by dioxins in land-applied sewage sludge.

In addition, the results of EPA's 2001 Dioxin Update to the National Sewage Sludge Survey (USEPA, 2002b) indicate that dioxin levels in sewage sludge have declined since 1988, the last time that dioxins in sewage sludge were surveyed by EPA. There is reason to believe that this downward trend in dioxin concentration in sewage sludge will continue as additional regulatory controls are placed on additional sources of dioxin creation, especially on various types of combustion practices and their emissions, as well as effluent limitation guidelines for the pulp, paper, and paperboard point source category, 40 CFR part 430.

In summary, the information available today on dioxin exposures, toxicity and assessed cancer risks supports EPA's determination that no additional numeric limits or management practices are required to adequately protect human health and the environment from the adverse effects of dioxins in land-applied sewage sludge.

B. Assessment of Cancer Risk From Dioxins in Land-Applied Sewage Sludge

As EPA stated in the proposal and the NODA, EPA is basing its decision with respect to human health impacts on an assessment of the risk of cancer due to exposure to dioxins in land-applied sewage sludge. Both the risk assessment for the proposed rule and the revised risk assessment presented in the NODA were based on EPA's identification of cancer as the hazard to be assessed.

1. *Redefinition of the HEI and Assumptions Regarding the HEI:* For the December 1999 proposal, EPA modeled a ''rural family'' as the Highly Exposed Individual (HEI) population. In the 1999 risk assessment, EPA assumed that the modeled rural family's risk of adverse health effects resulting from exposure to dioxins in land-applied sewage sludge is greater than that of the general population because a higher percentage of the family's diet consists of food grown on sewage sludge-amended soil. At proposal, the rural family was assumed to consume 10 percent of their beef, beef liver, and lamb diet, three percent of their dairy diet, and 43–59 percent of their produce diet from crops raised on sewage sludge-amended soil (64 FR 72053).

In contrast, the revised risk assessment conducted in support of the final decision used a probabilistic method (Monte Carlo) to produce an estimate of the distribution of risk to the HEI. In general, the probabilistic risk assessment approach better characterizes the range of potential risks, and better accounts for uncertainty and variability. For the revised risk assessment, EPA retained the basic assumption from the proposal that the modeled HEI population is at greater risk than the general population. However, EPA revised a number of the exposure assumptions with respect to the modeled HEI population.

In the revised risk assessment, EPA assumed that members of the highly exposed farm family live on farms where sewage sludge is land-applied as fertilizer or a soil amendment on pasture land as well as crop land. In addition, in the revised risk assessment EPA assumed that a higher percentage of the farm family's diet consists of food grown on sewage sludge-amended soil. Specifically, EPA assumed that the farm family consumes 49 percent of the beef and 25.4 percent of the dairy products in their diet from products of their own farms. EPA also assumed, for the first time, that the adults on the farm consume fish caught from a nearby waterbody (stream) pond. As in the deterministic risk assessment, the revised risk assessment assumed that the farm family also raised a significant portion of its fruit and vegetable diet on sewage sludge amended soils. A description of the modeled HEI population and how its risk was estimated is presented in the Background Document, Standards for Use or Disposal for Sewage Sludge, Final Action (USEPA, 2003b).

In the NODA, EPA requested comments on the Agency's use of the farm family scenario described for the revised risk assessment. A few commenters agreed with EPA's definition of the HEI population as the farm family. Most commenters believed that EPA's hypothetical farm family risk scenario was unrealistic and would overestimate risk. They argued that no family would farm its land in the manner described, nor consume such a high percentage of food (up to 50 percent) grown on sewage sludge-amended land. They also believed it

unlikely that every farm in America has a fish pond receiving dioxins runoff from land-applied sewage sludge. A few other commenters believe that EPA's assumptions were not sufficiently conservative, for example, that the percentage of home grown food in the diet was too low. Comments concerning the HEI also said that the risk assessment did not consider the possibility that farmland would be developed and that houses or schools could be built on farmland.

EPA disagrees with comments that assumptions for the modeled HEI population are too conservative and should be changed. Regarding the comment that the amount of food grown on sludge-amended land consumed by farm families as modeled in the revised risk assessment is too conservative, EPA disagrees. The values that EPA used to estimate the proportion of the farmer's diet that is home produced were taken from Table 13–71 (Fraction of Food Intake that is Home Produced) of the Exposure Factors Handbook (USEPA, 1997), a peer reviewed source of data for use in risk assessments. For similar reasons, EPA also disagrees with comments that EPA's estimates of home grown food consumption are not sufficiently conservative. In addition, as some commenters pointed out, the risk assessment should model the ''reasonably maximum exposed'' individual. EPA believes that the HEI modeled in the risk assessment meets this description, and that ''reasonably maximum exposed'' is not equivalent to ''maximum exposed.'' Although one could conceive of the possibility that someone may consume up to100% percent of their diet from home grown products, EPA does not believe it is reasonable to use this assumption in the risk assessment.

One commenter stated that houses could be built on farmland in the future and that EPA should factor this in (presumably to address families living on sewage sludge amended soil). However, because the risks associated with the scenario that EPA evaluated (the farm family as the highly exposed population) are greater than the risks EPA would estimate for a residential land use scenario, there is no need for EPA to evaluate residential exposure. In addition, the Agency evaluated the risks associated with a child's ingestion of sewage sludge amended soil, which could be typical of a residential scenario. Those risks are lower than those for a child's ingestion of contaminated beef and dairy products as in the modeled farm family described herein. (USEPA, 2003a).

Another commenter stated that it is unreasonable to assume that every farm has a fish pond receiving dioxins from runoff of land-applied sewage sludge. Fish consumption by an adult recreational fisher on the farm was one of the pathways used in the exposure model. EPA agrees that while it is unlikely that every farm will have a waterbody from which fish are caught and consumed, it is a possible scenario and a valid one to include in the analysis. In any case, the risk assessment indicates that the consumption of fish from a stream receiving dioxins runoff in land-applied sewage sludge results in minimal influence on the risk estimate.

2. *Other Assumptions in the Risk Assessment:* In addition to the revised modeled HEI population assumptions (USEPA, 2003a), other assumptions were used in the revised risk assessment. Again, these assumptions, to the extent possible, are presented as a range of values, which were modeled using a Monte Carlo probabilistic method. A number of assumptions concern farming practices and sewage sludge application rates. For sewage sludge application rates, EPA assumed a distribution ranging from 5 to 10 metric tons of sludge per hectare applied every other year for a period of time ranging from once to 40 years (that is, EPA assumed that there would be from one to 20 applications of sewage sludge). Half the acreage on the modeled farm was assumed to be in tilled crop production and half permanently in untilled pasture. EPA assumed that row crops are tilled three times per year, and that tilling incorporates sewage sludge into the top 20 cm of soil. EPA assumed that sewage sludge that is applied to pasture is not tilled. We used these assumptions because they are typical of agricultural application situations for soil amendment products by convention.

Many of the assumptions and values used in the revised risk assessment differed from those in the 1999 risk assessment for the proposed rule. The revised risk assessment includes new exposure pathways and mechanisms to more accurately portray farm conditions for the modeled HEI population. For example, the 1999 risk assessment assumed that pastured animals only eat sewage sludge-amended soil containing dioxins; this was assumed to be the animals' only route of exposure. In contrast, the revised risk assessment assumed that cattle ingest dioxins from several sources: leaf surfaces containing dioxins volatilized from the top two centimeters of soil; sewage sludge particles that remain on the leaf surfaces; and direct ingestion of sewage sludge-containing soil. The revised risk assessment also included chickens and assumed that they ingest soil from a buffer area that receives dioxins through erosion of surface soils from adjacent sewage sludge-amended pasture and crop.

EPA requested comments on the specific assumptions outlined in the revised risk assessment, and received a variety of public comments. Some commenters believed that these assumptions, like those concerning the HEI, were too conservative and reflected a worst-case scenario. Others wanted EPA to evaluate additional exposure pathways and scenarios (*i.e.*, dermal exposure, risks for breast-fed infants combined with risks for child and adult receptors, and soil ingestion rates that reflect potentially different soil contact behavior for crops and pasture). Other commenters believed EPA underestimated risk of cancer from exposure to dioxins in land-applied sewage sludge. EPA received several comments on the conceptual site models and exposure scenarios. These comments included statements that the risk assessment did not account for harvesting and land-use restrictions, or variation in sludge application rates among different crops and regions. Other commenters stated that modeling assumptions such as the HEI modeled farm family being exposed to dioxins from multiple pathways were questionable (uncertainty inherent in application of models and use of many ''average'' values imbedded in the assessment) and the vapor dispersion model may underestimate vapor concentration.

The revised risk assessment for dioxins in land-applied sewage sludge does not include additional exposure pathways, however, EPA has summed the risk from all pathways to estimate the overall risk to a given receptor. As explained later in this notice, EPA evaluated the risks to the adult, child, and nursing infant in the farm family. In addition to ingestion of breast milk for the infant, the risk assessment evaluated up to six additional exposure pathways and exposure routes: (1) Inhalation of ambient air; (2) incidental ingestion of soil in the buffer; (3) ingestion of above- and below-ground produce grown on the crop land; (4) ingestion of beef and dairy products from the pasture; (5) ingestion of home produced poultry and eggs from the buffer; and (6) ingestion of fish from the nearby waterbody. More detailed descriptions of the revised risk assessment assumptions and methodologies are presented in the TBD, Section 5.

No data were available on the variation in sludge application rates for specific crops or regions. Had these data been available, they could have been considered in the analysis. In the revised probabilistic risk assessment, however, EPA placed the conceptual farm scenario in 41 different meteorological and agricultural soil regions in the U.S. to account for variations in different crop harvesting and land use restrictions. The analysis as conducted is conservative and the risks estimated using these conservative use assumptions for the crops requiring the greatest fertilizer application still demonstrate low risks to even the HEI (members of a farm family that apply sewage sludge to their own land and consume products from their land).

EPA disagrees with comments that the risk assessment does not appropriately consider volatilization of dioxins from sewage sludge. First, the equations that EPA used (USEPA, 2003a) to represent the sewage sludge's environmental fate and transport in soil included volatilization as a fate and transport mechanism. While EPA assessed volatilization as a dioxin transport mechanism for several exposure pathways, volatilization is an important component only for the critical pathway of the contamination of forage crops grown on the agricultural field with subsequent ingestion of these crops by beef and dairy cattle. This is so because volatilization is the main mechanism of dioxin transport from the sewage sludge soil mixture to the receiving surfaces of the forage crop, which is a component of the mechanism of dioxin exposure to grazing animals. Volatilization of dioxins via other exposure pathways does not significantly contribute to the exposure of dioxins to the HEI.

To address the vapor concentration question (*i.e.*, dioxins concentrations on the surfaces of forage crops), the mixing height values used in this analysis are contained in the Industrial Source Complex Short-Term Model, Version 3 (ISCST3), the air model used in this analysis. This is an approved method for modeling area sources such as agricultural fields. This model has been validated with measurement data and is less conservative than the box model used in the proposed rule, which did not include dispersion and deposition of sewage sludge. A conservative modeling assumption is that land applied sewage sludge remains in the top two centimeters (cm) of the receiving soil for the pasture where the animals are grazed. This is an unlikely assumption since weathering and natural soil organism (*e.g.* earthworms) activity would naturally incorporate the sewage sludge into the soil at greater depths. This assumption creates an upper end dioxin transport from the sewage sludge soil mixture to the surface of the forage crop.

3. *Cancer Slope Factor (Q1*):* The cancer slope factor is used to calculate the incremental cancer risk attributable to the exposure to a pollutant. The cancer slope factor (also referred to as Q1*) is a numeric value which relates the incremental probability of developing cancer from exposure to a particular substance. The cancer slope factor is expressed as excess lifetime cancer risk per unit exposure, and is usually quantified in terms of milligrams or picograms toxic equivalents of substance per kilogram of body weight/day ((pg TEQ/kg-d)$^{-1}$). The greater the numeric value of the cancer slope, the greater the carcinogenic potency of the substance. For example, 1×10^{-5} is greater than the numeric value 1×10^{-6}. The same slope factor is used to estimate cancer risk for both children and adults. The cancer slope factor represents the upper bound 95th percentile confidence limit of the excess cancer risk from a lifetime exposure to a pollutant (*i.e.*, the dose for which increased risk of cancer is predicted for the most sensitive five percent of the population).

For calculating cancer risk from exposure to dioxins, in the revised risk assessment EPA used a cancer slope factor for TCDD of 1.56×10^{-4} picrograms toxic equivalence/kilogram body weight/day ((pg TEQ/kg-d)$^{-1}$) (USEPA, 1985). Thus, the estimate for the 95th percentile excess lifetime cancer risk to the modeled HEI population (*i.e.*, the five percent of the HEI population that is most exposed) is 2×10^{-5}, or 2 in 100,000.

Cancer risk can also be expressed in terms of the number of additional cases of cancer annually attributable to exposure to dioxins in land-applied sewage sludge. This requires an estimation of the number of people in the United States that fall into the farm family scenario that EPA modeled. As explained in the NODA (67 FR 40554) population could be no more than some 11,000 people. By assuming that all sewage sludge produced in the U.S. is land-applied, and by including all farm families whose diets consist of 50 percent of products produced on their farms, EPA took the approach of calculating a very high estimate of the size of the highly exposed population. A more realistic estimate of the HEI population takes into account the fact that only about half of the sewage sludge produced in the U.S. is land applied, and that the number of individuals who consume both home-grown dairy and beef can, by definition, be no greater than the smaller of the number of individuals who consume either home-produced dairy or home-produced beef. This approach results in an estimate of 1,600 persons in the HEI population, which is number of persons estimated to consume home-produced diary products. Because it is unlikely that all of those who consume home-produced dairy products also graze their dairy cows on sewage sludge-amended pastures, even this number may overestimate the size of the highly exposed population. See Background Document, USEPA, 2003b for a detailed explanation of calculating the HEI population. In order to present both the more realistic evaluation as well as a high estimate of the number of excess cancer cases in this population attributable to exposure to dioxins in land-applied sewage sludge, EPA calculated these estimates as a range.

Using this range of 1,600 to 11,200 individuals in the HEI population, EPA estimates that there could be between 0.002 to 0.01 total excess cancer cases in the HEI populations attributable to land application of sewage sludge. This corresponds to additional annual cancer cases of between 0.00003 and 0.0001 that would be attributable to land application of sewage sludge. Thus, whether the HEI population in the U.S. is estimated to be some 1,600 individuals or 11,200 individuals, or whether the maximum 95th percentile or more accurate 50th percentile risk is used, the number of excess lifetime cancer cases attributable to dioxins in land-applied sewage sludge approaches zero. EPA's methodology for reaching this estimate is explained as follows:

EPA estimates individual excess lifetime cancer risk as the product of an individual's lifetime average daily dose (LADD) of dioxins (expressed as a TEQ) and the cancer slope factor for TCDD (see Table 1). EPA summed individual exposure and subsequent cancer risks from all pathways relevant to an exposed individual to estimate the total individual lifetime cancer risk from all pathways. The estimate of the total number of lifetime cancer cases expected within a population is the product of the individual excess lifetime cancer risk estimates for all individuals in the population and the number of individuals in the population. Because this estimate looks at the HEI population as a whole, it is more accurate to apply the 50th percentile risk (1×10^{-6}) than the 95th percentile risk, which actually overestimates the predicted number of cancer cases for this population group. The estimate of

annual cancer cases within a population is the total number of excess lifetime cancer cases divided by a 70-year lifetime.

EPA used this procedure to derive the results of the revised risk assessment. Specifically, in the exposure assessment EPA estimated the HEI's dose of each 29 dioxin-like congeners detected in sewage sludge. The dose of each congener was converted to a TEQ dose by multiplying the congener's dose by the congener's toxicity equivalency factor (TEF). The TEQ doses for each of the 29 congeners were then summed to yield an overall TEQ dose to the individual for each exposure pathway (*e.g.*, inhalation, ingestion). Finally, the TEQ dose was multiplied by the cancer slope factor (Q1*) to estimate the excess lifetime cancer risk to the individual for each pathway of exposure. EPA estimated total lifetime average daily dioxins exposure and excess lifetime risk to the HEI by summing lifetime average daily dioxins exposures and excess lifetime cancer risks across all of the exposure pathways relevant to each modeled individual (adult, child, infant).

Many commenters questioned EPA's use of the 1985 guidance Q1* rather than the slope factor presented for TCDD in the September 2000 Draft Dioxin Reassessment (USEPA, 2000). They argued that it made no sense to assess cancer risk based on the 1985 cancer slope factor when EPA itself had developed an alternate value. Another commenter said that given the uncertainties in the assessment of the carcinogenicity of dioxin and dioxin-like compounds, quantifying a cancer slope factor and adopting a linear extrapolation model only magnified the uncertainty. EPA conducted its risk assessment utilizing the cancer slope factor from the 1985 guidance. Because of the terms of the Consent Decree, in the NODA we also evaluated the cancer risks to the modeled population by considering the cancer slope factor for dioxins in the Draft Dioxin Reassessment (USEPA, 2000). EPA's final decision not to regulate dioxins in land applied sewage sludge is in harmony with either cancer slope. One commenter believed EPA's existing slope factor was outdated and that the ongoing dioxin reassessment, or perhaps the Great Lakes Initiative (GLI) cancer slope factor (USEPA, 1995) reflected more current science.

EPA believes that use of the 1985 guidance Q1* is reasonable. While alternative cancer slope factor calculations have been under review, there remains sufficient uncertainty as to whether a different Q1* should be used for assessing cancer risk from dioxins exposure and what the new Q1* should be. EPA reevaluated the 1985 cancer slope in 1990 in the GLI (USEPA, 1995), by examining the pathological data from the study upon which the cancer slope factor was derived. From this reevaluation, both new tumor incidences and a new scaling factor were employed to produce a new cancer slope factor. The GLI cancer slope is approximately one half the value of the 1985 cancer slope factor. The GLI cancer slope factor was used to establish water quality standards for those water bodies. The Agency never officially adopted the GLI cancer slope factor in its risk assessments for other programs because by 1995 the Dioxin Reassessment was underway and additional science on the carcinogenic mechanism for 2,3,7,8-TCDD was evolving. In addition, the difference between the cancer risk estimate using the 1985 guidance Q1* and other proposals (*e.g.*, the GLI, alternate Q1* used in the NODA) would not lead EPA to reach a different conclusion with respect to whether the predicted adverse health effects (cancer) from dioxins in land-applied sewage sludge requires EPA to regulate dioxins in land-applied sewage sludge. A more detailed discussion of the cancer slope factor is provided in section VII (''Discussion of Scientific Information Presented in the NODA'').

4. *Method of Calculating Risk to the Modeled HEI Population:* As explained previously, using the results of all samples from the EPA 2001 dioxin update survey, EPA modeled all 29 dioxin and dioxin-like congeners individually, and then summed the results for all congeners to arrive at the risk for dioxins expressed as TEQ. EPA estimated excess lifetime cancer risks and corresponding average lifetime daily exposure to dioxins for a highly exposed farm adult and child (see section V.D. for a discussion of the EPA 2001 dioxins update survey).

As described in the NODA, the revised risk includes an analysis of exposures to individuals using 3,000 iterations of the Monte Carlo analysis. Individuals were subdivided into two exposure scenarios, those whose exposures begin during childhood and those whose exposures begin in adulthood. To account for the fact that children's intake rates vary with age, the analysis used separate sets of exposure parameters for four age cohorts: ages 1–5, ages 6–11, ages 12–19, and ages 20–70. To capture the higher intake-rate-to-body weight ratio of children, a start age between the ages of 1 and 6 was randomly selected for all children for each iteration in the probabilistic analysis.

Children (defined as between one year and six years of age) are an important sensitive population in risk assessment because they may be more highly exposed than adults. This age range was selected because this represents the highest consumption rate (intake/body weight) for most of the exposure pathways evaluated in this risk assessment. Compared to adults, children may eat more food and drink more fluids per unit of body weight. This higher intake-rate-to-body weight ratio can result in a higher average daily dioxins dose per body weight for children as compared to adults. The estimated excess lifetime cancer risk for individuals whose exposure begins in childhood is less than or equal to the estimated excess lifetime cancer risk for adults whose exposure begins later in life. The reason for this is that children's mobility generally is greater than that of adults. That is, overall, the period of time that a child will occupy a given residence is shorter than the period of time an adult will occupy a given residence. Therefore, individuals whose exposures to dioxins from land-applied sewage sludge in home-produced foods begins in childhood are, in general, assumed to be exposed for a shorter duration than those whose exposure begins in adulthood (USEPA, 2003a).

Infants are also an important sensitive population considered in the revised risk assessment. Infants may be exposed to dioxin-like compounds via the ingestion of breast milk. The characterization of risks to infants of farmers and home gardeners was considered separately from the characterization of risks to older children (*i.e.*, aged 1 year or older). While risks to children and adults were integrated to assess individuals for whom exposure first occurs during childhood but continues into adulthood, the lifetime risks to infants were calculated separately from the risks to older children (*i.e.*, ages 1 year or older) and adults. For infants, exposure during the first year of life was averaged over an expected lifetime of seventy years to derive a LADD that was then used to calculate risk. The ''lifetime'' risk to infants thus should be thought of as the contribution to an individual's lifetime risk that is due to ingestion of breast milk from a mother exposed to dioxins in home-produced foods derived from land-applied sewage sludge.

Table 1 below provides percentiles of the distribution of estimated excess lifetime cancer risk to a farm family adult and child who consume home-

produced foods derived from land on which sewage sludge has been applied.

TABLE 1.—RISKS AND DAILY EXPOSURE FOR HIGHLY EXPOSED INDIVIDUALS FOR ALL EXPOSURE PATHWAYS

[Q1*=1.56 × 10^{-4} (pg TEQ/kg-d^{-1}]

Percentile	Adult*		Child**	
	Risk	Daily exposure, pg TEQ/kg-d	Risk	Daily exposure, pg TEQ/kg-d
50th	1 × 10^{-6}	0.0086	1 × 10^{-6}	0.0094
75th	4 × 10^{-6}	0.026	3 × 10^{-6}	0.021
90th	1 × 10^{-5}	0.064	7 × 10^{-6}	0.042
95th	2 × 10^{-5}	0.11	1 × 10^{-5}	0.062

* Initial exposure begins in adulthood.
* Initial exposure begins during childhood.

As Table 1 shows, the median exposed HEI (at the 50th exposure percentile), even with the conservative assumptions built into the definition of the HEI, has a one in a million excess lifetime risk of cancer. An HEI at the high end of the exposure distribution (*i.e.*, one at the upper 5 percent exposed or the 95th percentile) has a 2 in 100,000 excess lifetime cancer risk from exposure to dioxins in land-applied sewage sludge. Both the lifetime and annual excess cases of cancer are considered conservative based on the assumptions used to model the HEI. EPA's reference to the 95th percentile exposure scenario and risk estimate is accompanied by the understanding that only five percent of the total number of individuals modeled in the HEI population (estimated to be 80 to 560 individuals nationwide) has an estimated lifetime cancer risk of 2 in 100,000 or greater. This risk estimate is considered to be unlikely based on the conservative assumptions used in constructing the HEI in a farm family. The remainder of the modeled HEI population will have a lower potential cancer risk because they are less exposed to dioxins than at the 95th percentile exposure scenario.

Certain commenters expressed concern that the 1999 human health risk assessment was limited to characterization of cancer risks, stating that the non-cancer health effects of dioxins may be a more serious concern than cancer because non-cancer health effects may occur at lower doses and may affect more body systems. Commenters recommended that non-cancer endpoints be considered in Round 2 or that draft reference doses be used to evaluate non-cancer endpoints.

EPA based the revised risk assessment for dioxin-like constituents in sewage sludge applied to agricultural land and its decision not to regulate dioxins in land-applied sewage sludge on the cancer endpoint because it is the most scientifically well-established and well-supported endpoint. Although EPA and others have been studying non-cancer human health effects from exposure to dioxins, a methodology to adequately assess those risks has not yet been established. Details of this assessment and developments in the study of assessing non-cancer risks are discussed further in section VII. Discussion of Scientific Information Presented in the NODA.

C. Findings Concerning Ecological Effects

In response to public and peer review comments received on the 1999 proposal, EPA performed a screening ecological risk analysis (SERA) (USEPA, 2003a). The SERA used a two-phased approach that includes: (1) an initial screening assessment to determine whether the dioxins concentrations in land-applied sewage sludge warranted further assessment. This effort was an initial bounding estimate to assess the upper bound potential for ecological effects at the high end of exposure, and (2) a more refined assessment using a combination of higher end central tendency exposure assumptions regarding environmental media concentrations, receptor-specific dietary preferences, and ecological benchmarks. EPA used a hazard quotient (HQ) approach to assess the potential for adverse ecological effects. For the SERA, the HQ was the ratio of the modeled exposure and an exposure (an ecological benchmark) that is expected to be without adverse ecological effects. When HQs are greater than one, exposures exceed ecological benchmarks, suggesting the potential exists for adverse ecological effects. When HQs are less than one, exposures are less than ecological benchmarks, suggesting that there is minimal potential for adverse ecological effects. In the SERA, EPA determined that all HQs were less than one.

In the NODA, EPA discussed the SERA and requested comments on the methodology, the data used, and the results derived from the SERA. As with the revised cancer risk assessment, the SERA used the concentrations of dioxins obtained from new sampling data in the 2001 Dioxin Update (USEPA, 2002b) of the National Sewage Sludge Survey (NSSS). As explained in section V.D., the 2001 dioxin update survey data consist of sewage sludge samples obtained from 94 municipal wastewater treatment facilities, and are considered a nationally representative sample.

The SERA addresses risks to mammals and birds, the receptors that are expected to have the highest exposure to dioxins. The assessment does not address risks to other receptor groups such as invertebrates and plants. The potential for dioxins to bioaccumulate in wildlife receptors is specifically addressed through analysis of the ingestion pathway. The analysis includes receptors exposed through ingestion of both aquatic and terrestrial food items and thus addresses the potential for bioaccumulation of dioxins from soil, surface water, and sediment.

The bioaccumulation factors (BAFs) for terrestrial invertebrates used in the analysis were derived from empirical data and assume a linear relationship between the concentrations of dioxins in soil and in food items. However, the BAFs are relatively conservative, and EPA considers them adequate for a screening level analysis.

There was disagreement among commenters concerning the adequacy of the SERA and whether dioxins in land-applied sewage sludge posed a risk to wildlife. Some commenters agreed with EPA's conclusion that there was no serious ecological risk, while others said that the uncertainty in the model's applications, and the many ''average''

values in the assessment, made the low HQs questionable. Other commenters indicated there was a potential for bioaccumulation in several forms of wildlife.

EPA believes the SERA is adequate to predict hazards to wildlife species from dioxins in land-applied sewage sludge. The SERA was designed to be consistent with EPA's Guidelines for Ecological Risk Assessment (USEPA, 1998). See the Technical Background Document (TBD) for a discussion of the SERA (USEPA, 2003a). Because the ecological analysis was a screening analysis intended only to indicate the potential for adverse ecological effects, EPA considers the qualitative uncertainty analysis to be adequate. The uncertainty discussion identifies sources of uncertainty, discusses their implications for the outcome of the analysis, and, where possible, indicates whether the uncertainty is likely to cause an over or underestimation of risk. Screening-level ecological risk assessments are designed to provide, for those chemicals and receptors that pass the screen (as in dioxins), a high level of confidence that there is a low probability of adverse effects to ecological receptors.

The SERA provides insight into the potential for ecological effects from dioxins in land-applied sewage sludge. The approach used shows that the exposures to animals in terrestrial and water body margin habitats do not exceed protective ecological benchmarks (that is HQs do not exceed one), suggesting that dioxins in land-applied sewage sludge do not pose a high potential for adverse ecological effects.

D. Indications From the 2001 Survey of Dioxins in Sewage Sludge

In response to comments on the proposal that EPA needed data more current than the 1988 National Sewage Sludge Survey (NSSS) data, EPA conducted a national sampling and analysis effort to measure dioxins in sewage sludge in 2001 (USEPA, 2002b). The EPA 2001 Dioxin Update of the NSSS provides data that support the calculation of unbiased national estimates (*i.e.*, based on a stratified random selection of publicly owned treatment works) for dioxin and dioxin-like compounds in sewage sludge. In addition to being more recent, the 2001 data also include concentrations of coplanar PCB congeners, along with dioxin and furan congeners. Coplanar PCB congeners were not analyzed in the 1988 NSSS.

EPA sampled sewage sludge from a stratified random sample of 94 POTWs selected from the sample of 174 POTWs surveyed in the 1988 NSSS, stratified into four size categories: those with a daily flow of less than one million gallons per day (MGD), 1–10 MGD, 10–100 MGD, and greater than 100 MGD. The 174 POTWs selected in 1988 had been selected from the approximately 11,000 POTWs in existence at that time that had secondary treatment. The 11,000 were sampled according to stratified probability design (*i.e.*, by size based on wastewater design flow). The sample for the 2001 Dioxin Update to the National Sewage Sludge Survey was a subset of the sample for the 1988 NSSS and thus resulted in a statistically valid national estimate of dioxin congener concentrations in the Nation's sewage sludge. EPA considers dioxin and dioxin-like congener concentrations used in the revised risk assessment to be representative of dioxins congener concentrations in sewage sludge nationwide because of the sample design. See Section III, Statistical Support Document for the Development of Round 2 Biosolids Use or Disposal Regulations (USEPA 2002b).

The sewage sludge samples were processed to produce a single representative sample for each facility. In addition, the data reflect probability-based survey weights based on the numbers of POTWs in the four strata defined on the basis of quantity of flow. Since the few POTWs in the flow group receiving more than 100 MGD of influent wastewater produce the largest amounts of sewage sludge, the probability-based sample design incorporated an over-sampling of large POTWs. The survey weights reflect this feature.

The 2001 dioxins update survey was designed based on the 1988 NSSS in order to allow comparability of statistically valid national estimates, although, as explained later, a number of factors limit the degree of comparison that is possible. A comparison of results for dioxin and furan congeners obtained in the 1988 and 2001 surveys is presented in Table 2. This table summarizes the results using alternative methods for handling non-detect measurements. These comparisons do not include coplanar PCB congeners because the 1988 NSSS did not collect coplanar PCB congener data.

TABLE 2.—NATIONAL ESTIMATES (NANOGRAMS/KILOGRAM DRY MATTER BASIS) FOR DIOXIN AND FURAN CONGENERS IN THE EPA 2001 DIOXIN UPDATE SURVEY AND 1988 NSSS

Method for handling nondetects (estimate)	Zero for nondetects		½ minimum level of quantitation (ML) for nondetects		ML for nondetects	
	2001	1988	2001	1988	2001	1988
Mean	21.70	46.50	21.70	67.30	21.80	88.20
Std. dev.	47.5	153.0	47.5	153.0	47.5	157.00
Maximum	682.00	1870.00	682.00	1870.00	682.00	1870.00
99th%	100.00	450.00	100.00	453.00	100.00	466.00
98th%	54.40	402.00	54.40	404.00	54.40	455.00
95th%	33.30	301.00	33.30	303.00	33.30	340.00
90th%	31.40	56.70	31.60	152.00	31.70	226.00
50th%	15.50	5.68	15.50	34.20	15.50	52.40

The EPA 2001 dioxin survey suggests that dioxins levels in sewage sludge have decreased from 1988 to 2001. In addition, the upper percentile values obtained in the EPA 2001 dioxins update survey are lower than those obtained in the 1988 NSSS. See Statistical Support Document for the Development of Round 2 Biosolids Use or Disposal Regulations (USEPA, 2002b) for a full discussion of the 2001 updated dioxins survey.

It is not possible to draw firm conclusions with regard to changes in dioxin concentrations in sewage sludge nationally, due to differences in the two surveys caused by changed circumstances since 1988 (13 years between surveys). During this time, changes may have occurred at POTWs, and there have been changes and improvements in analytical methods. Nevertheless, as discussed in the NODA, EPA has made a number of

observations regarding changes in dioxins concentrations in sewage sludge based on a comparison of the data in the two surveys. As mentioned previously, the 94 POTWs participating in the EPA 2001 dioxin update survey also participated in the original 1988 NSSS. Samples from 14 of the POTWs showed dioxins concentrations (dioxins and furans only) equal to or greater than 93 ppt TEQ from at least one of the surveys. These same 14 POTWs exhibited the greatest differences in the dioxins and furans concentrations when comparing the results of the 1988 and 2001 EPA surveys. The other 80 POTWs participating in both surveys have substantially smaller differences, as well as lower dioxins levels measured in both surveys. Of the 14 POTWs with the greatest differences between the two surveys, four had large increases in sewage sludge dioxins concentrations and ten had large decreases in sewage sludge dioxins concentrations from 1988 to 2001.

No sampled POTW with high levels of dioxins in sewage sludge in the 1988 NSSS showed high levels in the 2001 update survey. Based on these data, EPA infers that POTWs with higher concentrations of dioxins in their sewage sludge may experience a greater variability in dioxins concentrations over time, and that higher dioxins levels may not remain high for a significant period of time. It is possible that POTWs with higher concentrations of dioxins in their sewage sludge intermittently receive dioxins from unidentified but specific sources via the sewer system. Likewise, POTWs with moderate or low levels of dioxins in their sewage sludge may experience much less variability in dioxins concentrations over time. This second group of POTWs appears to be experiencing typical environmental background variation of dioxins levels.

EPA requested comments on the significance of the differences in dioxins concentrations in sewage sludge measured in the EPA 2001 dioxin update survey compared to dioxins concentrations in sewage sludge measured in the 1988 NSSS. Several commenters noted that dioxin levels had decreased between the 1988 survey and the 2001 survey. One commenter was unsure of the implications of the finding, because analytical methods have improved and PCBs were not analyzed in earlier surveys, but felt that both dioxin and PCB levels have most likely declined because of changes in their use.

Three commenters said that the results indicated that attendant risks were also decreasing; one went on to say that EPA should use the findings to promote public confidence in land application of sewage sludge and dioxins regulatory limits. Another respondent said that the decrease made stringent regulatory requirements for sewage sludge unnecessary and that existing dioxins controls are having a noticeable effect on environmental releases. One commenter said that the findings should give regulatory agencies and the public confidence that decisions based on current data sets will provide adequate protection under reasonably anticipated future conditions.

One commenter endorsed EPA's response to previous public comments by obtaining new data in the 2001 dioxins update survey to the 1988 NSSS, saying that the initiative demonstrated EPA's commitment to use reliable data to provide accurate risk assessments of sewage sludge. Another commenter felt that EPA had inappropriately weighted data from the NSSS by giving greater weight to samples from small-production POTWs and thereby understating risk estimates. Another commenter was unsure whether the study was designed to test the hypothesis that there might be differences in dioxins concentrations between small and large facilities. Finally, some commenters felt that the survey data support taking no action for dioxins in land-applied sewage sludge.

EPA believes that appropriate consideration of data from small POTWs was made in the design of the sample for the survey. A simple random sample of POTWs, without regard to the amount of influent wastewater, would not have provided adequate representation of the POTWs receiving the larger amounts of influent wastewater. In fact, a simple random sample, drawn without regard to size, would have been dominated by POTWs in the less than 1 million gallons per day (MGD) flow group.

Regarding indications from the data, EPA believes that the data suggest an overall decrease in dioxins. New or revised pretreatment requirements and pollution prevention measures adopted since 1988 would be expected to have reduced dioxins in the influent to POTWs. The decrease of dioxins in sewage sludge observed in the two surveys supports the Agency's conclusion that new regulatory requirements for dioxins in land-applied sewage sludge are unnecessary.

VI. Environmental Justice

Environmental justice and equity concerns involve consideration of the potential for minorities and people of lower economic status to be impacted by dioxins exposures to a greater degree than the rest of the general population. EPA believes the HEI analysis addresses reasonable high end exposures that could represent a subsistence low income farm family. The HEI analysis addresses exposure regardless of minority or economic status.

VII. Discussion of Scientific Information Presented in the NODA

For the past 12 years, EPA has been conducting a reassessment of the human health risks associated with dioxin and dioxin-like compounds. This reassessment is not a final document. In this decision the Agency continued its practice of using the best available data published from a variety of sources that meet the Information Quality Guidelines. The Agency considered all such data and associated uncertainty to determine the strength of the evidence in finalizing this regulatory action related to dioxin and dioxin-like compounds.

A. Assessing Cancer Risk

1. Incremental Cancer Risk

As explained in section V.A. of this Notice, the revised risk assessment for dioxins in land-applied sewage sludge supporting today's final action uses the 1985 Q1* of 1.56×10^{-4} (pg TEQ/kg-d)$^{-1}$. The estimated upper bound lifetime risks for highly exposed farm family adults using this Q1* range from 2×10^{-5} at the 95th percentile exposure to 1×10^{-6} at the 50th percentile exposure for multi-pathway exposure to dioxins through land-applied sewage sludge (see Table 1). There are two exposure scenarios for adults living in the farm family exposed to dioxins in land-applied sewage sludge: (1) Individuals whose exposure begins in adulthood referred to as ''Adult'' in Table 1, and (2) individuals whose exposure begins in childhood referred to as ''Child'' in Table 1. As explained in section V.A., the estimated lifetime cancer risks for the child are less than or equal to the estimated lifetime cancer risks for the adult. These risks correspond to estimated daily exposures for the latter group of adults ranging from 0.11 at the 95th exposure percentile to 0.0086 pg TEQ/kg-d at the 50th exposure percentile.

Use of the alternative Q1* of 1×10^{-3} (pg TEQ/kg-d)$^{-1}$ that was considered in the NODA would result in estimated high-end multi-pathway excess lifetime cancer risks for the latter group of adults in the highly exposed farm family ranging from 1×10^{-4} at the 95th exposure percentile to 6×10^{-6} at the 50th exposure percentile. These estimated risks in the NODA are based on the same daily exposures indicated

in Table 1. Again, the estimated excess lifetime cancer risks expressed for individuals born on the farm (see discussion above and in USEPA, 2003b) would be less than or equal to the estimated risks for individuals exposed to dioxins on the farm starting some years after birth (*i.e.*, the corresponding values are 6×10^{-5} at the 95th exposure percentile and 6×10^{-6} at the 50th exposure percentile).

2. Background Cancer Risk

The significance of the exposure and cancer risk due to a specific source such as dioxins in land-applied sewage sludge can be understood in the context of general population background exposure to dioxins from all sources. In other words, the exposure attributed to a particular source can be considered in the context of its contribution to the overall risk.

The background lifetime cancer risk to the general population from exposure to dioxins (all sources) is approximately 2×10^{-4} using the 1985 Q1* of 1.56×10^{-4} (pg TEQ/kg-d)$^{-1}$. The background risk to the HEI is identical to the background risk to the general population, since it is the risk associated with exposure to dioxins from all sources.

As previously explained, the estimated cancer risk for the HEI from exposure to dioxins in land-applied sewage sludge is 2×10^{-5} using the 1985 Q1*. However, excess lifetime cancer risk associated with dioxins in land-applied sewage sludge is very low compared to the background lifetime cancer risk from dioxins. At the 95th percentile, the increase in risk of the HEI (farm family estimated to be no more than 11,200 persons in the US) is about 10 percent of their background risk. As previously explained, excess cancer cases for this modeled population from exposure to dioxins in land-applied sewage sludge are estimated to be 0.002 to 0.01, again depending on the HEI analysis chosen (USEPA, 2003b), using the 1985 Q1*. Further, EPA estimates that the excess lifetime cancer risk to the overall U.S. general population from exposure to dioxins in land-applied sewage sludge is likely to be much lower than the excess lifetime cancer risk to the HEI, and as such, correspondingly lower relative to the general population's background risk from dioxins. This is because the general population's exposure to dioxins from dietary items grown on farms that use sewage sludge as a fertilizer or soil conditioner is significantly lower than the modeled HEI farm family's exposure to dioxins from the crops that they consume from their farms that use sewage sludge. (USEPA, 2003b).

Note that actual risks for individuals are a function of dietary habits, as well as a particular individual's susceptibility to develop cancer, and may be higher or lower. Thus, high-end incremental excess lifetime cancer risk estimates for highly exposed farm families from dioxins in land-applied sewage sludge are approximately an order of magnitude (*i.e.*, ten times) lower than background risks.

Based on this evaluation of the range of cancer risks to the modeled HEI , EPA believes the projected cancer risks to the HEI from dioxins in land-applied sewage sludge are reasonable.

B. Assessing Non-Cancer Risk

EPA generally uses a reference dose (RfD) for evaluating the potential for non-cancer effects for an incremental exposure that results from a specific source of contamination. The RfD is an estimate of a daily oral exposure to the human population that is unlikely to cause an appreciable risk of deleterious non-cancer effects over a lifetime. RfDs for particular contaminants are useful health benchmarks when background exposures are low or nonexistent.

As discussed in section VII of the NODA, background exposures for dioxin-like compounds have been quantified by EPA as being in the range of 1 pg TEQ/kg/d for adults. On a body burden basis, the background body burden for dioxin TEQs for adults in the U.S. has been estimated to be 5 nanograms toxic equivalence per kilogram body weight (ng TEQ/kg), on a whole body weight basis (USEPA, 2002a). As the NODA suggested, conventional approaches to calculating an RfD for dioxins would result in an RfD that is likely to be substantially below current background intakes. For this reason, EPA believes that establishment of an RfD that is below typical background exposures is uninformative in judging the significance of incremental dioxins exposures on human health and therefore not useful for subsequent risk management decisions for dioxins. Consequently, EPA has not developed an RfD for dioxins.

VIII. Public Comments and Other Considerations

EPA received over 200 comments on the 1999 proposed amendments to the Standards for the Use and Disposal of Sewage Sludge and 27 comments on the 2002 June 12, 2002 NODA regarding the land application of sewage sludge. The majority of the comments were addressed by the NODA or are addressed earlier in this Notice. A summary of other major comments is presented below, along with a summary of EPA's responses. A complete copy of all public comments and EPA's response to comments can be found in the Response to Comments Document in the docket (USEPA, 2003c).

A. Definition of ''Dioxins''

Several comments were received concerning the proposed definition of dioxins. Commenters indicated a preference for two separate and distinct definitions for ''dioxin'' and ''coplanar PCBs'' (*i.e.*, dioxins would mean tetra through octa chlorinated dibenzo-p-dioxin and furan congeners; and coplanar PCBs would mean the 12 coplanar PCB congeners).

EPA Response: As previously mentioned, EPA defined ''dioxins'' in the proposed rule as 29 specific congeners of PCDDs, PCDFs, and coplanar PCBs that have been found in sewage sludge. The proposed definition of ''dioxins'' specifies seven 2,3,7,8,-substituted congeners of PCDDs, ten 2,3,7,8-substituted congeners of PCDFs, and twelve coplanar PCB congeners. EPA had proposed a definition of dioxins using TEF values for dibenzo-p-dioxins and furans described in USEPA 1989 and the WHO 98 TEF scheme for coplanar PCBs. As explained in the NODA (67 FR 40556), EPA now uses the WHO 98 system of TEFs to account for the overall toxicity of complex mixtures of all 29 congeners. The TEF system is accepted worldwide as the most scientifically defensible and most easily implemented method to assess these mixtures in risk assessments.

B. The Need for Regulating Dioxins in Land-Applied Sewage Sludge

EPA received a number of comments regarding the need, or lack of need, to regulate dioxins in land-applied sewage sludge. There was disagreement among the comments premised on dioxins levels in the environment and perceived or real risks. Comments in favor of regulation (including setting numerical limits) included suggestions that: (1) A regulatory program is needed to ensure that dioxins are not land-applied, (2) it is illogical not to have a regulatory limit for dioxins when EPA regulated various metals in sewage sludge, (3) a risk-based limit is necessary, (4) sewage sludge is a significant source of dioxins and should therefore be regulated, (5) EPA should establish a risk-based limit and not a limit based on the 95th percentile concentration of dioxins measured in the 2001 dioxins update survey, and (6) EPA has traditionally used a one-in-one-million risk as acceptable for regulation,

and that there is no justification for setting less stringent standards for sewage sludge.

Commenters in favor of not regulating dioxins in sewage sludge felt that there was no need for numeric limits or other requirements, because the overall risks were well within EPA acceptable limits, that the data supported no further regulation, and that EPA failed to address the issue of whether further reductions in exposure were necessary or cost-effective.

EPA Response: For the reasons discussed elsewhere in this **Federal Register** notice, EPA has decided not to regulate dioxins in sewage sludge that is land applied. These decisions are based on the revised cancer risk assessment, the SERA, and 2001 Dioxin Update Survey data. Weighing risks using the collective body of scientific information, EPA has concluded that the increased risks of humans developing cancer from exposure to dioxins in land-applied sewage sludge, as well as effects to the environment, are reasonable, and that no further regulation is warranted. Therefore, neither numeric limitations nor management practices for dioxins in land-applied sewage sludge are being imposed.

Since the general population consumes only a small fraction of their diets from products grown on farms with land-applied sewage sludge, EPA assumed that a regulatory decision that is protective of the highly exposed farm family is also protective of the general population. EPA's risk analysis has shown that when dioxins TEQ concentrations in sewage sludge are modeled, only five percent of the population was at a risk level of 2×10^{-5}. EPA believes that the actual risk is likely to be lower, due to the many conservative assumptions used in constructing the HEI risk characterization.

Regarding comments that there is no justification for setting less stringent standards for sewage sludge than one-in-one-million risk, the revised risk assessment for dioxins in land-applied sewage sludge indicates that an individual in the highly exposed modeled population (estimated to be between approximately 1,600 and 11,200 people) has an estimated excess lifetime cancer risk ranging from 1×10^{-6} to 4×10^{-5} (50th to the 99th percentile exposure) for exposure by multiple pathways. EPA further notes that the lifetime cancer risk ranging from 1×10^{-6} to 4×10^{-5} may be overestimates due to the substantial number of conservative assumptions used in the revised risk assessment. As a result, the Agency does not agree that the risks discussed here warrant further regulation.

C. Groundwater Exposure

Certain commenters stated that EPA did not take into consideration the potential exposure to groundwater impacted by dioxins in land-applied sewage sludge.

EPA Response: The Agency did not analyze a groundwater contamination pathway because dioxins are hydrophobic and they bind very tightly to the sewage sludge/soil matrix. Our analysis found that transport of dioxins through the soil to groundwater, in the subsurface environment, was minimal. Details are provided in the TBD (USEPA, 2003).

D. Synergistic Effects

Some public comments indicated that EPA did not consider synergistic effects. They asserted, for example, that dioxins can be mobilized by solvents and surfactants, which are common in sewage sludge. Commenters also asserted that exposure to dioxins may increase susceptibility to other carcinogens and that this dimension should be analyzed.

EPA Response: There are no models or data available to address synergistic effects with respect to the fate and transport of diverse types of pollutants. Therefore, EPA could not assess such effects from other pollutants acting in combination with the 29 dioxin, dibenzofuran, and coplanar PCB congeners modeled by EPA. While such effects are always possible, EPA is not aware of scientific evidence to date suggesting that any such effects are likely to be significant for dioxins interacting with other pollutants in sewage sludge. The TEF/TEQ approach as outlined in today's notice allows EPA to assess the toxic effects from exposure to the sum of all 29 dioxin and dioxin-like congeners.

E. Voluntary Program

EPA received a wide variety of comments on methodologies to reduce dioxins sources and contamination. Two commenters agreed with EPA's suggested methodology for identifying dioxins sources (*i.e.*, identifying dioxins sources by tracing their congener ''fingerprints''). Some supported the use of voluntary programs in combination with regulatory standards and monitoring programs. Others suggested that a voluntary program only is sufficient, but that EPA should develop guidance to provide additional details and explain how communities can utilize the voluntary methodology. There was concern about who would define ''high'' concentrations of dioxins in sewage sludge or ensure that adequate steps would be taken to reduce high dioxins concentrations if such a program were voluntary. Some commenters asserted that EPA should positively encourage facilities with a history or likelihood of elevated dioxins levels in sewage sludge to monitor and investigate possible sources contributing to high dioxins levels. One commenter noted that the suggested EPA methods would be expensive and perhaps beyond the means of POTWs.

Another commenter said that EPA should require management practices to lessen human exposure to sewage sludge in which dioxins are below the numeric limit and should require POTWs to develop pretreatment programs to reduce dioxins in sewage sludge and minimize dioxins discharges into sewer systems.

EPA Response: With today's final notice EPA is imposing no regulatory requirements on small or large facilities, including monitoring. However, EPA believes that there may be local benefits from establishing a voluntary monitoring and source investigation and identification program for dioxins in land-applied sewage sludge for some POTWs.

EPA believes that voluntary monitoring for dioxins in sewage sludge, combined with a source identification program when high concentrations of dioxins in sewage sludge are encountered, could identify dioxins sources that contribute to any elevated levels of dioxins in sewage sludge. Mixtures of the 29 dioxin congeners have distinct patterns (*i.e.*, profiles or fingerprints) depending on the dioxins source. For example, a congener profile that is dominated by chlorinated dibenzofurans is often characteristic of a chemical manufacturing source. Voluntary monitoring and source identification, and perhaps a follow-up source reduction program, utilizing these fingerprints, could assist in the identification and subsequent mitigation or elimination of dioxins sources when relatively high dioxins concentrations in sewage sludge are detected.

EPA encourages POTWs to consider implementing a voluntary sewage sludge dioxins monitoring and dioxins source identification program through an Environmental Management System (EMS) approach. An EMS for a wastewater utility that generates sewage sludge is a voluntary program that encourages a utility to perform above and beyond mandatory Federal and State sewage sludge requirements and, thereby, improve their environmental

performance in all areas of wastewater management including the use or disposal of sewage sludge. EMS participants involve citizens in their communities to assist in defining improved environmental performance. EMS status is awarded to participating utilities only after a rigorous review and subsequent certification by a third party. A voluntary dioxins monitoring and source investigation program, and suggestions for reducing and eliminating sources of dioxins in sewer service areas, could help contribute to reducing concentrations of dioxins in the community's sewage sludge.

The biosolids industry most likely will be implementing an EMS through the National Biosolids Partnership (NBP). The NBP is a partnership formed in 1997 with AMSA (Association of Metropolitan Sewerage Agencies), WEF (Water Environment Federation), and EPA (U.S. Environmental Protection Agency). Through partnering with sewage sludge producers, sewage sludge service contractors such as sewage sludge land application companies, sewage sludge users, regulatory agencies, universities, the farming community, and environmental organizations, the goal of the NBP is to advance environmentally sound and accepted biosolids management practices.

Through a voluntary EMS, being developed for biosolids by the NBP, EPA continues to provide the public with educational information, based on the best science, about the recycling and disposal of biosolids. EPA strongly supports the ongoing efforts of the NBP to develop the EMS and to provide correct and timely information and community-friendly practices that could be followed via its new communications system. The EMS program supports local authorities to find ways to meet and go beyond what is required in State and Federal regulations. About 54 municipalities are now pilot-testing their biosolids EMS programs based upon a blueprint developed by the NBP.

In 2003, the first two municipal wastewater treatment authorities, Orange County (CA) Sanitation District and the Department of Public Works from the City of Los Angeles, CA were awarded entry into the EMS Program by certification from an independent third party auditor. Several additional municipalities will be ready to undergo an independent third party audit of the EMS program later this year (2003). Municipalities involved in the voluntary EMS program are reporting benefits they have achieved. They report that their participation in the EMS program has resulted in more efficient operation, reduced odors from biosolids, less intrusive transport of the sewage sludge to land application sites, better communication, and meaningful involvement of the public. The Agency plans to continue supporting NBP activities and working with municipalities on expanding the use of EMS programs in biosolids management. Two NBP Web site addresses that present relevant biosolids information are *http://www.biosolids.org* and *http://biosolids.policy.net/emsguide/manual/goodpractmanual.vtml.*

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Marianne Lamont Horinko,

Acting Administrator.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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H.R. 2152/P.L. 108–99

To amend the Immigration and Nationality Act to extend for an additional 5 years the special immigrant religious worker program. (Oct. 15, 2003; 117 Stat. 1176)

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