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The President

Proclamation 7695 of August 26, 2003

Women's Equality Day, 2003

By the President of the United States of America

A Proclamation

The 19th Amendment to the Constitution, ratified on August 26, 1920, guaranteed the right to vote for American women. Women's Equality Day commemorates this constitutional amendment and is an opportunity for citizens across our country to honor those who took part in the long and difficult struggle for women's suffrage, as well those since 1920 who have continued to fight for equal rights for women.

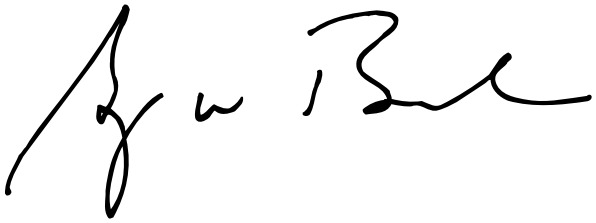
Beginning with the Seneca Falls Convention in 1848, women's suffrage supporters lectured, wrote, marched, and lobbied for enfranchisement of American women. Susan B. Anthony, Elizabeth Cady Stanton, and Lucretia Mott led this movement and advocated an amendment to the Constitution that would guarantee women the right to vote. Through their vision and dedication, these women advanced the fight for equal rights.

Today, American women are making a difference in their communities and workplaces. Women's accomplishments in education, business, science, art, medicine, athletics, and every other field have made America better and stronger. The courage and determination of American women are exemplified in the personnel serving in our Armed Forces. Women across America are also helping to secure our country by serving as police officers, firefighters, doctors, nurses, paramedics, and first-responders.

Americans believe in opportunity for all and on this day, we honor the achievements of women who have charted the path to equal opportunity.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim August 26, 2003, as Women's Equality Day. I call upon the people of the United States to observe this day with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of August, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.



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Federal Register

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

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 247

RIN 0584–AD33

Commodity Supplemental Food Program—Allocation of Administrative Funds

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends Commodity Supplemental Food Program regulations to implement nondiscretionary provisions of the Farm Security and Rural Investment Act of 2002 affecting the allocation of administrative funds to State agencies. In accordance with that Act, using whatever funds are appropriated for the fiscal year to support the program, and any program funds remaining available from the preceding fiscal year, this rule requires the allocation of an administrative grant per assigned caseload slot, adjusted each year for inflation, to pay State and local agency administrative costs. This method of allocation provides States a specific amount of administrative funds to support each caseload slot assigned.

DATES: This rule will become effective on September 29, 2003. The statutory formula for determining the grant per assigned caseload slot for fiscal year 2003 will apply for the entire fiscal year. The formula for fiscal years 2004 through 2007 differs from that for 2003 and will apply to each of those years respectively.

FOR FURTHER INFORMATION CONTACT: Lillie F. Ragan, Assistant Branch Chief, Household Programs Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 500, 3101 Park Center Drive, Alexandria, Virginia 22302–1594, or telephone (703) 305–2662. Inquiries may also be sent via Internet to *Lillie.Ragan@FNS.USDA.GOV.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service (FNS) generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The program addressed in this action is listed in the Catalog of Federal Domestic Assistance under 10.565, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, and final rule-related notices published at 48 FR 29114, June 24, 1983, and 49 FR 22676, May 31, 1984).

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. The FNS has considered the impact of this rule on State and local governments and has determined that this rule does not have Federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under section 6(b) of the Executive Order, a federalism summary impact statement is not required.

Regulatory Impact Analysis

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). The regulatory provisions contained in this rule will benefit State and local agencies by providing a stable level of funding to support administration of the program. Under the Farm Security and Rural Investment Act of 2002, State agencies will receive a grant per assigned caseload slot to pay for administrative program costs. The per caseload slot grant will be adjusted for inflation each year. Funding to support the program, including administrative grants, is discretionary. Therefore, an increase in program funds is not mandatory. However, if additional funds are not appropriated, the number of caseload slots allocated to each State will be reduced.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial action challenging the application of Commodity Supplemental Food Program (CSFP) rules, exhaustion of administrative remedies, as set out in 7 CFR 247.33, would be required.

Paperwork Reduction Act

This final rule reflects no new information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The existing reporting and recordkeeping requirements for 7 CFR part 247, which were approved under OMB control number 0584–0293, will not change as a result of this rule.

Government Paperwork Elimination Act

FNS is committed to compliance with the Government Paperwork Elimination Act (Pub. L. 105–277), which requires Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

This action is published as a final rule without prior notice or public comment under authority of 5 U.S.C. 553(b)(3)(B). This final rule implements section 4201, a non-discretionary statutory provision of the Farm Security and Rural Investment Act of 2002, Pub. L. 107–171, by mandating the allocation of an administrative grant per assigned caseload slot, adjusted each year for inflation, to pay State and local agencies' administrative costs of the CSFP. Thus, the Department has determined in accordance with 5 U.S.C. 553(b)(3)(B) that notice of proposed rulemaking and opportunity for public comments are impracticable and contrary to the public interest. The provisions will become effective 30 days after publication in the **Federal Register**.

Background

Through the CSFP, the Department of Agriculture's FNS provides commodities and administrative funds to participating State agencies, which, through local agencies, distribute a package of foods each month to participating pregnant, postpartum, and breastfeeding women, infants, children up to age 6, and seniors (age 60 or older). FNS utilizes funds provided in the CSFP appropriation and funds carried over from the previous year to assign caseload and allocate administrative funds to State agencies each year. State and local agencies serve participants in accordance with their assigned caseload limits, and utilize administrative funds to meet program costs, which may include costs of storage and distribution of foods, determination of eligibility, provision of nutrition education and other costs.

The Farm Security and Rural Investment Act of 2002 (2002 Act), Pub. L. 107–171, which was enacted on May 13, 2002, amended the means by which the Department provides administrative funds to State agencies. Section 4201(b) of the 2002 Act amended section 5(a) of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c *note*) to provide State agencies with a grant per assigned caseload slot to pay for administrative program costs. It also deleted the limitation of total administrative funding for the program, which before the deletion was limited to 20 percent of the program appropriation and of food funds carried over from the previous year.

Prior to the deletion of the 20 percent limit, as discussed above, State agencies received a portion of the total administrative funding equal to their share of total assigned caseload.

Thus, a State agency with a caseload assignment that was 10 percent of the total for all State agencies would have received funds totaling 10 percent of the total funds allocated. However, since the cost of food per caseload slot and related factors fluctuate from year to year while the 80/20 split between food funds and administrative funds remained constant, the actual amount of administrative funding available for each assigned caseload slot could change from year to year, having nothing to do with the State and local government price index.

In order to remedy the situation described above, Congress allotted specific amounts for CSFP administrative support in excess of the 20 percent limit, in the program appropriations legislation for each of fiscal years (FY) 2001 and 2002. In FY 2001, Congress allotted $20,781,000 to meet administrative costs, and in FY 2002 allotted $20,820,000. These administrative allocations allowed FNS to provide administrative support, on a per-caseload slot basis, of $50.89 in FY 2001 and $50.25 in FY 2002. This provided considerably more administrative funding for each caseload slot assigned than in previous years. However, administrative funding per slot continued to fluctuate from year to year.

Section 4201(b)(2) of the 2002 Act stipulates the per-caseload slot amounts State agencies are to receive in FY 2003, and for subsequent fiscal years. For FY 2003, the grant per assigned caseload slot is $51.49, an amount equal to the per-caseload slot amount provided in FY 2001 ($50.89), adjusted by the percentage change between:

(1) The value of the State and local government price index, as published by the Bureau of Economic Analysis of the Department of Commerce, for the 12-month period ending June 30, 2001; and

(2) The value of that index for the 12-month period ending June 30, 2002.

For subsequent fiscal years, the amount of the grant per assigned caseload slot is equal to the amount of the grant per assigned caseload slot for the preceding fiscal year, adjusted by the percentage change between:

(1) The value of the State and local government price index, as published by the Bureau of Economic Analysis of the Department of Commerce, for the 12-month period ending June 30 of the second preceding fiscal year; and

(2) The value of that index for the 12-month period ending June 30 of the preceding fiscal year.

FNS issued two memoranda to State Directors of CSFP which explained and implemented these changes to the means of allocating administrative funds to State agencies participating in CSFP. The first memorandum, dated July 24, 2002, explained generally the statutory change resulting in the method for calculating CSFP administrative funding based on the per caseload slot formula. The second memorandum, dated September 16, 2002, specifically calculated the legislatively mandated administrative grant assigned per caseload slot for FY 2003.

Regulatory provisions pertaining to the allocation of administrative funds to State agencies administering CSFP are described under 7 CFR 247.10(b). This rule revises subsections (b)(1), (b)(2), and (b)(3) of § 247.10 to reflect the new method of allocation of administrative funds. Subsection (b)(1) describes the allocation to the States of an administrative grant per assigned caseload slot, adjusted each year for inflation. Subsection (b)(2) describes the means of determining the amount of the per-caseload slot grant for FY 2003, and subsection (b)(3) codifies the means for determining the amounts for subsequent fiscal years, as set forth in the 2002 Act.

In accordance with the 2002 Act, the current language in subsections (b)(1), (b)(2), and (b)(3) which limits administrative funding to a percentage of total program funds, and describing the portion of the total that each State receives, has been deleted. The current language describing the separate allocation of administrative funds to support the distribution of surplus commodities provided to CSFP was rendered ineffective by legislation enacted previous to the enactment of the 2002 Act, and has also been deleted.

List of Subjects in 7 CFR Part 247

Agricultural commodities, Food assistance programs, Infants and

children, Maternal and child health, Public assistance programs, nutrition, women, aged.

■ Accordingly, 7 CFR part 247 is amended as follows:

PART 247—COMMODITY SUPPLEMENTAL FOOD PROGRAM

■ 1. The authority citation for part 247 is revised to read as follows:

Authority: Sec. 5, Pub. L. 93–86, 87 Stat. 249, as added by Sec. 1304(b)(2), Pub. L. 95–113, 91 Stat. 980 (7 U.S.C. 612c *note*); sec. 1335, Pub. L. 97–98, 95 Stat. 1293 (7 U.S.C. 612c *note*); sec. 209, Pub. L. 98–8, 97 Stat. 35 (7 U.S.C. 612c *note*); sec. 2(8), Pub. L. 98–92, 97 Stat. 611 (7 U.S.C. 612c *note*); sec. 1562, Pub. L. 99–198, 99 Stat. 1590 (7 U.S.C. 612c *note*); sec. 101(k), Pub. L. 100–202; sec. 1771(a), Pub. L 101–624, 101 Stat. 3806 (7 U.S.C. 612c *note*); sec. 402(a), Pub. L. 104–127, 110 Stat. 1028 (7 U.S.C. 612c *note*), Sec. 4201(b), Pub. L. 107–171.

■ 2. In § 247.10, paragraphs (b)(1), (b)(2), and (b)(3) are revised to read as follows:

§ 247.10 Caseload assignment and administrative funding.

* * * * *

(b) Administrative Funding. * * *

(1) FNS allocates to each State agency an administrative grant per assigned caseload slot, adjusted each year for inflation.

(2) For fiscal year 2003, the amount of the grant per assigned caseload slot is equal to the per-caseload slot amount provided in fiscal year 2001, adjusted by the percentage change between:

(i) The value of the State and local government price index, as published by the Bureau of Economic Analysis of the Department of Commerce, for the 12-month period ending June 30, 2001; and

(ii) The value of that index for the 12-month period ending June 30, 2002.

(3) For subsequent fiscal years, the amount of the grant per assigned caseload slot is equal to the amount of the grant per assigned caseload slot for the preceding fiscal year, adjusted by the percentage change between:

(i) The value of the State and local government price index, as published by the Bureau of Economic Analysis of the Department of Commerce, for the 12-month period ending June 30 of the second preceding fiscal year; and

(ii) The value of that index for the 12-month period ending June 30 of the preceding fiscal year.

* * * * *

Dated: August 21, 2003.

Eric M. Bost,

Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 03–22021 Filed 8–27–03; 8:45 am]

BILLING CODE 3410–30–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

RIN 3245–AE68

Business Loans and Development Company Loans

AGENCY: Small Business Administration (SBA).

ACTION: Direct final rule.

SUMMARY: Statutory amendments to the Small Business Act require changes to SBA rules concerning maximum loan guaranty and gross loan amounts, percentages of financing which can be guaranteed by SBA, guarantee fees paid by lenders, real estate occupancy rules, and borrower subsidy recoupment fees. This direct final rule implements the statutory provisions.

DATES: This rule is effective October 14, 2003 without further action, unless adverse comment is received by September 29, 2003. If an adverse comment is received, SBA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Written comments should be sent to LeAnn Oliver, Deputy Associate Administrator for Financial Assistance, Office of Financial Assistance, Small Business Administration, 409 Third Street SW., Washington, DC 20416. Comments also may be sent by e-mail to *leann.oliver@sba.gov* or submitted electronically at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Charles W. Thomas, Acting Director, Office of Loan Programs, Office of Financial Assistance, (202) 205–6656, *charles.thomas@sba.gov.*

SUPPLEMENTARY INFORMATION: The Small Business Reauthorization Act of 2000, Pub. L. 106–554, Appendix I—H.R. 3667, Titles II–III, 114 Stat. 2763A–681 to 689 (2000 Act) became effective on December 21, 2000. The Veterans Entrepreneurship and Small Business Development Act of 1999, Public Law 106–50, 113 Stat. 236, became effective August 17, 1999 (Veterans' Act). This direct final rule is necessary to amend SBA regulations to incorporate certain legislative changes made by the 2000 Act and the Veterans' Act.

Previously, SBA was authorized to guarantee no more than 80 percent of a loan if the gross amount of the loan was $100,000 or less, and no more than 75 percent of a loan over that amount. Section 202 of the 2000 Act amends the 7(a) business loan program by authorizing SBA to guarantee up to 85 percent of a loan if the gross amount of the loan is no more than $150,000. Under the 2000 Act, the maximum SBA guaranty on a loan greater than $150,000 is 75 percent except as otherwise authorized by law. To reflect these changes, SBA is amending § 120.210 of the regulations.

Section 203 of the 2000 Act increases the maximum amount that SBA may guarantee to a single borrower from $750,000 to $1 million. Section 203 provides that the gross amount of any one SBA guaranteed loan cannot exceed $2 million. Previously, there was no limit on the maximum gross loan amount. SBA is amending § 120.151 of its regulations to implement these changes.

Section 205 of the 2000 Act imposes a subsidy recoupment fee on some borrowers with respect to certain SBA 7(a) guaranteed loans. A subsidy recoupment fee applies if a prepaid loan has a maturity of 15 years or more, the prepayment is voluntary, the amount of prepayment in the aggregate in any 12 month period is more than 25 percent of the outstanding balance of the loan in that period, and the prepayment is made within the first three years of the initial disbursement of the loan proceeds. The subsidy recoupment fee is paid to SBA and applies to the full amount of the prepayment, not just to the guaranteed portion of the prepayment, as follows: if a borrower prepays during the first year after initial disbursement, the prepayment charge is 5 percent of the amount of the prepayment; if a borrower prepays during the second year after initial disbursement, the prepayment charge is 3 percent of the amount of the prepayment; and if a borrower prepays during the third year after initial disbursement, the prepayment charge is 1 percent of the amount of the prepayment. SBA is adding a new § 120.223 to its regulations to reflect this statutory amendment.

Section 206 of the 2000 Act simplifies the calculation of the guaranty fee payable to SBA by a participating lender. This provision continues to allow a lender to pass this fee on to the borrower. Under the new simplified calculation for all loans with a maturity of over 12 months, if the total loan amount is $150,000 or less, a lender must pay a guaranty fee equal to 2 percent of the SBA guaranteed portion, however, the lender may retain 25 percent of the fee. In addition, for all loans with a maturity of over 12 months, if the total loan amount is more than $150,000, but not more than $700,000, a lender must pay a guaranty fee of 3 percent of the SBA guaranteed portion, and if the total amount is more than $700,000, a lender must pay a guaranty

fee equal to 3.5 percent of the SBA guaranteed portion. (This rule does not change guaranty fees payable or timing of fee payment for loans with maturities for 12 months or less.) SBA is revising § 120.220 to implement these provisions, and will replace the chart currently in the regulations with text. (SBA notes that legislation enacted after the 2000 Act lowered the guarantee fees for some 7(a) loans for the two-year period beginning October 1, 2002. This temporary reduction in the guarantee fee will be reflected in regulations to be published at a later date.)

Section 207 of the 2000 Act added section 7(a)(28) to the Small Business Act with respect to the ability of a borrower in the 7(a) business loan program to lease out a portion of a building constructed with the proceeds of a guaranteed loan. Borrowers under the 7(a) business loan program will now be treated the same as borrowers under SBA's 504 program, established under Title V of the Small Business Investment Act (SBI Act). Specifically, when the use of proceeds is for new construction, section 7(a)(28) allows a 7(a) borrower to permanently lease to one or more tenants not more than 20 percent of any property constructed with the proceeds of a 7(a) guaranteed loan, if the borrower permanently occupies and uses not less than 60 percent of the total space at the outset. This provision is substantially similar to section 502(5) of the SBI Act, which is applicable to the 504 program.

To reflect this statutory change, SBA is revising § 120.131 of its regulations to cover the leasing of space in new and existing buildings in both the 7(a) and 504 programs, under the terms permitted by sections 7(a)(28) and 502(5). All the leasing options permitted by the current § 120.131(a) (which reflects leasing options under sections 502(4) and 502(5) of the SBI Act) would be permitted under revised § 120.131(a) and will be available in both the 7(a) and 504 programs.

Section 120.131(a) is being revised to cover the construction of a new building financed with 7(a) or 504 financing. A borrower would be authorized to permanently lease up to 20 percent of the space to one or more tenants if it permanently occupies and uses no less than 60 percent of the rentable property. It would have to plan to permanently occupy and use within three years some of the remaining space not immediately occupied and not permanently leased and to plan to permanently use and occupy within ten years all of the remaining space not permanently leased. All the leasing options permitted by the current § 120.131(a), which now reflects section 502(4) of the SBI Act, will continue to be available under the revised § 120.131(a). Therefore, the language in the current regulations for § 120.131(a) is being replaced by language that describes sections 7(a)(28) and 502(5) only.

Section 120.131(b) is revised to emphasize that this regulation applies to both the 7(a) and 504 loan programs and it deletes the cross reference to section 120.870(c).

Section 209 of the 2000 Act allows the SBA guaranteed portions of export working capital loans to be sold in the secondary market. The provision accomplishes this by eliminating, for export working capital program (EWCP) loans only, the requirement that a loan be fully disbursed before it can be sold in the secondary market. Any other SBA guaranteed loan made under the 7(a) business loan program still must be fully disbursed before a lender can sell the guaranteed portion in the secondary market. SBA is amending § 120.613(b) to reflect this statutory change. Other provisions concerning EWCP loans remain the same.

Section 306 of the 2000 Act amends Section 508 of the SBI Act (15 U.S.C. 697e), which relates to Premier Certified Lenders Program (PCLP). Section 306 requires that, if upon default in repayment, SBA acquires a loan guaranteed under this section (a PCLP loan) and identifies such loan for inclusion in a bulk asset sale of defaulted or repurchased loans or other financings, it shall give prior notice to any CDC which has a contingent liability under this section. Currently, only a Premier CDC under the PCLP has a contingent liability with respect to a 504 loan even if SBA's loss is not caused by the Premier CDC's negligence, fraud, or misrepresentation. Thus, SBA is adding a new § 120.540(f) to make clear that SBA is required to give notice only to a Premier CDC which has a contingent liability with respect to a PCLP loan SBA intends to include in a bulk asset sale.

Section 306 requires that SBA give notice to the Premier CDC as soon as possible after the financing is identified for sale, but not less than 90 days before the date SBA first makes any records on such financing available for examination by prospective purchasers prior to such loan being offered in a package of loans for bulk sale. SBA is adding this requirement in new § 120.540(f).

Compliance With Executive Orders 13132, 12988, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C., Ch. 35)

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132, SBA determines that this direct final rule has no federalism implications warranting preparation of a federalism assessment.

The Office of Management and Budget (OMB) has determined that this rule does not constitute a ''significant regulatory action'' under section 3(f) of Executive Order 12866.

SBA has determined that this direct final rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., chapter 35.

This rule meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. This rule also will not have retroactive or preemptive effect.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, including small businesses, small non-profit enterprises, and small local governments. Pursuant to the RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis which describes the impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. If the head of the agency makes such a certification, that certification must be published along with a statement providing the factual basis for such certification. Within the meaning of RFA, SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities. The factual basis for that certification is provided below.

Section 202 of the Act raises SBA's guaranty from 75 percent for loans of $100,000 or less to 85 percent for loans of $150,000 or less, which is intended to reduce lender risk and reduce lender cost for providing small business loans and thus increase the availability of

financing to the small business community. SBA estimates that for FY 2000, it approved approximately 6,300 loans between $100,000 and $150,000. For FY 2002, SBA estimates that it approved approximately 7,600 loans between $100,000 and $150,000. This represents an increase of approximately 1,300 additional SBA loans between $100,000 and $150,000 in FY 2002 compared to FY 2000. This compares to a total of about 52,000 loans SBA approved in FY 2002. (The SBA estimates that annually about 3 percent of its 7(a) loans go to an existing SBA borrower—For example, SBA may approve a term loan and a separate working capital loan to the same borrower—Thus, the actual number of small businesses receiving an SBA loan in a given year will be about 50,000 businesses.)

Section 203 of the Act raises the maximum amount the SBA may guarantee to a single borrower from $750,000 to $1 million, which will allow SBA and its lending partners to provide additional small business financing, particularly to growing small businesses and to businesses located in more costly, higher growth areas of the country. In FY 2002, the first full year during which SBA could guaranty loans up to $1 million, about 2,000 small businesses benefited from SBA's expanded guaranty authority. Section 203 also limits the maximum size of an SBA loan to $2 million, where formerly there was no maximum. However, historically the Agency has approved very few loans over $2 million, generally less than 20 per year. But, with continuing limitations to SBA 7(a) loan authority due to budget constraints, the 7(a) authority that would have been used by these 20 or so larger SBA borrowers can now be channeled to smaller borrowers. Thus, while annually about 20 or so larger borrowers will no longer have access to SBA financing due to this limitation, the Agency estimates that with an average SBA loan size of approximately $163,000, about 370 other small business borrowers will receive SBA financing that would not otherwise be available.

Section 205 imposes a subsidy recoupment fee on SBA borrowers that pre-pay longer term loans. This recoupment fee was instituted to ensure SBA loan subsidy costs are not distorted and effectively increased due to the pre-payment of longer term loans by SBA borrowers, which could reduce the overall availability of SBA financing to the small business community as a whole. SBA's analysis of management information data indicates that approximately 80 SBA loans were pre-paid in FY 2002 and subject to the subsidy recoupment fee. This compares to a total of approximately 52,000 SBA loans approved during FY 2002.

Section 206 modifies, simplifies and, in many cases, reduces the fees that the SBA charges lenders for SBA's guaranty, which the lenders usually pass on to the borrowers. It also establishes a guaranty fee of 3.5 percent for loans over $700,000, the majority of which are loans made under SBA's new authority (under section 203 above) to approve guaranties up to $1 million. The simplification and modification of the fee structure was intended to reduce the administrative complexity of SBA loan programs and reduce the administrative costs associated with an SBA loan, thereby encouraging lenders to make more SBA loans. Section 206 also revised and reduced the cost of SBA's guaranty for some SBA loans. In FY 2002, under the revised fee structure about 17,000 SBA borrowers paid lower guaranty fees (from several hundred to over $1,000 less), about 33,000 borrowers paid the same, and about 3,000 borrowers paid slight guaranty fees. As a result of these and other program changes, SBA approved about 8,000 additional loans in FY 2002 compared to FY 2000. The SBA also estimates that in FY 2002 about 2,500 small businesses were approved for an SBA guaranty between $700,000 and $1 million and were thus impacted by the 3.5 percent guaranty that applies to these loans. However, these loans were approved for small businesses that, without the SBA guaranty, would not have had access to financing. As a result, they benefited economically from the availability of these loans, which was in part made possible by the 3.5 percent guaranty fee.

Section 207 allows borrowers under the 7(a) business loan program to lease out a portion of a building constructed with the proceeds of an SBA guaranteed loan, which provides additional flexibility to some borrowers and enhances their longer term prospects for success. SBA's analysis indicates that of the approximately 52,000 loans approved during FY 2002, only about 100 small businesses took advantage of this increased flexibility.

Section 209 allows the SBA guaranteed portions of export working capital loans to be sold in the secondary market, which is expected to improve lender liquidity and encourage lenders to provide additional financing to small business exporters. From an analysis of its management information data, the Agency estimates that about 370 small businesses benefited from SBA guaranteed export working capital loans in FY 2002, which is about the same number of small businesses that received export working capital loans in FY 2000. The SBA estimates about 60 of those loans were sold on the secondary market.

Section 306 requires that SBA provide no less than 90 days notice to Premier Certified Lenders (PCL) of its intent to include PCL loans in a bulk sale of SBA loans. About 30 CDCs currently participate in the PCL program, through which about 780 loans were approved in FY 2002. However, SBA has not as yet included any PCL loans in bulk asset sales and currently has no plans to do so.

List of Subjects in 13 CFR Part 120

Loan programs—business, Small businesses.

■ For the reasons set forth in the preamble, amend part 120 of title 13 of Code of Federal Regulations as follows:

■ 1. The authority citation for part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(a) and (h), 696(3), and 697(a)(2).

■ 2. Revise § 120.131 to read as follows:

§ 120.131 Leasing part of new construction or existing building to another business.

(a) If the SBA financing (whether 7(a) or 504) is for the construction of a new building, a Borrower may permanently lease up to 20 percent of the Rentable Property to one or more tenants if the Borrower permanently occupies and uses no less than 60 percent of the Rentable Property, and plans to permanently occupy and use within three years some of the remaining space not immediately occupied and not permanently leased and plans to permanently occupy and use within ten years all of the remaining space not permanently leased. If the Borrower is an Eligible Passive Company which leases 100 percent of the new building's space to one or more Operating Companies, the Operating Company, or Operating Companies together, must follow the same rules set forth in this paragraph.

(b) If the SBA financing (whether 7(a) or 504) is for the acquisition, renovation, or reconstruction of an existing building, the Borrower may permanently lease up to 49 percent of the Rentable Property if the Borrower permanently occupies and uses no less than 51 percent of the Rentable Property. If the Borrower is an Eligible Passive Company which leases 100 percent of the space of the existing building to one or more Operating Companies, the Operating Company, or

Operating Companies together, must follow the same rules set forth in this paragraph.

■ 3. Remove the first sentence of § 120.151 and add in its place two new sentences to read as follows:

§ 120.151 What is the statutory limit for total loans to a Borrower?

The aggregate amount of the SBA portions of all loans to a single Borrower, including the Borrower's affiliates as defined in § 121.103 of this chapter, must not exceed a guaranty amount of $1,000,000, except as otherwise authorized by statute for a specific program. The maximum loan amount for any one 7(a) loan is $2,000,000. * * *

■ 4. Revise the third and fourth sentences of § 120.210 to read as follows:

§ 120.210 What percentage of a loan may SBA guarantee?

* * * Effective December 21, 2000, loans of $150,000 or less may receive a maximum guaranty of 85 percent. Loans more than $150,000 may receive a maximum guaranty of 75 percent, except as otherwise authorized by law.

■ 5. Amend § 120.220 by adding introductory text, revising paragraph (a), redesignating paragraphs (b) and (c) as (e) and (f), and adding new paragraphs (b), (c), and (d) to read as follows:

§ 120.220 Fees that Lender pays SBA.

A Lender must pay a guaranty fee to SBA for each loan it makes. If the guarantee fee is not paid, SBA may terminate the guarantee. Acceptance of the guaranty fee by SBA does not waive any right of SBA arising from a Lender's negligence, misconduct or violation of any provision of these regulations, the guaranty agreement, or the loan authorization.

(a) *Amount of guaranty fee.* For a loan with a maturity of twelve (12) months or less, the guaranty fee which the Lender must pay to SBA is one-quarter (1/4) of one percent of the guaranteed portion of the loan. For a loan with a maturity of more than twelve (12) months, the guaranty fee is:

(i) 2 percent of the guaranteed portion of the loan if the total amount of the loan is not more than $150,000,

(ii) 3 percent of the guaranteed portion of a loan if the total amount is more than $150,000 but not more than $700,000, and

(iii) 3.5 percent of the guaranteed portion of a loan if the total amount is more than $700,000.

(b) *When the guaranty fee is payable.* For a loan with a maturity of twelve (12) months or less, the Lender must pay the guaranty fee to SBA with its application for a guaranty. The Lender may charge the Borrower for the fee when the loan is approved by SBA. For a loan with a maturity in excess of twelve (12) months, the Lender must pay the guaranty fee to SBA within 90 days after SBA gives its loan approval. The Lender may charge the Borrower the fee after the Lender has made the first disbursement of the loan. The Borrower may use the loan proceeds to pay the guaranty fee. However, the first disbursement must not be made solely or primarily to pay the guaranty fee.

(c) *Refund of guaranty fee.* For a loan with a maturity of twelve (12) months or less, SBA will refund the guaranty fee if the loan application is withdrawn prior to approval by SBA; if SBA declines to guarantee the loan; or if SBA substantially changes the Lender's loan terms and then approves the loan, but SBA's modified terms are unacceptable to the Lender. In the latter case, the Lender must request a refund in writing within 30 calendar days of SBA's approval. For a loan with a maturity of more than twelve (12) months, SBA will refund the guaranty fee if the Lender has not made any disbursement and the lender requests in writing the refund and cancellation of the SBA guaranty.

(d) *Lender's retention of portion of guaranty fee.* With respect to a loan with a maturity of more than twelve (12) months, where the total loan amount is no more than $150,000 Lender may retain not more than 25 percent of the guaranty fee.

* * * * *

■ 6. Add new § 120.223 to read as follows:

§ 120.223 Subsidy recoupment fee payable to SBA by Borrower.

(a) The subsidy recoupment fee is payable to SBA when:

(1) Loan has a maturity of 15 years or more.

(2) Borrower makes a voluntary prepayment (or several prepayments in the aggregate) during any one of the first three successive 12 month periods following the first disbursement of the loan. Prepayment is defined as a payment of principal in excess of the amount due according to the amortization schedule.

(3) The prepayment (or several prepayments in the aggregate) is more than 25 percent of the highest outstanding principal balance of the loan in any one of the first three successive 12 month periods following the first disbursement.

(b) When all the conditions above exist, the following subsidy recoupment fees apply:

(1) If the prepayment is made during the first 12 month period after first disbursement, the charge is 5 percent of the total amount of all prepayments made during such period;

(2) If the prepayment is made during the second 12 month period after first disbursement, the charge is 3 percent of the total amount of all prepayments made during that period; and

(3) If the prepayment is made during the third 12 month period after first disbursement, the charge is 1 percent of the total amount of all prepayments made during that period.

■ 7. Add a new § 120.540(f) to read as follows:

§ 120.540 What are SBA's policies concerning the liquidation of collateral and the sale of business loans and physical disaster assistance loans, physical disaster business loans and economic injury disaster loans?

* * * * *

(f) *Notice.* If upon default in repayment, SBA acquires a Premier Certified Lenders Program (PCLP) loan and identifies such loan for inclusion in a bulk asset sale of defaulted or repurchased loans or other financings, SBA must give prior notice to any Premier Certified Lenders (''Premier CDC'') which has a contingent liability with respect to the PCLP loan. SBA must give the notice to the Premier CDC as soon as possible after the loan is identified for inclusion in such sale, but not less than 90 days before the date SBA first makes any records on such loan available for examination by prospective purchasers prior to such loan being offered in a package of loans for bulk sale.

■ 8. Revise § 120.613(b) to read as follows:

§ 120.613 Secondary Participation Guarantee Agreement.

* * * * *

(b) Except for export working capital loans, disburse to the Borrower the full amount of the loan; and

* * * * *

Dated: August 19, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–22012 Filed 8–27–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–34–AD; Amendment 39–13276; AD 2003–15–51]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SE3160, SA315B, SA316B, SA316C, and SA319B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2003–15–51, which was sent previously to all known U.S. owners and operators of the specified model Eurocopter France (Eurocopter) helicopters by individual letters. This AD requires inspecting each main rotor blade (blade) root end bolt (bolt) and bolt hole for a crack or corrosion or a crack on the blade root end fitting (fitting) and for certain serial-numbered blades, a one-time pull test on each fitting and blade root end doubler (doubler) to detect disbonding. This amendment is prompted by a report from the blade manufacturer of the discovery of a cracked blade; the cause of the crack remains under investigation. The actions specified by this AD are intended to prevent failure of a blade and subsequent loss of control of the helicopter.

DATES: Effective September 12, 2003, to all persons except those persons to whom it was made immediately effective by Emergency AD 2003–15–51, issued on July 16, 2003, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 12, 2003.

Comments for inclusion in the Rules Docket must be received on or before October 27, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2003–SW–34–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.*

The service information referenced in this AD may be obtained from Rotor Trends, LLC, 1715 N. Pinal Avenue, Casa Grande, Arizona 85222, telephone: (520) 421–7482, fax: (520) 421–7458, E-mail: *jmp@helisupport.com*. 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: Jon Mowery, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone: (562) 627–5322, fax: (562) 627–5210.

SUPPLEMENTARY INFORMATION: On July 16, 2003, the FAA issued Emergency AD 2003–15–51 for the specified model helicopters, which requires inspecting the blade bolts and bolt holes for a crack or corrosion or a crack on the blade fittings using a 10x or higher magnifying glass, and for certain serial-numbered blades, a one-time pull test on the blade fittings and doublers to detect disbonding. That action was prompted by a report from the blade manufacturer of a cracked blade, which was discovered on May 27, 2003. The cause of the crack is unknown at this time, however investigation indicates that the crack may be attributable to a quality control system problem. This condition, if not corrected, could result in failure of a blade and subsequent loss of control of the helicopter.

The FAA has reviewed Rotor Trends, LLC Service Bulletin No. 01.03, dated July 9, 2003, which describes procedures for initial and repetitive inspections of the bolts and bolt holes for a crack or corrosion using a 10x magnifying glass and light. A one-time pull test on the blade fittings and doublers to detect disbonding is also described. If a crack is found on a blade fitting or in a bolt hole, or if any corrosion is found in a bolt hole or radiating from a bolt hole, or if disbonding is detected in the blade fittings or doublers, removing the blade and replacing it with an airworthy blade is specified. If corrosion is detected only on bolts, replacing the affected bolts with airworthy bolts is specified.

Since the unsafe condition described is likely to exist or develop on other Eurocopter Model SE3160, SA315B, SA316B, SA316C, and SA319B helicopters of the same type designs, the FAA issued Emergency AD 2003–15–51 to prevent failure of a blade and subsequent loss of control of the helicopter. The AD requires, for blades, part number (P/N) L3160–100–01 (all serial numbers), within 10 hours time-in-service (TIS) or 30 days, whichever occurs first, inspecting the blade bolts and bolt holes for a crack or corrosion using a 10x or higher magnifying glass. If a crack is found on a blade fitting or in a bolt hole, or if any corrosion is found in a bolt hole or radiating from a bolt hole, removing the blade and replacing it with an airworthy blade is required. If corrosion is detected only on bolts, replacing the affected bolts with airworthy bolts, P/N NAS1105, is required. The AD also requires, for blades, P/N L3160–100–01, serial numbers 600 through 671, within 50 hours TIS or 90 days, whichever occurs first, a one-time pull test on the blade fittings and doublers to detect disbonding. The actions must be accomplished in accordance with the service bulletin described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect controllability and structural integrity of the helicopter. Therefore, inspections, pull test, and replacements, if necessary, are required at short compliance times, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on July 16, 2003 to all known U.S. owners and operators of Eurocopter Model SE3160, SA315B, SA316B, SA316C, and SA319B helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to 14 CFR 39.13 to make it effective to all persons.

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. Because we have now included this material in part 39, we no longer need to include it in each individual AD.

The FAA estimates that this AD will affect 30 helicopters of U.S. registry, and the visual inspection and pull test will take approximately 4 work hours each per helicopter to accomplish, and replacing the blades (if necessary) will take approximately 3 hours to accomplish at an average labor rate of $65 per work hour. Required parts will cost approximately $100,000 per

helicopter, if replacement of the blades is necessary. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $115,795 per helicopter, assuming one inspection per year and one pull test for each helicopter in the entire fleet; and, replacing the blades on one helicopter.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2003–SW–34–AD.'' The postcard will be date stamped and returned to the commenter.

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.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, 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:

2003–15–51 Eurocopter France: Amendment 39–13276. Docket No. 2003–SW–34–AD.

Applicability: Model SE3160, SA315B, SA316B, SA316C, and SA319B helicopters, with main rotor blade (blade), part number (P/N) L3160–100–01, produced under a Parts Manufacturer Approval approved by Supplemental Type Certificate SH778GL, installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a blade and subsequent loss of control of the helicopter, accomplish the following:

(a) For helicopters that have a blade, part number (P/N) L3160–100–01 (all serial numbers), installed, within 10 hours time-in-service (TIS) or 30 days, whichever occurs first, using a 10x or higher magnifying glass, visually inspect each blade root end bolt (bolt) and bolt hole for corrosion in a bolt hole or radiating from a bolt hole, or for a crack on a blade root end fitting (fitting) or in a bolt hole, in accordance with Part A of Rotor Trends, LLC Service Bulletin No. 01.03, dated July 9, 2003 (SB).

(b) If corrosion or a crack is found, replace the blade with an airworthy blade before further flight. If corrosion is detected only on a bolt, P/N NAS1105, replace the affected bolt with an airworthy bolt before further flight.

(c) For helicopters that have a blade, P/N L3160–100–01, serial numbers 600 through 671, installed, within 50 hours TIS or 90 days, whichever occurs first, conduct a one-time pull test on each fitting and blade root end doubler to detect disbonding in accordance with Part B of the SB, except that you are not required to contact or return a form to Rotor Trends, LLC.

(d) If disbonding is detected, replace the blade with an airworthy blade before further flight.

(e) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Los Angeles Aircraft Certification Office, Transport Airplane Directorate, FAA, for information about previously approved alternative methods of compliance.

(f) Special flight permits will not be issued.

(g) The visual inspections and pull test shall be done in accordance with Rotor Trends, LLC Service Bulletin No. 01.03, dated July 9, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rotor Trends, LLC, 1715 N. Pinal Avenue, Casa Grande, Arizona 85222, telephone: (520) 421–7482, fax: (520) 421–7458, Email: jmp@helisupport.com. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2003–SW–34–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on September 12, 2003, to all persons except those persons to whom it was made immediately effective by Emergency AD 2003–15–51, issued July 16, 2003, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on August 8, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–21520 Filed 8–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–16–AD; Amendment 39–13290; AD 2003–17–15]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc. RB211–535 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD)

that applies to Rolls-Royce plc. (RR) models RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 turbofan engines, with certain part number (P/N) low pressure (LP) turbine stage 2 discs installed. That AD currently requires establishing new reduced LP turbine stage 2 disc cyclic limits. That AD also requires removing from service affected discs that already exceed the new reduced cyclic limits, and removing other affected discs before exceeding their cyclic limits, using a drawdown schedule. This amendment requires changing certain cyclic limits, changing the effective date of certain disc cyclic lives, and would allow intermix of Flight Plan A and Flight Plan B intermix calculations. This amendment is prompted by a reassessment of the thermal and stress data from recent operational experience and comments received from operators on the current AD. We are issuing this AD to prevent LP turbine stage 2 disc failure, which could result in uncontained engine failure and possible loss of the airplane.

DATES: Effective October 2, 2003. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 2, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Rolls-Royce plc, P.O. Box 31 Derby, DE24 8BJ, United Kingdom; telephone 011–44–1332–242424; fax 011–44–1332–249936. This information may be examined, by appointment, at the Federal Aviation Administration (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: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7178; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2002–23–08, Amendment 39–12952 (67 FR 71094, November 29, 2002), which applies to RR models RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 turbofan engines, with certain P/N low pressure LP turbine stage 2 discs installed was published in the **Federal Register** on March 25, 2003 (68 FR 14355). That action proposed to require establishing new reduced LP turbine stage 2 disc cyclic limits. That AD also requires removing from service affected discs that already exceed the new reduced cyclic limits, and removing other affected discs before exceeding their cyclic limits, using a drawdown schedule in accordance with mandatory service bulletin (MSB) RB.211–72–D181, Revision 3, dated August 16, 2002.

Comments

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

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it 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. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

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 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. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting 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 removing Amendment 39–12952 (67 FR 71094, November 29, 2002) and by adding a new airworthiness directive, Amendment 39–13290, to read as follows:

2003–17–15 Rolls-Royce plc: Amendment 39–13290. Docket No. 2002–NE–16–AD. Supersedes AD 2002–23–08, Amendment 39–12952.

Applicability: This airworthiness directive (AD) is applicable to Rolls-Royce plc. (RR) models RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 turbofan engines, with low pressure (LP) turbine stage 2 discs part numbers (P/Ns) UL11508, UL17141, UL18947, UL29029, and UL37352 installed. These engines are installed on, but not limited to, Boeing 757 and Tupolev Tu204 airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines 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 (h) 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: You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

To prevent LP turbine stage 2 disc failure, which could result in an uncontained engine failure and possible loss of the airplane, do the following:

Cycle Limits

(a) Change the RR Time Limits Manual cyclic limits for LP turbine stage 2 discs as specified in the following Table 1:

TABLE 1.—TIME LIMITS MANUAL (TLM) CYCLIC LIMITS

Date of reduced life limit	Life limits for RB211–535E4 engines operating in flight plan A, and RB211–535E4–B engines	Life limits for RB211–535E4 engines operating in flight plan B
(1) December 31, 2001	23,200 cycles-since-new (CSN)	19,700 CSN.
(2) December 31, 2002	22,500 CSN	19,000 CSN.
(3) December 31, 2003	21,500 CSN	18,000 CSN.
(4) December 31, 2004	20,000 CSN	16,500 CSN.
(5) December 31, 2005	18,100 CSN	14,600 CSN.

RB211–535E4 Engines Operating to Flight Plan A, and RB211–535E4–B Engines

(b) For RB211–535E4 engines operating to flight plan A, and RB211–535E4–B engines, remove the LP turbine stage 2 disc from service using the CSN and Action times listed in the following Table 2.

TABLE 2.—DRAWDOWN SCHEDULE FOR RB211–535E4 ENGINES OPERATING TO FLIGHT PLAN A, AND RB211–535E4–B ENGINES

Disc CSN	Action	Replace disc	
		Without eddy current inspection	With eddy current inspection
(1) 20,001 CSN or greater on December 31, 2000.	Remove disc from service or perform optional on-wing eddy current disc inspection within 21 days after the effective date of this AD.	Within 21 days after the effective date of this AD.	Within 3,000 cycles-in-service (CIS) after the inspection, but do not exceed the new reduced life limit specified in Table 1 of this AD
(2) 18,100 to 20,000 CSN on December 31, 2000.	Remove disc from service or perform optional on-wing eddy current disc inspection.	Before accumulating 21,000 CSN or within 21 days after the effective date of this AD, whichever occurs first.	Within 3,000 CIS after the inspection, but do not exceed the new reduced life limit specified in Table 1 of this AD.
(3) Fewer than 18,100 CSN on December 31, 2000 and greater than 20,000 CSN on December 31, 2004.	Remove disc from service or perform optional on-wing eddy current disc inspection.	Before accumulating 20,500 CSN or by December 31, 2004, whichever occurs first.	Within 3,000 CIS after the inspection, but do not exceed the new reduced life limit specified in Table 1 of this AD.
(4) Fewer than 18,100 CSN on December 31, 2000 and greater than 18,100 CSN on December 31, 2005.	Remove disc from service or perform on-wing eddy current disc inspection.	Before accumulating 20,000 CSN or by December 31, 2005, whichever occurs first.	Within 3,000 CIS after the inspection, but do not exceed the new reduced life limit specified in Table 1 of this AD.
(5) Fewer than 18,100 CSN on December 31, 2000 and fewer than 18,100 CSN on December 31, 2005.	No action required	N/A	N/A.

(c) Information regarding disc removal may be found in 3.A. of the Accomplishment Instructions of Mandatory Service Bulletin (MSB) RB.211–72–D181, Revision 3, dated August 16, 2002.

(d) The optional on-wing eddy current disc inspection noted in Table 2 of this AD must be performed in accordance with 3.C.(1) through 3.C.(6) of the Accomplishment Instructions of MSB RB.211–72–D181, Revision 3, dated August 16, 2002.

RB211–535E4 Engines Operating to Flight Plan B

(e) For RB211–535E4 engines operating to flight plan B, remove the LP turbine stage 2 disc from service using the CSN and Action times listed in the following Table 3.

TABLE 3.—DRAWDOWN SCHEDULE FOR RB211–535E4 ENGINES OPERATING TO FLIGHT PLAN B

Disc CSN	Action	Replace disc	
		Without eddy current inspection	With eddy current inspection
(1) 16,501 CSN or greater on December 31, 2000.	Remove disc from service or perform optional on-wing eddy current disc inspection within 21 days after the effective date of this AD.	Within 21 days after the effective date of this AD.	Within 3,000 CIS after the inspection, but do not exceed the new reduced life limit specified in Table 1 of this AD.
(2) Greater than 14,600 CSN on December 31, 2000.	Remove disc from service or perform optional on-wing eddy current disc inspection.	Before accumulating 17,500 CSN or within 21 days after the effective date of this AD, whichever occurs first.	Within 3,000 CIS after the inspection, but do not exceed the new reduced life limit specified in Table 1 of this AD.

TABLE 3.—DRAWDOWN SCHEDULE FOR RB211–535E4 ENGINES OPERATING TO FLIGHT PLAN B—Continued

Disc CSN	Action	Replace disc	
		Without eddy current inspection	With eddy current inspection
(3) Fewer than 14,600 CSN on December 31, 2000 and greater than 16,500 CSN on December 31, 2004.	Remove disc from service or perform optional on-wing eddy current disc inspection.	Before accumulating 17,000 CSN or by December 31, 2004, whichever occurs first.	Within 3,000 CIS after the inspection, but do not exceed the new reduced life limit specified in Table 1 this AD.
(4) Fewer than 14,600 CSN on December 31, 2000 and greater than 14,600 CSN on December 31, 2005.	Remove disc from service or perform on-wing eddy current disc inspection.	Before accumulating 16,500 CSN or by December 31, 2005, whichever occurs first.	Within 3,000 CIS after the inspection, but do not exceed the new reduced life limit specified in this AD.
(5) Fewer than 14,600 CSN on December 31, 2000 and fewer than 14,600 CSN on December 31, 2005.	No action required	N/A	N/A.

(f) Information regarding disc removal may be found in 3.A. of the Accomplishment Instructions of MSB RB.211–72–D181, Revision 3, dated August 16, 2002.

(g) The optional on-wing eddy current disc inspection must be performed in accordance with 3.C.(1) through 3.C.(6) of the Accomplishment Instructions of MSB RB.211–72–D181, Revision 3, dated August 16, 2002.

Note 2: For engines moving from Flight Plans A to B or B to A, the intermix calculations found in MSB RB.211–72–D181, Revision 3, dated August 16, 2002, may be applied to the life limits.

Alternative Methods of Compliance

(h) 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, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(i) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated By Reference

(j) The actions must be done in accordance with Rolls-Royce plc mandatory service bulletin RB.211–72–D181, Revision 3, dated August 16, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce plc, P.O. Box 31 Derby, DE24 8BJ, United Kingdom; telephone 011–44–1332–242424; fax 011–44–1332–249936. Copies may be inspected 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.

Note 4: The subject of this AD is addressed in CAA airworthiness directive 006–05–2001, dated August 3, 2001.

Effective Date

(k) This amendment becomes effective on October 2, 2003.

Issued in Burlington, Massachusetts, on August 20, 2003.

Francis A. Favara,

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

[FR Doc. 03–21740 Filed 8–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

RIN 2120–AA66

[Docket No. FAA–2003–15978; Airspace Docket No. 03–AAL–14]

Establishment of Jet Routes 618 and 623, and Revocation of Jet Routes 600 and 601; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the designation of Jet Routes 600 and 601 (J–600 and J–601) to J–618 and J–623. Currently, there are two jet routes in Canada with the same designation of J–600 and J–601, which is creating continuous data processing problems and confusion. This action will eliminate the dual designation of the jet route numbers. There are no changes to any of the existing route alignments, radials, or altitudes. This action will enhance safety by eliminating the likelihood of flight plan processing problems.

EFFECTIVE DATES: 0901 UTC, October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

The FAA has identified a duplication in jet route number designations in Canada and the U.S. The jet routes, J–600 and J–601, have caused repeated route validation problems in flight plan processing. By changing the U.S. designations of J–600 and J–601 to J–618 and J–623, the FAA will eliminate any confusion between Canada and the U.S. jet routes.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 (part 71) by changing the designation of J–600 and J–601 to J–618 and J–623. There are no changes to any of the existing route alignments, radials, or altitudes. This action will enhance safety by eliminating the likelihood of flight plan processing problems, and reduce controller workload. Because this action is needed for safety reasons, the FAA finds that notice and public comment under 5 U.S.C. 552(b) is impracticable and contrary to public interest.

Jet routes are published in paragraph 2004, of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The jet routes listed in this document would be published subsequently in the order.

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

Environmental Review

The FAA has determined that this action is not subject to environmental assessments and procedures in accordance with FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts, and the National Environmental Policy Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 2004 Jet Routes

* * * * *

J–600 [Revoke]

J–601 [Revoke]

* * * * *

J–618 [New]

From Mt. Moffett, AK, NDB; to Elfee, AK, NDB.

* * * * *

J–623 [New]

From Port Heiden NDB; Cold Bay, AK; INT Dutch Harbor, AK, NDB, 006° and St. Paul Island, AK, NDB, 111° radials; to St. Paul Island, NDB.

* * * * *

Issued in Washington, DC, August 20, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–22043 Filed 8–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30384; Amdt. No. 3072]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective August 28, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

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

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

For Examination—

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

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

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

4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

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

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

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

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on August 15, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs: § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC NO.	Subject
08/01/03	NM	Alamogordo	Alamogordo-White Sands Regional	3/6917	RNAV (GPS) Rwy 3 Orig.
08/01/03	NM	Alamogordo	Alamogordo-White Sands Regional	3/6918	VOR/DME Rwy 3 Orig.
08/01/03	NM	Alamogordo	Alamogordo-White Sands Regional	3/6919	VOR Rwy 3 Amdt 2.
08/01/03	NM	Alamogordo	Alamogordo-White Sands Regional	3/6920	NDB Rwy 3 Amdt 5.
08/06/03	OR	Redmond	Roberts Field	3/7052	ILS Rwy 22, Amdt 1A.
08/07/03	TX	McKinney	McKinney Muni	3/7065	VOR/DME–A, Orig-C.
08/07/03	TX	McKinney	McKinney Muni	3/7066	GPS Rwy 17, Orig-C.
08/07/03	TX	McKinney	McKinney Muni	3/7067	GPS Rwy 35, Orig-B.
08/07/03	TX	Rock Springs	Edwards County	3/7107	VOR Rwy 14, Amdt 4.
08/12/03	ND	Fargo	Hector Intl	3/7247	RNAV (GPS) Rwy 35, Orig-A.
08/12/03	SC	Beaufort	Beaufort County	3/7090	RNAV (GPS) Rwy 25, Orig.
08/12/03	SC	Beaufort	Beaufort County	3/7089	RNAV (GPS) Rwy 7, Orig.

[FR Doc. 03–21767 Filed 8–27–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30383; Amdt. No. 3071]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

instrument flight rules at the affected airports.

DATES: This rule is effective August 28, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

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

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

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The Flight Inspection Area Office which originated the SIAP; or,
4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

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

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

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

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

The Rule

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC on August 15, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

** * * Effective September 4, 2003*

Denver, CO, Denver Intl, ILS OR LOC RWY 16R, Orig
Denver, CO, Denver Intl, ILS OR LOC RWY 34L, Orig
Denver, CO, Denver Intl, RNAV (GPS) RWY 16R, Orig
Denver, CO, Denver Intl, RNAV (GPS) RWY 34L, Orig
Miami, FL, Miami Intl, LOC/DME, RWY 8, Orig
Miami, FL, Miami Intl, LOC/DME RWY 26, Orig
Miami, FL, Miami Intl, RNAV (GPS) RWY 8, Orig
Miami, FL, Miami Intl, RNAV (GPS) RWY 26, Orig
Lawrence, KS, Lawrence Muni, ILS OR LOC RWY 33, Amdt 1
Lawrence, KS, Lawrence Muni, NDB RWY 33, Amdt 1
Shreveport, LA, Shreveport Regional, RNAV (GPS) RWY 14, Orig
Shreveport, LA, Shreveport Regional, RNAV (GPS) RWY 32, Orig
Shreveport, LA, Shreveport Regional, RNAV (GPS) RWY 5, Orig
Shreveport, LA, Shreveport Regional, RNAV (GPS) RWY 23, Orig
Shreveport, LA, Shreveport Regional, ILS OR LOC RWY 14, Amdt 24

Frederick, MD, Frederick Muni, RNAV (GPS) RWY 23, Amdt 2
Gaithersburg, MD, Montgomery County Airpark, RNAV (GPS) RWY 14, Amdt 1
Gaithersburg, MD, Montgomery County Airpark, RNAV (GPS) RWY 32, Orig
New York, NY, La Guardia, VOR/DME–E, Amdt 2A
New York, NY, La Guardia, VOR–F, Amdt 2A
New York, NY, La Guardia, VOR/DME–G, Amdt 2A
New York, NY, La Guardia, RNAV (GPS) RWY 22, Orig
New York, NY, La Guardia, RNAV (GPS) RWY 31, Orig
New York, NY, La Guardia, RNAV (GPS) RWY 4, Orig
New York, NY, La Guardia, ILS RWY 22, Amdt 19
New York, NY, La Guardia, VOR/DME–H, Amdt 2A
New York, NY, La Guardia, NDB RWY 22, Amdt 12C
New York, NY, La Guardia, NDB RWY 4, Amdt 36A
Midland, TX, Midland Intl, RNAV (GPS) RWY 4, Orig
Midland, TX, Midland Intl, RNAV (GPS) RWY 16R, Orig
Midland, TX, Midland Intl, RNAV (GPS) RWY 22, Orig
Midland, TX, Midland Intl, RNAV (GPS) RWY 28, Orig
Midland, TX, Midland Intl, RNAV (GPS) RWY 34L, Orig
Midland, TX, Midland Intl, GPS RWY 16R, Orig, CANCELLED
Midland, TX, Midland Intl, GPS RWY 34L, Orig, CANCELLED
Midland, TX, Midland Intl, VOR/DME RNAV RWY 16R, Amdt 3A, CANCELLED
Midland, TX, Midland Intl, VOR/DME RNAV RWY 34L, Amdt 2, CANCELLED
Leesburg, VA, Leesburg Executive, RNAV (GPS) RWY 17, Orig
Leesburg, VA, Leesburg Executive, GPS RWY 17, Amdt 1A, CANCELLED
Manassas, VA, Manassas Regional/Harry P. Davis Field, GPS RWY 16L, Orig-A, CANCELLED
Manassas, VA, Manassas Regional/Harry P. Davis Field, RNAV (GPS) RWY 16L, Orig

** * * Effective October 2, 2003*

Savannah, GA, Savannah/Hilton Head Intl, RNAV (GPS) RWY 9, Orig-A
Savannah, GA, Savannah/Hilton Head Intl, RNAV (GPS) RWY 18, Orig-A
Savannah, GA, Savannah/Hilton Head Intl, RNAV (GPS) RWY 27, Orig-A
Savannah, GA, Savannah/Hilton Head Intl, RNAV (GPS) RWY 36, Orig-A

** * * Effective October 30, 2003*

Atlanta, GA, Cobb County-McCollum Field, RNAV (GPS) RWY 9, Orig-A
Atlanta, GA, Cobb County-McCollum Field, RNAV (GPS) RWY 27, Orig-A
Atlanta, GA, Cobb County-McCollum Field, VOR/DME RWY 9, Orig-F
Atlanta, GA, Cobb County-McCollum Field, ILS RWY 27, Amdt 1A
Blackfoot, ID, McCarley Field, VOR/DME RWY 19, Orig, CANCELLED
Portland, ME, Portland Intl Jetport, NDB RWY 11, Amdt 15B
Portland, ME, Portland Intl Jetport, ILS OR LOC RWY 11, Orig
Portland, ME, Portland Intl Jetport, ILS OR LOC RWY 29, Orig
Portland, ME, Portland Intl Jetport, RNAV (GPS) RWY 11, Orig
Portland, ME, Portland Intl Jetport, RNAV (GPS) RWY 29, Orig
Portland, ME, Portland Intl Jetport, ILS RWY 11, Amdt 20, CANCELLED
Portland, ME, Portland Intl Jetport, ILS RWY 29, Orig, CANCELLED
Duncan, OK, Halliburton Field, VOR RWY 35, Amdt 11
Duncan, OK, Halliburton Field, RNAV (GPS) RWY 17, Orig
Duncan, OK, Halliburton Field, RNAV (GPS) RWY 35, Orig
Duncan, OK, Halliburton Field, GPS RWY 35, Orig-A, CANCELLED
Milwaukee, WI, General Mitchell Intl, ILS RWY 1L, Amdt 8
Milwaukee, WI, General Mitchell Intl, ILS RWY 7R, Amdt 15
Milwaukee, WI, General Mitchell Intl, ILS RWY 19R, Amdt 10
Milwaukee, WI, General Mitchell Intl, NDB RWY 1L, Amdt 4B
Milwaukee, WI, General Mitchell Intl, NDB RWY 7R, Amdt 10D
Milwaukee, WI, General Mitchell Intl, RNAV (GPS) RWY 1L, Orig
Milwaukee, WI, General Mitchell Intl, RNAV (GPS) RWY 1R, Orig
Milwaukee, WI, General Mitchell Intl, RNAV (GPS) RWY 7R, Orig
Milwaukee, WI, General Mitchell Intl, RNAV (GPS) RWY 7L, Orig
Milwaukee, WI, General Mitchell Intl, RNAV (GPS) RWY 13, Orig
Milwaukee, WI, General Mitchell Intl, RNAV (GPS) RWY 19L, Orig
Milwaukee, WI, General Mitchell Intl, RNAV (GPS) Y RWY 19R, Orig
Milwaukee, WI, General Mitchell Intl, RNAV (GPS) Z RWY 19R, Orig
Milwaukee, WI, General Mitchell Intl, RNAV (GPS) RWY 25L, Orig
Milwaukee, WI, General Mitchell Intl, RNAV (GPS) RWY 25R, Orig
Milwaukee, WI, General Mitchell Intl, RNAV (GPS) RWY 31, Orig

[FR Doc. 03–21766 Filed 8–27–03; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations No. 4 and 16]

RIN 0960–AF95

Revised Medical Criteria for Evaluating Amyotrophic Lateral Sclerosis

AGENCY: Social Security Administration

ACTION: Final rules.

SUMMARY: We are revising the criteria in the Listing of Impairments (the listings) that we use to evaluate Amyotrophic Lateral Sclerosis (ALS). We apply these criteria when you claim benefits based on disability under title II or title XVI of the Social Security Act (the Act). The revision provides that we will find you disabled if you have medical evidence showing that you have ALS.

Because of this change, we are also adding guidance about ALS to our listings. We are also adding ALS to the list of specific impairment categories in our regulation that provides for presumptive disability payments under title XVI.

DATES: These rules are effective August 28, 2003.

FOR FURTHER INFORMATION CONTACT: Martin Sussman, Regulations Officer, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–1767 or TTY (410) 966–5609. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet Web site, *Social Security Online,* at *http://www.socialsecurity.gov.*

Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.* It is also available on the Internet site for SSA (*i.e.*, Social Security Online): *http://www.socialsecurity.gov/regulations.*

SUPPLEMENTARY INFORMATION: For the reasons we explain below, we are revising listing 11.10, our listing for ALS, in our neurological body system listings. The new listing provides that we will find you disabled if you have medical evidence that shows that you have ALS. Because of this change, we are also making two additional changes:

- We are adding a new section 11.00G to the introductory material to the neurological listings to provide information about ALS and the evidence we need so that we can evaluate ALS under the new listing.
- We are amending § 416.934 of our regulations to include ALS on the list of ''specific impairment categories'' our field offices and State agencies use to make findings of presumptive disability under the Supplemental Security Income (SSI) program. This change will allow us to make findings of presumptive disability in claims involving allegations of ALS, without obtaining any medical evidence. We are also making a nonsubstantive technical change to the specific impairment category for Down syndrome in § 416.934, so that the category reflects the current terminology for the condition.

What Programs Do These Final Regulations Affect?

These final regulations affect disability determinations and decisions that we make under title II and title XVI of the Act. In addition, to the extent that Medicare entitlement and Medicaid eligibility are based on whether you qualify for disability benefits under title II or title XVI, these final regulations also affect the Medicare and Medicaid programs.

Who Can Get Disability Benefits?

Under title II of the Act, we provide for the payment of disability benefits if you are disabled and belong to one of the following three groups:

- Workers insured under the Act,
- Children of insured workers, and
- Widows, widowers, and surviving divorced spouses (*see* § 404.336) of insured workers.

Under title XVI of the Act, we provide for SSI payments on the basis of disability if you are disabled and have limited income and resources.

How Do We Define Disability?

Under both the title II and title XVI programs, the Act says that disability must be the result of any medically determinable physical or mental impairment or combination of impairments that is expected to result in death or which has lasted or is expected to last for a continuous period of at least 12 months. Our definitions of disability are shown in the following table:

If you file a claim under . . .	And you are . . .	Disability means you have a medically determinable impairment(s) as described above and that results in . . .
title II	an adult or child	the inability to do any substantial gainful activity (SGA).
title XVI	an individual age 18 or older	the inability to do any SGA.
title XVI	an individual under age 18	marked and severe functional limitations.

How Do We Decide Whether You Are Disabled?

To decide whether you are disabled under the Act, we use a five-step ''sequential evaluation process,'' which we describe in our regulations at §§ 404.1520 and 416.920. We follow the five steps in order and stop as soon as we can make a determination or decision. The steps are:

1. Are you working, and is the work you are doing substantial gainful activity? If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled, regardless of your medical condition or your age, education, and work experience. If you are not, we will go on to step 2.

2. Do you have a ''severe'' impairment? If you do not have an impairment or combination of impairments that significantly limits your physical or mental ability to do basic work activities, we will find that you are not disabled. If you do, we will go on to step 3.

3. Do you have an impairment(s) that meets or equals the severity of an impairment in the listings? If you do, and the impairment(s) meets the duration requirement, we will find that you are disabled. If you do not, we will go on to step 4.

4. Does your impairment(s) prevent you from doing your past relevant work? If it does not, we will find that you are not disabled. If it does, we will go on to step 5.

5. Does your impairment(s) prevent you from doing any other work, considering your residual functional capacity, age, education, and work experience? If it does, and it meets the duration requirement, we will find that you are disabled. If it does not, we will find that you are not disabled.

We use different sequential evaluation processes for children who apply for disability payments under SSI and, if you are already receiving benefits, when we are deciding whether your disability continues. See §§ 404.1594, 416.424, 416.994, and 416.994a of our regulations. However, all of these different processes also include steps that consider whether your impairment meets or medically equals one of our listings.

What Are the Listings?

The listings are examples of impairments that we consider severe enough to prevent you as an adult from doing any gainful activity. If you are a child seeking SSI benefits based on disability, the listings describe impairments that we consider severe enough to result in marked and severe functional limitations. Although the listings are contained only in appendix 1 to subpart P of part 404 of our rules, we incorporate them by reference in the SSI program in § 416.925 of our regulations, and apply them to claims under both title II and title XVI of the Act.

How Do We Use the Listings?

The listings are in two parts. There are listings for adults (part A) and for children (part B). If you are an individual age 18 or over, we apply the listings in part A when we assess your claim, and we never use the listings in part B.

If you are an individual under age 18, we first use the criteria in part B of the listings. If the listings in part B criteria do not apply, and the specific disease process(es) has a similar effect on adults and children, we then use the criteria in part A. (See §§ 404.1525 and 416.925.)

If your impairment(s) does not meet any listing, we will also consider whether it medically equals any listing; that is, whether it is as medically severe. (See §§ 404.1526 and 416.926.)

What If You Do Not Have an Impairment That Meets or Medically Equals a Listing?

We use the listings only to decide that individuals are disabled or that they are still disabled. We will never deny your claim because your impairment(s) does not meet or medically equal a listing. If you are not working and you have a severe impairment(s) that does not meet or medically equal any listing, we may still find you disabled based on other rules in the sequential evaluation process that we use to evaluate all disability claims. Likewise, we will never decide that you no longer qualify for benefits because your impairment(s) does not meet or medically equal a listing.

Also, when we conduct reviews to determine whether your disability continues, we will not find that your disability has ended because we have changed a listing. Our regulations explain that, when we change our listings, we continue to use our prior listings when we review your case, if you qualified for disability benefits or SSI payments based on our determination or decision that your impairment(s) met or medically equaled the listings. In these cases, we determine whether you have experienced medical improvement, and if so, whether the medical improvement is related to the ability to work. If your condition(s) has medically improved so that you no longer meet or medically

equal the prior listing, we evaluate your case further to determine whether you are currently disabled. We may find that you are currently disabled, depending on the full circumstances of your case. See §§ 404.1594(c)(3)(i) and 416.994(b)(2)(iv)(A). If you are a child who is eligible for SSI payments, we follow a similar rule when we decide whether you have experienced medical improvement in your condition(s). See § 416.994a(b)(2).

What Is ALS?

ALS, sometimes called Lou Gehrig's disease, is a progressive, invariably fatal neurological disease that attacks the nerve cells (motor neurons) responsible for controlling voluntary muscles.

ALS most commonly strikes people between 40 and 60 years of age. The diagnosis of ALS is based on history, clinical findings, and electrophysiological and neuroimaging studies. It is also arrived at by ruling out the existence of other neurological disorders that may have similar effects, such as neuropathy.

Eventually, all muscles under voluntary control are affected and individuals with ALS ultimately lose the ability to move their arms and legs, and the capacity to effectively swallow, speak, and breathe. Most people with ALS die from respiratory failure, usually within 3 to 5 years from the onset of symptoms. There is currently no cure for ALS.

What Did the Prior Listing for ALS Require?

The prior listing for ALS, listing 11.10, required that you have ALS with either:

- ''Significant bulbar signs'' (listing 11.10A) or
- ''Disorganization of motor function as described in 11.04B'' (listing 11.10B).

''Significant bulbar signs'' include difficulty in the ability to chew, swallow, and speak. Listing 11.04B requires ''[s]ignificant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station''; in other words, inability to use both of your upper extremities effectively or to walk effectively.

Why Are We Revising the Listing for ALS?

We are revising listing 11.10 because we have determined that it is not necessary to include the requirements in paragraphs A and B of prior listing 11.10. We expect that these final rules will simplify and expedite our adjudication of claims filed by individuals with ALS.

We receive very few applications based on ALS, and we approve almost all of them at the first level of our decisionmaking process. For example, in calendar year 2002 we received a total of only 1,384 claims based on ALS under titles II and XVI, and the State agencies that review disability claims for us allowed 1,324, or almost 96 percent of them, at the initial level of our administrative review process. The vast majority of the people who appealed their initial determinations denying their claims were also found disabled. In 2002, the State agencies found disabled about 80 percent of the people with claims based on ALS who asked for a reconsideration of their initial determinations. There were similar approval rates for every year since 1999.

There has also been significant Congressional action to help people with ALS qualify for benefits and services as quickly as possible. For example, in 2000, Congress amended the Act to provide that people who are disabled with ALS do not have to wait until they have received benefit payments under title II for 24 months before they can qualify for Medicare, as do all other people who are entitled to disability benefits under title II. See section 226(h) of the Act. These rules will help some people who are disabled with ALS to qualify for Medicare sooner.

We have decided that the simplest and fastest way to process claims of individuals with ALS without sacrificing the quality of our disability determinations and decisions is to revise the listing to provide that anyone who shows that he or she has ALS, established by clinical and laboratory findings, will be found disabled.

Why Are We Adding ALS to § 416.934 of Our Regulations?

The Act and our regulations provide that we may make SSI payments to you for up to 6 months on the basis of presumptive disability before we make a formal determination about whether you are disabled. You must also meet all other eligibility requirements before we may make presumptive disability payments. See section 1631(a)(4) of the Act and § 416.932 of our regulations. (There are no provisions in the Act that would allow us to make presumptive disability payments under title II.) Under § 416.933 of our regulations, we explain that we make these payments if there is a high degree of probability that we will find that you are disabled when we make our formal determination. If our formal determination is that you are not disabled, the Act provides that you do not have to pay us back.

We may make findings of presumptive disability with or without medical evidence. Section 416.934 of our regulations provides a list of ''specific impairment categories'' that we use to find presumptive disability without medical evidence. For example, we may make a finding of presumptive disability without medical evidence based on an allegation of Down syndrome. A person meets a listing for Down syndrome (10.06 or 110.06) simply by showing medical evidence establishing that he or she has non-mosaic Down syndrome. Therefore, there is a high degree of probability that we will find people who allege Down syndrome disabled. The new rules for ALS are similar. There is a high degree of probability that we will find people who have ALS disabled when we make our formal determination because everyone who applies for SSI and who has medical evidence showing that they have ALS will be found disabled under revised listing 11.10.

When Will We Start To Use These Final Rules?

We will apply the final rules starting today.

As is our usual practice when we make changes to our regulations, we will apply these final rules to the claims of applicants for benefits that are pending at any stage of our administrative review process, including any claims that are pending administrative review after remand from a Federal court.

What Revisions Are We Making?

We are adding a new section 11.00G to the introductory material in the neurological body system section of our listings. The new section contains three paragraphs. Section 11.00G1 provides some basic information about ALS. Sections 11.00G2 and 11.00G3 provide information about how ALS is diagnosed and the information we need to establish that you meet the requirements of revised listing 11.10. The language of paragraphs 11.00G2 and 11.00G3 is based on language we use in the introductory material to the Down syndrome listings (sections 10.00A and B, and 110.00A and B) and the introductory material to our immune system listings regarding documentation of HIV infection (sections 14.00D and 114.00D).

We are revising listing 11.10 to provide that, if you have a diagnosis of ALS established by the medical evidence described in section 11.00G,

we will find that you are disabled. We are not adding a corresponding listing in part B of our listings, the listings we use to evaluate people who are under 18 years old, because ALS is rare in children. We will use revised listing 11.10 to evaluate all people with ALS, including people who are under age 18, as we did under the prior listing.

As already noted, we are also adding a new paragraph (i) to § 416.934 to allow us to make findings of presumptive disability without medical evidence in cases involving allegations of ALS. Together with this addition, we are also making minor editorial changes for context and to update one of our rules. We needed to revise paragraph (g) near the end of prior § 416.934 to remove the word ''and'' at the end of the section because paragraph (h) is no longer the last paragraph in the section. In addition, we are changing the language of paragraph (g) from ''Allegation of Down's syndrome (Mongolism)'' to ''Allegation of Down syndrome.'' This is the current terminology for the condition.

Regulatory Procedures

Pursuant to section 702(a)(5) of the Act, 42 U.S.C. 902(a)(5), the Social Security Administration follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its Notice of Proposed Rulemaking (NPRM) procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. In the case of these rules, we have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiving the NPRM procedures.

As we have noted above, we receive very few claims each year based on ALS. In light of the nature of ALS, we find disabled at the initial level of our administrative review process about 96 percent of people who apply for disability benefits under title II and title XVI based on the condition. Many of the remaining few people whose claims are denied initially are found disabled on appeal. Ultimately, we find that almost all people who apply based on ALS are disabled. We expect that the changes we are making in these rules will simplify and expedite our processing of claims based on ALS. The main differences between these rules and our prior rules are that a small number of people who would be required to appeal an unfavorable determination under our prior rules will no longer have to do so, and a very small number of people whose claims were denied incorrectly under our prior rules will now properly be found to be disabled. Consequently, we find that prior notice and comment is unnecessary with respect to these rules.

We also find that good cause exists for waiving the APA's notice-and-comment rulemaking procedures because use of notice-and-comment rulemaking procedures would be contrary to the public interest. In light of the serious consequences caused by ALS, ultimately, we find that almost all people who apply for disability benefits based on the condition are disabled. The serious consequences caused by ALS are also reflected in Congress' judgment, set out in section 226(h) of the Act, to eliminate for individuals who are disabled with ALS the normal 24-month Medicare waiting period that applies to people who are found disabled under title II of the Act. The changes we are making in these rules will allow us to make more timely determinations of disability for individuals with a progressive and invariably fatal disorder. The changes we are making in these rules will also help to implement Congress' judgment that individuals who are disabled under title II of the Act based on ALS should also receive immediate entitlement to Medicare rather than having to wait 24 months. It is critical that we issue these rules as soon as possible so that more people can qualify as quickly as possible for Medicare benefits and other services. Likewise, the small number of individuals who file applications for SSI will be able to benefit from the presumptive eligibility provisions of these rules. For these reasons, we find that use of the APA's notice-and-comment rulemaking procedures is contrary to the public interest in this instance.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, as provided for by 5 U.S.C. 553(d)(3). For the reasons that we have discussed above, we find that it is in the public interest to make these rules effective upon publication.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were subject to OMB review.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final rules contain reporting requirements at sections 11.00G and 11.10. The public reporting burden is accounted for in the Information Collection Requests for the various forms that the public uses to submit the information to SSA. Consequently, a 1-hour placeholder burden is being assigned to the specific reporting requirement(s) contained in these rules. We are seeking clearance of the burden referenced in these rules because the rules were not considered during the clearance of the forms. An Information Collection Request has been submitted to OMB. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments should be submitted to the Office of Management and Budget at the following fax number and to the Social Security Administration at the following address or fax number:

Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202–395–6974.

Social Security Administration, Attn: SSA Reports Clearance Officer, 1338 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, Fax Number: 410–965–6400.

Comments can be received for between 30 and 60 days after publication of this notice and will be most useful if received by SSA within 30 days of publication.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping

requirements, Supplemental Security Income.

Dated: July 22, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set forth in the preamble, subpart P of part 404 of chapter III of title 20 of the Code of Federal Regulations is amended as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

Appendix 1 to Subpart P of Part 404—[Amended]

■ 2. Add new section 11.00G to section 11.00 in part A of appendix 1 and revise section 11.10 to read as follows:

Appendix 1 to Subpart P of Part 404—Listing of Impairments

* * * * *

11.00 Neurological

* * * * *

G. *Amyotrophic Lateral Sclerosis (ALS).* 1. Amyotrophic lateral sclerosis (ALS), sometimes called Lou Gehrig's disease, is a progressive, invariably fatal neurological disease that attacks the nerve cells (motor neurons) responsible for controlling voluntary muscles. Eventually, all muscles under voluntary control are affected, and individuals with ALS ultimately lose their ability to move their arms and legs, and their capacity to swallow, speak, and breath. Most people with ALS die from respiratory failure. There is currently no cure for ALS, and most treatments are designed only to relieve symptoms and improve the quality of life.

2. Diagnosis of ALS is based on history, neurological findings consistent with the diagnosis of ALS, and electrophysiological and neuroimaging testing to rule out other impairments that may cause similar signs and symptoms. The diagnosis may also be supported by electrophysiological studies (electromyography or nerve conduction studies), but these tests may be negative or only suggestive of the diagnosis. There is no single test that establishes the existence of ALS.

3. For purposes of 11.10, documentation of the diagnosis must be by generally accepted methods consistent with the prevailing state of medical knowledge and clinical practice. The evidence should include documentation of a clinically appropriate medical history, neurological findings consistent with the diagnosis of ALS, and the results of any electrophysiological and neuroimaging testing.

* * * * *

11.10 *Amyotrophic lateral sclerosis* established by clinical and laboratory findings, as described in 11.00G.

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

■ 3. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c), and (d)(1), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), and (d)(1), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

■ 4. In § 416.934, revise paragraph (g) and add new paragraph (i) to read as follows:

§ 416.934 Impairments which may warrant a finding of presumptive disability or presumptive blindness.

* * * * *

(g) Allegation of Down syndrome.

* * * * *

(i) Allegation of amyotrophic lateral sclerosis (ALS, Lou Gehrig's disease).

[FR Doc. 03–22016 Filed 8–27–03; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 2003N–0346]

Food Labeling: Ingredient Labeling of Dietary Supplements That Contain Botanicals

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulation on declaring botanical ingredients in dietary supplements to incorporate by reference the latest editions of two books. Currently, the regulation incorporates by reference *Herbs of Commerce* (1992) and the *International Code of Botanical Nomenclature (Tokyo Code) 1994*. FDA is replacing the references to these editions with the 2000 editions of the same books. This action is intended to provide industry with current and more comprehensive references to use in identifying on product labels the common or usual name of each botanical ingredient contained in dietary supplements. In addition, FDA is incorporating new statutory restrictions on the use of the word ''ginseng'' in dietary supplement labeling. Finally, FDA is making minor wording changes in its regulation on declaring botanical ingredients in dietary supplements. These changes are intended to improve the reader's understanding, consistent with the principles of plain English, or to be more technically accurate, consistent with internationally accepted botanical terminology. FDA is issuing a direct final rule for this action because FDA expects there will be no significant adverse comments on the rule. Elsewhere in this issue of the **Federal Register**, FDA is publishing a companion proposed rule through the usual notice-and-comment rulemaking process. If FDA receives significant adverse comment on either rule, FDA intends to withdraw the direct final rule and proceed with the rulemaking. The companion proposed rule and direct final rule are substantively identical.

DATES: This rule is effective January 1, 2006. Submit written or electronic comments on this direct final rule by November 12, 2003. If FDA receives no significant adverse comments within the specified comment period, the agency intends to publish a document in the **Federal Register** confirming the effective date of this direct final rule. If the agency receives any timely significant adverse comments, FDA intends to publish a document in the **Federal Register** withdrawing this direct final rule before its effective date. The Director of the Office of the Federal Register approves the incorporation by reference, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, of certain publications in 21 CFR 101.4(h) as of January 1, 2006.

ADDRESSES: Submit written comments on this direct final rule to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Victoria Lutwak, Office of Nutritional Products, Labeling, and Dietary Supplements, Center for Food Safety and Applied Nutrition (HFS–810), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2375.

SUPPLEMENTARY INFORMATION:

I. Background

A. Rulemaking Process

FDA has determined that the subject of this rulemaking is suitable for a direct final rule because it does not involve controversial regulatory changes and FDA does not anticipate receiving any significant adverse comments. This direct final rule has a companion proposed rule addressing the same topic published in the proposed rules section of this issue of the **Federal Register**. The direct final rule and its companion proposed rule are substantively identical. The proposed rule provides the procedural framework to finalize the rule in the event that the direct final rule is withdrawn because FDA receives significant adverse comment.

A significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or why it would be ineffective or unacceptable without a change. In determining whether a significant adverse comment is sufficient to terminate a direct final rulemaking, FDA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered adverse under this procedure. A comment recommending additional changes in the rule will not be considered a significant adverse comment, unless the comment states why the rule would be ineffective without the recommended revision. In addition, if a significant adverse comment applies to an amendment, paragraph, or section of this rule and that provision can be severed from the remainder of the rule, FDA may adopt as final those provisions of the rule that are not the subject of a significant adverse comment.

The comment periods for the direct final rule and its companion proposed rule run concurrently. We have identified and discussed the regulatory changes in the preambles to both rules. Any comments received under the direct final rule will be treated as comments regarding the proposed rule and vice versa. FDA is publishing this direct final rule because the rule does not contain controversial changes and FDA does not anticipate receiving significant adverse comments about it. If no significant adverse comments are received in response to either rule, FDA will take no further action on the proposed rule. Instead, after the comment period ends, FDA intends to publish a document in the **Federal Register** to confirm the January 1, 2006, effective date of the direct final rule. This is the applicable uniform effective date for compliance with food labeling requirements published in the **Federal Register** (see the **Federal Register** of December 31, 2002 (67 FR 79851), designating January 1, 2006, as the effective date for food labeling regulations issued between January 1, 2003, and December 31, 2004). However, if FDA receives significant adverse comment on either rule, FDA will withdraw the direct final rule and will proceed to respond to all comments received on both rules under the companion proposed rule using the usual notice-and-comment procedures. A full description of FDA's policy on direct final rule procedures appears in a guidance document published in the **Federal Register** on November 21, 1997 (62 FR 62466).

B. Current Regulatory and Legislative Requirements Related to Direct Final Rule Amendments

FDA issued a final rule entitled ''Food Labeling: Statement of Identity, Nutrition Labeling and Ingredient Labeling of Dietary Supplements'' in the **Federal Register** on September 23, 1997 (62 FR 49826). This rule incorporated by reference under § 101.4(h) (21 CFR 101.4(h)) the two books entitled *Herbs of Commerce* (1992) (Ref. 1) and *International Code of Botanical Nomenclature (Tokyo Code) 1994* (Ref. 2) for industry's use in identifying on product labels the common or usual name of each botanical ingredient contained in dietary supplements. Both books were incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

Section 101.4(h) currently requires that a dietary supplement that contains one or more botanical ingredients (including fungi and algae) state the common or usual name for each of these ingredients on the label. This common or usual name must be consistent with the ''standardized common name'' listed in *Herbs of Commerce* (1992) for the corresponding plant from which the ingredient is derived. Therefore, the ''standardized common name'' of each botanical used as an ingredient of a dietary supplement is its common or usual name for labeling purposes.

Current § 101.4(h)(2) also requires that if no standardized common name for a particular botanical ingredient is listed in *Herbs of Commerce* (1992), the label must state the Latin binomial name of the plant from which that ingredient is derived. All names in Latin binomial form must be stated on the label in accordance with internationally accepted rules on nomenclature, such as those found in the *International Code of Botanical Nomenclature (Tokyo Code) 1994*. Further, the name in Latin binomial form must include the designation of the author or authors who published the Latin name [hereafter referred to as author citation] when a positive identification of the dietary ingredient cannot be made without identifying the author(s).

Since 1997, both of the books incorporated by reference for use by industry in the labeling of dietary supplements that contain botanical ingredients have been updated and now the 2000 editions supersede the earlier ones. *Herbs of Commerce, 2nd Edition* (2000) (Ref. 3) added standardized common names for approximately 1,500 more botanicals than were included in the earlier edition, and changed the standardized common names for approximately 140 botanicals listed in the earlier edition. The *International Code of Botanical Nomenclature (Saint Louis Code) 2000* (Ref. 4) reflects the International Botanical Congress's latest decisions on the rules for the scientific naming of plants. Botanical nomenclature is an evolving science that is influenced by new discoveries and the correction of past misidentifications of plants.

Further, in 2002, Congress passed and the President signed into law the Farm Security and Rural Investment Act of 2002 (Public Law 107–171) [hereafter referred to as the Farm Bill]. Section 10806 of the Farm Bill amended the misbranding provisions in section 403 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343) by adding a new paragraph (u), which states that a dietary supplement is misbranded ''[i]f it purports to be or is represented as ginseng, unless it is an herb or herbal ingredient derived from a plant classified within the genus Panax.'' Section 10806(b)(1)(A) of the Farm Bill states that ''the term 'ginseng' may only be considered to be a common or usual name (or part thereof) for any herb or herbal ingredient derived from a plant classified within the genus Panax.'' Section 10806(b)(1)(B) further provides that ''only labeling or advertising for herbs or herbal ingredients classified within that genus may include the term 'ginseng.'''

The Farm Bill requirements about use of the term ''ginseng'' are in effect today because the law is self-executing. Congress did not direct FDA to issue regulations in order to implement these new requirements; therefore, industry must comply with them currently.

C. Updated Books To Be Incorporated by Reference

Herbs of Commerce, 2nd Edition (2000) establishes a ''standardized common name,'' expressed primarily in English, for each plant used in commerce, including fungi and algae. However, in a few instances, the standardized common name is expressed in another language or is the same as the plant's Latin binomial name (i.e., genus and species) when that name has become common. For example, the Spanish word ''mate'' is the standardized common name for the plant ''*Ilex paraguariensis* A. St.-Hil.,'' and the Latin binomial name ''*Phyllanthus amarus*'' is the standardized common name for the plant ''*Phyllanthus amarus* Schumach.'' The standardized common name generally applies to the whole plant, but in some instances it applies to a plant part. For example, the standardized common names ''mace'' and ''nutmeg'' pertain specifically to the plant parts ''aril'' and ''seed,'' respectively, of the same plant ''*Myristica fragrans* Houtt.''

All standardized common names listed in *Herbs of Commerce, 2nd Edition* (2000) are printed in boldface letters. In this book under ''Section One: Latin Binomials,'' each plant name is listed first alphabetically by its Latin binomial name. The plant's corresponding standardized common name is stated after the acronym ''SCN'' on the first indented line of text underneath its Latin binomial name. Under ''Section Two: Standardized Common Names,'' each plant name is listed first alphabetically by its standardized common name. The plant's corresponding Latin binomial name is stated on the first indented line of text underneath its standardized common name.

In addition to the standardized common name, *Herbs of Commerce, 2nd Edition* (2000) identifies the currently recognized Latin binomial name and four other categories of common names for each of the plants listed, as applicable. These other categories are:

- ''botanical synonym,''
- ''Ayurvedic name,''
- ''pinyin name,'' and
- ''other common name.''

The botanical synonym, if any, represents one or more examples of other Latin binomial names that have been broadly used for the plant in the past. The Ayurvedic name, if any, generally represents the plant's Sanskrit name; however, the Hindi name may be cited if the plant is primarily known by it instead. The pinyin name, if any, may be one or more of the plant's Chinese common names. Other common names, if any, represent any additional names frequently used for the plant.

The ''standardized common name'' is different and distinct from all of the other categories of common names for a plant. There is only one *standardized* common name that is selected for each plant listed in *Herbs of Commerce, 2nd Edition* (2000); however, there may be several names cited within one or more of the other categories of common names that are associated with the same plant.

The *International Code of Botanical Nomenclature (Saint Louis Code) 2000* (the Code) establishes the current internationally accepted rules that govern the scientific naming of plants, including fungi and algae. The scientific name, which identifies the plant's genus and species, is expressed in Latin and applies to the whole plant without exception. The Latin binomial name of a plant is followed by the name(s) of the person(s) who described and published the plant name in accordance with the Code's guidelines. The Code refers to such notation about authors as an ''author citation.''

II. Direct Final Rule

FDA is revising § 101.4(h) to substitute *Herbs of Commerce, 2nd Edition* (2000) for its 1992 edition, and the *International Code of Botanical Nomenclature (Saint Louis Code) 2000* for its 1994 edition, as books incorporated by reference. Requirements on how these references are to be used for dietary supplement labeling purposes remain the same and are not affected by this direct final rule, with one minor exception.

Currently, § 101.4(h)(2) uses the phrase ''such as'' when referring to the *International Code of Botanical Nomenclature* as a reference that industry may use to ensure that any Latin binomial name of a botanical ingredient listed on the label of a dietary supplement conforms to the internationally accepted rules of botanical nomenclature. As presently worded, the regulation could be interpreted to allow other references to be consulted for this purpose. We are revising the language in the Code of Federal Regulations (CFR) to make the *International Code of Botanical Nomenclature* the only reference that may be used on the rules for determining and formatting the Latin binomial name of a botanical ingredient for dietary supplement labeling purposes. This book is internationally recognized by botany experts from nations around the world as the foremost authoritative reference on botanical nomenclature. We are not aware of any comparable reference that comprehensively addresses the rules on the scientific naming of plants and has as broad international support. The *International Code of Botanical Nomenclature* is regulated by the Nomenclature Section of an International Botanical Congress. This group meets under the auspices of the International Union of Biological Sciences, of which the U.S. National Research Council/National Academy of Sciences is a member. The XVI International Botanical Congress brought together more than 4,000 scientists from more than 100 countries at its most recent meeting held in Saint Louis, MO in 1999 when the *International Code of Botanical Nomenclature (Saint Louis Code) 2000* was voted on and adopted. Therefore, to be in harmony with this international cooperation and to be consistent with FDA's science-based philosophy, this direct final rule is incorporating by reference the *International Code of Botanical Nomenclature (Saint Louis Code) 2000* as the one that industry must follow on the rules to determine and format the Latin binomial names of any botanical ingredients stated on dietary supplement labels.

Some dietary supplements may contain a botanical ingredient that is not listed in the 2000 edition of *Herbs of Commerce* and therefore does not have a standardized common name. Like the former regulation, in such cases the direct final rule is requiring that the common or usual name for that botanical ingredient listed on the label be accompanied, in parentheses, by the Latin binomial name of the plant from which it is derived. When needed to positively identify the botanical ingredient, the direct final rule is continuing to require that the Latin binomial name also must include the author citation, stated in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*.

FDA is aware that there may be instances when a botanical ingredient belongs to a subspecies or variety of a species that is not listed in the 2000 edition of *Herbs of Commerce*. In those cases, the Latin binomial name and author citation alone will not identify the subspecies or variety of that species. Although not a requirement, FDA encourages industry to voluntarily state the following on dietary supplement labels directly after the Latin binomial name when needed to positively identify a botanical ingredient below the species level: The name of any

applicable subspecies, variety, or other subdivision and its corresponding author citation, stated in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*.

FDA is further revising § 101.4(h) to incorporate statutory restrictions on the use of the term ''ginseng'' that were imposed by section 10806 of the Farm Bill. Specifically, the direct final rule includes the following statement in § 101.4(h): ''The use of the term 'ginseng' as a common or usual name (or part thereof) for any dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus '*Panax*.'''

Finally, FDA is making minor wording changes in § 101.4(h) to improve the reader's understanding, consistent with the principles of plain English, or to improve technical accuracy, consistent with internationally accepted botanical terminology. Examples of changes we are making to improve the reader's understanding are using simpler language throughout, substituting the word ''must'' for ''shall,'' and dividing very long sentences into shorter ones. To be more technically accurate, the direct final rule replaces the current wording under § 101.4(h)(2) that refers to the ''designation of the author or author(s) who published the Latin name'' with the term ''author citation'' to refer to the ''name(s) of the person(s) who described and published the Latin binomial name in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*.'' For technical clarity, the direct final rule also adds the notation ''(i.e., genus and species)'' after the first reference to the term ''Latin binomial name'' under § 101.4(h).

III. Use of the Incorporated References and Implementation of Pertinent Farm Bill Provisions

Over the years, FDA has received several inquiries from representatives of the dietary supplement industry about the use of *Herbs of Commerce* and the *International Code of Botanical Nomenclature*. These books are references for industry to use in determining the common or usual name of each botanical ingredient or to consult on the rules for determining and formatting any required Latin binomial names corresponding to the botanical ingredients declared on dietary supplement labels. The act of ''incorporation by reference,'' however, does not imply that all of the botanicals that have standardized common names listed in *Herbs of Commerce* or that follow the scientific naming rules found in the *International Code of Botanical Nomenclature* are safe for consumption as dietary supplements or other foods by man or other animals. Citation of these books in the CFR is specific and limited to the sole purpose of identifying authoritative references for industry to use to determine the correct plant nomenclature. Neither reference addresses the safety or uses of plants.

This direct final rule focuses only on the naming of botanical ingredients of dietary supplements for labeling purposes. It is the responsibility of manufacturers and distributors to ensure that the particular botanicals they use as ingredients of dietary supplements are safe for human consumption, do not contain contaminants, are properly identified on the label, are legally marketed, and conform to all governing regulations.

In addition, *Herbs of Commerce, 2nd Edition* (2000) does not represent an authoritative compilation of botanical dietary ingredients that were marketed in the United States before October 15, 1994 (i.e., botanicals that are not new dietary ingredients under section 413(c) of the act (21 U.S.C. 350b(c))). The book's disclaimer explains that the publisher did not verify whether or not the companies that submitted botanical information for inclusion in this reference had valid documentation that supported such marketing. The book's disclaimer further states: ''The listing of a particular species of plant in this work is not, therefore, in and of itself, evidence that such species was marketed in the United States prior to October 15, 1994'' (Ref. 3, page xx). This direct final rule does not confer FDA endorsement of *Herbs of Commerce, 2nd Edition* (2000) for any other purpose than to serve as a reference on the common or usual names of botanical ingredients contained in dietary supplements.

In most cases, *Herbs of Commerce, 2nd Edition* (2000) assigns a unique standardized common name to each plant. However, the book indicates that the same standardized common name is given to more than one plant when the plants are used interchangeably in commerce. There are over 100 instances in *Herbs of Commerce, 2nd Edition* (2000) where the same standardized common name applies to two or more different species, subspecies, or varieties of the same genus of plant.

In other cases in *Herbs of Commerce, 2nd Edition* (2000), a name listed under one of the categories of common names (e.g., Pinyin names) for one botanical may be shared by another botanical from a different genus of plants. For example, the botanical *Ammi majus* L. has the standardized common name bishop's weed, whereas bishop's weed is also listed as the other common name for the botanical *Aegopodium podagraria* L. that has the standardized common name ash weed.

Confusion and mistakes in the identity of botanicals can be caused when the ingredients have the same or similar common names. Therefore, it is important that manufacturers know a botanical's true identity, including its Latin binomial name with author citation and its biological and chemical properties, before substituting one botanical for another as an ingredient of a dietary supplement. It is the responsibility of manufacturers and distributors to ensure that any botanical used as an ingredient of a dietary supplement or other food marketed in the United States is safe for consumption and complies with all applicable requirements of the act.

The ''standardized common names'' of botanicals listed in both the 1992 and 2000 editions of *Herbs of Commerce* are consistent with the Farm Bill's definition of the term ''ginseng.'' However, both editions note that the term ''ginseng'' has been used as part of ''other common names'' associated with botanicals from genera other than *Panax*, including blue ginseng, lesser ginseng, prince ginseng, and Siberian ginseng. We remind industry that names that include the term ''ginseng'' may be used as the common or usual name for a botanical ingredient only if the botanical is derived from the plant genus ''*Panax*.''

IV. Environmental Impact

FDA has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environment assessment nor an environmental impact statement is required.

V. Regulatory Impact Analysis

FDA has examined the economic implications of this direct final rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The

Executive order classifies a regulatory action as significant if it meets any one of a number of specified conditions, including: having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. The Executive order also classifies a regulatory action as significant if it raises novel legal or policy issues. We have determined that this direct final rule is not a significant regulatory action as defined by the Executive order.

A. Regulatory Options

We have identified the following major regulatory alternatives or options: (1) Take no action, (2) take the direct final rule action, and (3) take an alternative action. These options are explained in the next section of this document.

1. Option One: Take No Action

The incorporation by reference citations under § 101.4(h) would remain unchanged. Under this option, the following requirements and provisos apply:

• The label of a dietary supplement containing a botanical ingredient must use the ''standardized common name'' for that botanical ingredient listed in the 1992 edition of *Herbs of Commerce*.

• For a botanical ingredient not listed in the 1992 edition of *Herbs of Commerce*, the label could use any appropriately descriptive name as the common or usual name, with the following exception. In accordance with section 10806 of the Farm Bill, the use of the term ''ginseng'' as a common or usual name (or part thereof) for any dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus ''*Panax*.''

• Any common or usual name *other than* the ''standardized common name'' for a botanical ingredient may be used only if the botanical ingredient is not listed in *Herbs of Commerce* (1992), and must be accompanied by the Latin binomial name of the plant from which it is derived.

• The Latin binomial name must be stated in accordance with the internationally accepted rules on botanical nomenclature, such as those found in the *International Code of Botanical Nomenclature (Tokyo Code) 1994*.

• The Latin binomial name of a botanical ingredient also must include the designation of the author or authors who published the Latin name, when a positive identification of the botanical cannot be made in its absence.

2. Option Two: Take the Direct Final Rule Action

The direct final rule option would update the incorporation by reference citations under § 101.4(h). Under this option, the following requirements and provisos apply:

• The label of a dietary supplement containing a botanical ingredient must use the ''standardized common name'' for that botanical ingredient listed in the 2000 edition of *Herbs of Commerce*.

• For a botanical ingredient not listed in the 2000 edition of *Herbs of Commerce*, the label could use any appropriately descriptive name as the common or usual name, with the following exception. As in Option One, in accordance with section 10806 of the Farm Bill, the use of the term ''ginseng'' as a common or usual name (or part thereof) for any dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus ''*Panax*.''

• Any common or usual name other than the ''standardized common name'' for a botanical ingredient may be used only if the botanical ingredient is not listed in *Herbs of Commerce* (2000), and must be accompanied by the Latin binomial name of the plant from which it is derived.

• The Latin binomial name must be stated in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*.

• When needed to positively identify the botanical ingredient, the Latin binomial name also must include the author citation (i.e., name(s) of the person(s) who described and published the Latin binomial name in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code), 2000*).

3. Option Three: Take an Alternative Action

This option is similar to the direct final rule option. We would still update the incorporation by reference citations under § 101.4(h), but firms would have slightly more flexibility when labeling supplements containing a botanical ingredient. Under this option, the following requirements and provisos apply:

• As in Option Two, if the ''standardized common name'' for a botanical ingredient has changed from the 1992 to the 2000 edition of *Herbs of Commerce*, firms must use the revised ''standardized common name'' listed in the 2000 edition of *Herbs of Commerce*.

• If a botanical ingredient listed in the 2000 edition of *Herbs of Commerce* was not previously listed in the 1992 edition of that reference, firms could elect to use any of the names (i.e., botanical synonym, Ayurvedic name, pinyin name, or other common name) listed for that botanical in the 2000 edition as the common or usual name, with the following exception. As in Options One and Two, in accordance with section 10806 of the Farm Bill, the use of the term ''ginseng'' as a common or usual name (or part thereof) for a dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus ''*Panax*.''

• Similar to Options One and Two, if the botanical ingredient is not listed in either the 1992 or 2000 edition of *Herbs of Commerce*, firms could use any appropriately descriptive name as the common or usual name for that ingredient with the following exception. In accordance with section 10806 of the Farm Bill, the use of the term ''ginseng'' as a common or usual name (or part thereof) for a dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus ''*Panax*.''

• As in Option Two, any common or usual name *other than* the ''standardized common name'' for a botanical ingredient may be used only if the botanical ingredient is not listed in *Herbs of Commerce* (2000), and must be accompanied by the Latin binomial name of the plant from which it is derived.

• As in Option Two, the Latin binomial name must be stated in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*.

• As in Option Two, when needed to positively identify the botanical ingredient, the Latin binomial name also must include the author citation (i.e., name(s) of the person(s) who described and published the Latin binomial name in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*).

B. Impacts of Regulatory Options

1. Option One: Take No Action

This option would retain the 1992 edition of *Herbs of Commerce* as the source for standardized common names and the 1994 edition of the *International Code of Botanical Nomenclature* as the reference on how to state the Latin

binomial names of botanical ingredients of dietary supplements. By convention, we treat the option of taking no action as the baseline for defining the costs and benefits of the other options. Therefore, we discuss the impacts of this option indirectly via the costs and benefits of the other options.

For this direct final rule, we include as part of the baseline costs for Option One (take no action) the cost of section 10806 of the Farm Bill, which restricts the use of the term ''ginseng'' in the labeling of dietary supplements as discussed under section II, Direct Final Rule, of this document. This is because the requirements of the Farm Bill are already in effect and are not dependent upon this rule for implementation.

2. Option Two: Take the Direct Final Rule Action

a. *Costs of option two.* The direct final rule would generate two basic types of costs: (1) Costs associated with changing certain dietary supplement labels and (2) potential one-time increases in product search costs for some consumers.

We estimate the first type of cost by using a model developed for that purpose by Research Triangle Institute (RTI) under contract to us (Ref. 5). This model estimates the total cost to change product labels by estimating and then adding together the following types of costs: (1) Internal administrative, (2) graphic design, (3) pre-press, (4) plate or cylinder engraving or etching, and (5) inventory disposal. The first four costs depend, in part, on the number of stockkeeping units (SKUs) involved. According to this model, dietary supplements are associated with 29,514 SKUs (Ref. 5).

The direct final rule would not affect all of these SKUs, only those associated with dietary supplements containing botanicals. We do not have direct estimates of the number of SKUs associated specifically with dietary supplements containing botanicals. However, a 1999 report by RTI on the economic characteristics of the dietary supplement industry found that herbals and botanicals made up 28 percent of sales in the dietary supplement market (Ref. 6). A statement submitted to us by the American Herbal Products Association (AHPA) noted that the *Nutrition Business Journal* ''has consistently stated that herbal products represent approximately 25 percent of the sales of all supplements'' (Ref. 7). In the following analysis, we use the 28 percent figure rather than the 25 percent figure because it is better documented and because the 28 percent figure is consistent with the phrase ''approximately 25 percent.'' In the absence of other information, we assume that the share of SKUs associated with products containing botanicals is similar to the share of sales associated with such products; that is, we assume that 28 percent of the total number of SKUs associated with dietary supplements is associated with dietary supplements containing botanicals. Therefore, we assume that approximately 8,300 SKUs (29,514 SKUs x 28 percent) are associated with dietary supplements containing botanicals.

In addition, the direct final rule would only affect dietary supplements containing the following botanicals: (1) Any of the 1,500 additional botanicals for which the 2000 edition of *Herbs of Commerce* establishes standardized common names, if the labels of those products do not already list those botanicals under those names, (2) any of the 140 botanicals that the 2000 edition of *Herbs of Commerce* lists under a different standardized common name than in the 1992 edition, and (3) any botanical that the 2000 edition of the *Herbs of Commerce* does not list and for which using the naming conventions in the 2000 edition of the *International Code of Botanical Nomenclature* would result in a different Latin binomial name or author citation than using the naming conventions in the 1994 edition.

We do not know how many Latin binomial names the 2000 edition of the *International Code of Botanical Nomenclature* has changed, because that reference contains naming conventions rather than a list of names that we could compare with another list of names. Firms may need to change the labels of products containing botanicals that were listed under the same standardized common names in both the 1992 and 2000 editions of *Herbs of Commerce*, if the firms voluntarily listed the Latin binomial names of those botanicals and the 2000 edition of the *International Code of Botanical Nomenclature* has changed those names.

We do not have information on the number of dietary supplements this direct final rule would likely affect. AHPA reportedly reviewed the labels of several hundred dietary supplements containing botanicals and found that 85 percent fully conformed to the 2000 edition of *Herbs of Commerce* (Ref. 7). Additional samples might find higher or lower rates of compliance. In addition, labels that are already in compliance with the 2000 edition of *Herbs of Commerce* might not be in compliance with the 2000 edition of the *International Code of Botanical Nomenclature*. To better reflect the uncertainty about the number of dietary supplements this direct final rule would be likely to affect, we assume it would affect between 10 and 20 percent of the 8,300 SKUs associated with botanical supplements or from 830 SKUs (8,300 SKUs x 10 percent) to 1,660 SKUs (8,300 SKUs x 20 percent). This range corresponds to an overall percentage of 3 (830 SKUs ÷ 29,514 SKUs) to 6 percent (1,660 SKUs ÷ 29,514 SKUs) of dietary supplement SKUs.

The labeling cost model we use does not base inventory disposal costs specifically on SKUs, but on the types of labels firms generally use for different types of products and assumptions about the amount of inventory remaining under different compliance periods for different types of products. We assume that the direct final rule would generate between 3 and 6 percent of the inventory disposal costs the model estimates for changing all dietary supplement SKUs.

The cost of changing product labels also varies with the amount of time we give firms to change the labels. The effective date for this direct final rule is January 1, 2006, which is the uniform effective date for food labeling regulations published between January 1, 2003, and December 31, 2004. We have chosen the uniform effective date for implementing the direct final rule in part because it provides a compliance period of at least 1 year following the publication of this rule. Under this compliance period, the label cost model estimates that the direct final rule would generate one-time relabeling costs of between $2 million (830 SKUs x $2,400 per SKU) and $7 million (1,660 SKUs x $4,200 per SKU).

In addition, the direct final rule may generate a one-time increase in product search costs for some consumers. Affected consumers would include those who currently identify desired botanical ingredients by: (1) Common or usual names that are different from the 1,500 new standardized common names listed in the 2000 edition of the *Herbs of Commerce*, (2) one of the 140 standardized common names changed by the 2000 edition of the *Herbs of Commerce*, or (3) one of the Latin binomial names changed by the 2000 edition of the *International Code of Botanical Nomenclature*. These consumers would need to learn the new names for desired ingredients. We do not know the number of affected consumers, but approximately 100 million adults (49 percent of adults times 202,493,000 adults ages 18 and older in the United States in 1999) consumed dietary supplements

containing botanicals in 1999 (Refs. 8 and 9). Probably only a small percentage of these consumers would be interested in one or more of the botanicals whose names would be affected by this direct final rule. In the absence of other information, we assume that the proportion of consumers using the botanical ingredient names that the direct final rule would change is the same as the proportion of labels bearing those names or 3 to 6 percent. These percentages correspond to 3 to 6 million consumers.

We do not know the amount of time these consumers would need to discover that they cannot locate a product containing a desired botanical ingredient by the name under which they were accustomed to finding it, investigate the cause, and discover the new name. The methods consumers would use to resolve these issues are probably: (1) Asking a salesperson, (2) reading information on current botanical names in books or the Internet, or (3) reading additional product labels or brochures, some of which might voluntarily indicate the relevant name changes. The amount of time particular consumers devote to finding ingredients that have different names will vary with their interest in the ingredient and the number of ingredients involved. Consumers interested in multiple affected ingredients would probably spend the greatest amount of time on the first change they encounter because they could use some of the information they discover about that change to deal with additional changes. For example, they might learn that names have changed and develop a method for finding the new name. We assume that each affected consumer might spend between 0 and 30 minutes to process the name changes. The average value of 1 hour of leisure time should be similar to the average value of 1 hour of working time, which was $15.66 in January 2001 (Ref. 10). Therefore, we estimate a maximum search cost increase of between $23 million (3 million x 0.5 hours x $15.66 per hour) and $47 million (6 million x 0.5 hours x $15.66 per hour). This burden is a one-time cost, because future consumers of these products would not need to switch from the old name to the new name.

Combining the two types of costs, relabeling and search costs, gives a range of total one-time costs of $25 to $54 million.

b. *Benefits of option two.* The direct final rule would reduce product search costs for consumers who currently shop for dietary supplements containing desired botanical ingredients by using Latin binomial names or the nonstandardized names that might appear along with Latin binomial names, but who would be able to use one or more of the 1,500 additional standardized common names in the 2000 edition of the *Herbs of Commerce*. The direct final rule would reduce these consumers' search costs because standardized common names tend to be shorter and more distinctive than Latin binomial names, and the same ingredients would always appear under the same standardized common name.

Other consumers who would benefit from the direct final rule are those who shop for dietary supplements containing botanical ingredients by using the standardized common names listed in the 1992 edition of *Herbs of Commerce*, but who are currently unable to differentiate desired ingredients from undesired ingredients using those standardized names. Some of these consumers might be better able to differentiate these ingredients using the more specific standardized common names in the 2000 edition. As noted previously, the 2000 edition reports that it has changed 140 names to improve specificity, accuracy, or both.

Additional consumers who would benefit are those who shop for dietary supplements containing botanical ingredients using: (a) One or more of the standardized common names that the 2000 edition of *Herbs of Commerce* has changed to improve accuracy or (b) one or more of the Latin binomial names that the 2000 edition of the *International Code of Botanical Nomenclature* has changed due to a better understanding about the taxonomic relationships between plants. These consumers shop for dietary supplements using the botanical ingredient names in the 2000 edition of *Herbs of Commerce* or stated in accordance with the rules in the 2000 edition of the *International Code of Botanical Nomenclature* but sometimes have difficulty finding those dietary supplements because the product labeling may use a name from or stated in accordance with previous editions of those texts. The direct final rule would reduce search costs for these consumers by reducing inconsistencies between the botanical names in the 2000 editions of *Herbs of Commerce* and the *International Code of Botanical Nomenclature* and the names used to refer to those botanicals on dietary supplement labels.

We do not know the number of consumers in each of these categories. Therefore, we again assume that the total number of consumers in all affected categories would be between 3 and 6 percent of the estimated 100 million consumers who used a dietary supplement containing a botanical ingredient in 1999, or 3 to 6 million consumers.

We also do not know the decrease in search costs that the consumers in each of these categories would experience. However, we estimate the possible range of total search cost reductions using three studies on consumer behavior. The first study recorded the amount of time people in drug stores spent looking at an item on the shelf before making a purchase (Ref. 11) and found that customers, on average, spent approximately 4 minutes studying a product before purchasing it. According to data from RTI, adult consumers bought an average of six units of dietary supplements containing a botanical ingredient in 1999. Therefore, this study suggests that consumers of dietary supplements containing botanicals spend an average of 24 minutes per year (six units per year x 4 minutes per unit) looking at these products on shelves before purchasing them.

The second study, called the Americans' Use of Time Project, used time diaries to study how over 3,500 adults spent their time (Ref. 12). This study found that adult Americans spent about 371 minutes per week shopping for personal consumption items in 1985, such as groceries and other household products. This study did not provide information on time spent searching specifically for dietary supplements. To estimate this time, we assume that the share of shopping time devoted to dietary supplements is proportional to the share of consumers' budgets spent on dietary supplements. According to an industry source and FDA projections, consumers spent about $4.8 billion on dietary supplements containing botanical ingredients in 1999 (Ref. 13). Consumers spent $6,250 billion on personal consumption in 1999 (Ref. 14). We do not know the personal consumption expenditures of people who specifically purchase dietary supplements containing botanicals. Therefore, we assume that the personal consumption expenditures of those consumers are 49 percent of the personal consumption expenditures of all consumers. We base this assumption on the estimate that 49 percent of adult consumers used such a supplement in 1999, and the assumption that those consumers spent about the same amount on personal consumption as did other consumers. Under these assumptions, we estimate on the basis of this study that consumers spend an average of 30 minutes per year [($4.8 billion ÷ [$6,250 billion X 0.49]) x 371 minutes per week

x 52 weeks per year] shopping for supplements containing botanicals.

The third study used hidden observers to track and record shopping time in grocery stores (Ref. 15). This study found that people spent an average of about 21 minutes shopping in the grocery store per trip to the grocery store. By combining the estimated time per trip with the Food Marketing Institute's finding that consumers average about 2.2 grocery shopping trips per week, we estimate shopping time for all grocery store purchases to be 46.2 minutes per week (2.2 trips per week x 21 minutes per trip) (Ref. 16). Again, we assume that the proportion of shopping time devoted to dietary supplements equals the proportion of grocery store expenditures on dietary supplements. In 1999, consumers spent approximately $711 billion on grocery store purchases (here defined as food, alcoholic beverages, housekeeping supplies, personal care products, and tobacco products and smoking supplies) (Ref. 17).

We again assume that 49 percent of this amount was spent by adults who consumed dietary supplements containing botanicals. Based upon this study and the stated assumptions, we estimate that consumers spend about 33 minutes per year [($4.8 billion ÷ [$711 billion X 0.49]) x 46 minutes per week x 52 weeks per year] shopping for dietary supplements containing botanical ingredients.

All of the estimates of search costs are imprecise. None of these studies looks at product search activity that does not involve shopping, such as looking up material in books or on the Internet. The grocery store and use of time studies both addressed shopping time, which includes activities other than reading product labels. Nevertheless, in the absence of additional information, we estimate that this direct final rule could reduce one's shopping time by a maximum of about 33 minutes (0.55 hours) per year. Applying this time savings to the estimated 3 to 6 million affected consumers and the average value of time of $15.66 gives maximum search cost savings of between $26 million (0.55 hours per year x 3 million x $15.66 per hour) and $52 million (0.55 hours per year x 6 million x $15.66 per hour) per year. The direct final rule, however, would not eliminate all search costs associated with dietary supplements containing botanical ingredients for consumers interested in the affected products. To reflect this fact, we assume that this direct final rule would eliminate between 10 and 20 percent of those search costs, which would result in a range of search cost savings of $3 to $10 million per year ($2.6 million x 10 percent to $52 million x 20 percent). These benefits would recur annually because they would apply whenever a consumer actively searched for products containing the relevant ingredients, unlike the one-time increases in search costs that some consumers might face because the direct final rule would change existing botanical ingredient names.

Based on the preceding discussion, we estimate this direct final rule would generate net costs in the first year of between $15 to $51 million, and net benefits of $3 to $10 million every year after the first year. Under a discount rate of 7 percent, the present value of an infinite stream of benefits of $3 million per year is $43 million ($3 million ÷ 7 percent), and the present value of an infinite stream of benefits of $10 million per year is $143 million ($10 million ÷ 7 percent). Therefore, over time, this option would generate net benefits of negative $8 million ($43 million - $51 million) to $128 million ($143 million - $15 million). The stream of benefits that would exactly offset the maximum estimated cost of $51 million to give zero net costs is $4 million ($4 million ÷ 7 percent = $57 million) per year out of the potential range of $3 to $10 million per year. Therefore, this direct final rule would probably generate net benefits.

3. Option Three: Take an Alternative Action (as described under section V.A, Regulatory Options, of this document)

As discussed under section I, Background, of this document, in addition to standardized common names and Latin binomial names, the 2000 edition of *Herbs of Commerce* includes up to four other categories of names (i.e., botanical synonyms, Ayurvedic names, pinyin names and other common names) for each plant listed, when applicable. In order to reduce the number of label and name changes that we would require under Option Two, we could allow firms using any of the 1,500 botanicals that were not listed in the 1992 edition of *Herbs of Commerce*, but that are listed in the 2000 edition, to continue to label their products as they do now, as long as the name used for a botanical ingredient meets one of the following requirements: (1) Is among the names for the respective botanical listed in the 2000 edition and complies with the Farm Bill requirement concerning the use of the term ''ginseng'' and (2) is accompanied by the corresponding Latin binomial name, stated to conform to the naming conventions of the 2000 edition of the *International Code of Botanical Nomenclature*, including the author citation when needed for a positive identification of the botanical.

a. *Costs of option three*. This option would generate the same labeling costs as Option Two, except that some firms manufacturing or labeling dietary supplements containing one or more of the 1,500 botanical ingredients for which the 2000 edition of *Herbs of Commerce* establishes new standardized common names would not need to revise the labels of those products. The product whose labels would not need to be revised are, with some exceptions, those that currently list botanical ingredients by any one of their corresponding names found in the 2000 edition of *Herbs of Commerce*. The exceptions whose labels would nonetheless need to be revised, are those with names that conflict with the Farm Bill restriction on the use of the term ''ginseng,'' or that do not state the correct Latin binomial names must be stated in accordance with the naming conventions of the 2000 edition of the *International Code of Botanical Nomenclature* and include the author citations when needed for a positive identification of the botanicals. We do not know the number of such products. Using the cost estimated for Option Two, we estimate that the label change costs for Option Three would also be between $2 and $7 million, except that the cost of this option must be the same or less than the costs of Option Two.

Option Three would also generate the same short-term increases in product search costs as Option Two, except that some consumers who currently use one of the other names listed in the 2000 edition of *Herbs of Commerce* to identify botanical ingredients would be able to continue to use those names to identify those ingredients. We do not know the number of such consumers. Using the cost estimated for Option Two, we estimate that the increase of search costs under Option Three would also be between $23 and $47 million, except that these costs must be the same or less than the corresponding costs of Option Two, because the consumers affected by this cost under Option Three are a subset of the consumers affected by this cost under Option Two.

b. *Benefits of option three*. This option would generate the same reduction in long-term search costs as Option Two, except that fewer consumers who currently shop for dietary supplements using nonstandardized names would instead be able to use standardized common names to more easily identify those ingredients in other supplements. Again, we do not have sufficiently

detailed information to distinguish the size of this benefit from that of Option Two, so we again estimate the benefits to be between $3 and $10 million per year, except that they must be the same or less than the benefits of Option Two because the source of benefits under Option Three is a subset of the sources of benefits under Option Two.

We cannot compare the net benefits of Option Three to those of Option Two because the costs and benefits of Option Three are both lower, and we do not know the relative size of the changes in costs and benefits. If, however, the costs and benefits of Option Three were below those of Option Two by the same proportion, then Option Three would probably have lower net benefits than Option Two.

VI. Regulatory Flexibility Analysis

FDA has examined the economic implications of this direct final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires us to analyze regulatory options that would minimize the economic effect of the rule on small entities. We find that this direct final rule will have a significant economic impact on a substantial number of small entities.

A. Regulatory Options

In the preceding preliminary regulatory impact analysis under section V.A, Regulatory Options, of this document, we identified the following major regulatory alternatives or options: (1) Take no action, (2) take the direct final rule action, and (3) take an alternative action. We request comments on these and any other plausible alternatives.

B. Impacts of Regulatory Options

1. Option One: Take No Action

The incorporation by reference citations under § 101.4(h) would remain unchanged. Under this option, the following requirements and provisos apply:

• The label of a dietary supplement containing a botanical ingredient must use the ''standardized common name'' for that botanical ingredient listed in the 1992 edition of *Herbs of Commerce*.

• For a botanical ingredient not listed in the 1992 edition of *Herbs of Commerce*, the label could use any appropriately descriptive name as the common or usual name, with the following exception. In accordance with section 10806 of the Farm Bill, the use of the term ''ginseng'' as a common or usual name (or part thereof) for any dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus ''*Panax*.''

• Any common or usual name *other than* the ''standardized common name'' for a botanical ingredient may be used only if the botanical ingredient is not listed in *Herbs of Commerce* (1992), and must be accompanied by the Latin binomial name of the plant from which it is derived.

• The Latin binomial name must be stated in accordance with the internationally accepted rules on botanical nomenclature, such as those found in the *International Code of Botanical Nomenclature (Tokyo Code) 1994*.

• The Latin binomial name of a botanical ingredient also must include the designation of the author or authors who published the Latin name, when a positive identification of the botanical cannot be made in its absence.

Taking no additional action beyond the current regulatory regime that we described in the previous paragraphs would have no effect on small entities relative to the status quo.

2. Option Two: Take the Direct Final Rule Action

The direct final rule action is to update the incorporation by reference citations under § 101.4(h). Under this option, the following requirements and provisos apply:

• The label of a dietary supplement containing a botanical ingredient must use the ''standardized common name'' for that botanical ingredient listed in the 2000 edition of *Herbs of Commerce*.

• For a botanical ingredient not listed in the 2000 edition of *Herbs of Commerce*, the label could use any appropriately descriptive name as the common or usual name, with the following exception. As in Option One, in accordance with section 10806 of the Farm Bill, the use of the term ''ginseng'' as a common or usual name (or part thereof) for any dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus ''*Panax*.''

• Any common or usual name *other than* the ''standardized common name'' for a botanical ingredient may be used only if the botanical ingredient is not listed in *Herbs of Commerce* (2000), and must be accompanied by the Latin binomial name of the plant from which it is derived.

• The Latin binomial name must be stated in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*.

• When needed to positively identify the botanical ingredient, the Latin binomial name also must include the author citation (i.e., name(s) of the person(s) who described and published the Latin binomial name in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*).

The direct final rule would cause some small businesses to change product labels as described in the preceding regulatory impact analysis. It would not affect any other class of small entities. RTI developed a Dietary Supplement Enhanced Establishment Database (DS–EED) under contract to us. RTI based the DS–EED on our official establishment inventory and supplemented it with information from trade organizations, trade shows, and electronic databases (Ref. 6). According to these data, approximately 350 to 1,260 establishments might manufacture, repackage, or relabel supplements containing botanicals.

The Small Business Administration (SBA) defines a small business in the dietary supplement industry as a business having 500 or fewer employees. RTI traced the establishments to the parent company to determine how many establishments belonged to small firms. Based on that study, between 60 and 90 percent of the 1,260 establishments belong to small firms, or between approximately 700 and 1,200 establishments. However, the RTI study did not provide information on the total number of firms associated with those establishments.

In a letter to FDA, AHPA claims that between 600 and 1,100 firms produce at least one dietary supplement product containing an herbal ingredient and are also involved in labeling products (Ref. 7). The letter also states that the editor of the *Nutrition Business Journal* told APHA that between 95 and 96 percent of dietary supplement companies have 500 or fewer employees. This information appears consistent with the information on establishments provided by RTI. We do not know how many of these firms would actually need to revise their labels. Therefore, we estimate that the direct final rule would affect between 0 and 1,045 small firms.

We assume that these firms would face 96 percent of the maximum total labeling costs for all firms we estimated in this document's preceding section V.B.2.a, Costs of Option Two, which were $2 to $7 million. Therefore, we estimate that this direct final rule would generate one-time costs for small firms

of between $2 and $7 million, after rounding to the nearest million.

3. Option Three: Take an Alternative Action

This option is similar to the direct final rule action. We would still update the incorporation by reference citations under § 101.4(h), but firms would have slightly more flexibility when labeling dietary supplements containing a botanical ingredient. Under this option, the following requirements and provisos apply:

• As in Option Two, if the ''standardized common name'' for a botanical ingredient has changed from the 1992 to the 2000 edition of *Herbs of Commerce*, firms must use the revised ''standardized common name'' listed in the 2000 edition of *Herbs of Commerce*.

• If a botanical ingredient listed in the 2000 edition of *Herbs of Commerce* was not previously listed in the 1992 edition of that reference, firms could elect to use any of the names (i.e., botanical synonym, Ayurvedic name, pinyin name, or other common name) listed for that botanical in the 2000 edition as the common or usual name, with the following exception. As in Options One and Two, in accordance with section 10806 of the Farm Bill, the use of the term ''ginseng'' as a common or usual name (or part thereof) for a dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus ''*Panax*.''

• Similar to Options One and Two, if the botanical ingredient is not listed in either the 1992 or 2000 edition of *Herbs of Commerce*, firms could use any appropriately descriptive name as the common or usual name for that ingredient with the following exception. In accordance with section 10806 of the Farm Bill, the use of the term ''ginseng'' as a common or usual name (or part thereof) for a dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus ''*Panax*.''

• As in Option Two, any common or usual name *other than* the ''standardized common name'' for a botanical ingredient may be used only if the botanical is not listed in *Herbs of Commerce* (2000), and must be accompanied by the Latin binomial name of the plant from which it is derived.

• As in Option Two, the Latin binomial name must be stated in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*.

• As in Option Two, when needed to positively identify the botanical ingredient, the Latin binomial name also must include the author citation (i.e., name(s) of the person(s) who described and published the Latin binomial name in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*).

We discussed this option under this document's preceding section V.B.3.a, Costs of Option Three, and concluded that it would generate lower relabeling costs for all firms than the direct final rule action. However, we were unable to estimate the size of the cost reduction and again concluded that labeling costs could be anywhere from $2 to $7 million, except that the costs of this option must be the same or less than the costs of Option Two. These conclusions also hold for small firms, which make up the vast majority of the affected firms. Although Option Three would reduce the impact of the direct final rule on small firms, it would also reduce the benefits by an unknown amount. We have decided not to pursue this option because the potential cost savings for small firms would be modest and we do not know the impact on benefits.

VII. Paperwork Reduction Act of 1995

FDA concludes that the labeling requirements in this document are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Rather, these dietary supplement labeling requirements are a ''public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

VIII. Unfunded Mandates Reform Act of 1995

Section 202(a) of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation).

The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for the direct final rule, because the direct final rule is not expected to result in any one-year expenditure that would exceed $100 million adjusted for inflation. The current inflation-adjusted statutory threshold is $112 million.

IX. Federalism

FDA has analyzed this direct final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule has a preemptive effect on State law. Section 4(a) of the Executive order requires agencies to:

> * * * construe * * * a Federal Statute to preempt State law only where the statute contains an express preemption provision, or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.

Section 403A of the act (21 U.S.C. 343–1) is an express preemption provision. That section provides that ''no State or political subdivision of a State may directly or indirectly establish under any authority or continue in effect as to any food in interstate commerce'' certain food labeling requirements, unless an exemption is provided by the Secretary of Health and Human Services (and, by delegation, FDA). Relevant to this rule, one such requirement that States and political subdivisions may not adopt is ''any requirement for the labeling of food of the type required by section * * * 403(i)(2) that is not identical to the requirement of such section,'' (section 403A(a)(2) of the act). Another such requirement that States and political subdivisions may not adopt is ''any requirement for the labeling of food of the type required by section * * * 403(i)(1) that is not identical to the requirement of such section,'' (section 403A(a)(3) of the act). Prior to the effective date of this direct final rule, this provision operates to preempt States from imposing requirements concerning the use of botanical names in dietary supplement labeling if the requirements concerning the use of those names are not identical to those contained in § 101.4(h) (incorporating by reference *Herbs of Commerce* (1992) and the *International Code of Botanical Nomenclature (Tokyo Code) 1994*). Specifically, the preemptive effect applies to requirements concerning the use of botanical names in the common or usual name on the label of a dietary supplement (section 403(i)(1) of the act) and to requirements for listing individual botanical ingredients on the label of a dietary supplement (section 403(i)(2) of the act). Once this direct final rule becomes effective, States will be preempted from imposing any such requirements concerning the use of

botanical names on dietary supplement labels that are not identical to those required by the new rule, which amends the existing § 101.4(h) to incorporate by reference *Herbs of Commerce* (2000) and the *International Code of Botanical Nomenclature (Tokyo Code) 2000*, and to incorporate new Federal legislative restrictions on the use of the term ''ginseng'' in dietary supplement labeling.

Section 403A(a)(2) to (a)(3) of the act displaces both State legislative requirements and State common-law duties (*Medtronic* v. *Lohr*, 518 U.S. 470, 503 (1996) (Breyer, J., concurring in part and concurring in the judgment); *id.* at 510 (O'Connor, J., joined by Rehnquist, C. J., Scalia, J., and Thomas, J., concurring in part and dissenting in part); *Cipollone* v. *Liggett Group, Inc.*, 505 U.S. 504, 521 (1992) (plurality opinion); *id.* at 548–49 (Scalia, J., joined by Thomas, J., concurring in part in the judgment and dissenting in part)). Although this rule has preemptive effect in that it would preclude States from adopting statutes, issuing regulations, or adopting or enforcing any requirements, including State tort-law imposed requirements, that are not identical to the requirements of this rule, this preemptive effect is consistent with what Congress set forth in section 403A of the act.

Section 4(e) of the Executive order states that ''when an agency proposes to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings.'' Similarly, section 6(c) of the Executive order states that:

> * * * to the extent practicable and permitted by law, no agency shall promulgate any regulation that has federalism implications and that preempts state law, unless the agency, prior to the formal promulgation of the regulation
> * * * consulted with State and local officials early in the process of developing the proposed regulation.

This requirement, that FDA provide the States with an opportunity for appropriate participation in this rulemaking, has been met. This rule updates and makes minor changes to a rule that was first proposed through full notice-and-comment rulemaking procedures in 1995 and finalized in 1997. During the comment period prior to the issuance of the 1997 final rule, and after the publication of the final rule, the agency received no comments, correspondence, or other communications from any State or local government concerning preemption of an existing legislative or common-law requirement. In its consultation with states prior to the publication of this direct final rule, FDA was not informed about any State requirements that would be in conflict with the Federal requirements in this rule, and no States expressed concerns over the rule's preemptive effect. Moreover, FDA is providing an opportunity for State and local officials to comment through this rulemaking, and intends to withdraw the direct final rule if significant adverse comments are received.

In conclusion, the agency believes that it has complied with all of the applicable requirements under the Executive order, and has determined that the preemptive effects of this rule are consistent with Executive Order 13132.

X. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. This comment period runs concurrently with that for the companion proposed rule. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. FDA will consider any comments received on either this direct final rule or the companion proposed rule to be comments received on both rules.

XI. Effective Date

FDA periodically establishes, by final rule in the **Federal Register**, uniform effective dates for compliance with food labeling regulations (see, e.g., the **Federal Register** of December 31, 2002 (67 FR 79851), designating the effective date of January 1, 2006, for food labeling regulations issued between January 1, 2003, and December 31, 2004). FDA intends to make this direct final rule effective on January 1, 2006, the uniform effective date for compliance with food labeling regulations published between January 1, 2003, and December 31, 2004. FDA will publish a document in the **Federal Register** to confirm the effective date of this direct final rule, if FDA receives no significant adverse comments on it or its companion proposed rule.

XII. References

Copies of the following references have been placed on display and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday at the Division of Dockets Management (see **ADDRESSES**). FDA has verified the Web site addresses, but is not responsible for subsequent changes to the Web sites after this document publishes in the **Federal Register**.

1. Foster, Steven, editor, *Herbs of Commerce*, American Herbal Products Association, Austin, TX, 1992.
2. Greuter, W., editor (chairman), *International Code of Botanical Nomenclature (Tokyo Code) 1994*, adopted by the 15th International Botanical Congress, Koeltz Scientific Books, D–61453 Königstein, Germany, 1994.
3. McGuffin, Michael, managing editor, *Herbs of Commerce, 2nd Edition*, American Herbal Products Association, Silver Spring, MD, 2000.
4. Greuter, W., editor (chairman), *International Code of Botanical Nomenclature (Saint Louis Code) 2000*, adopted by the 16th International Botanical Congress, Koeltz Scientific Books, D–61453 Königstein, Germany, 2000.
5. *FDA Labeling Cost Model: Final Report*, Research Triangle Institute (RTI) International, April 2002, Revised.
6. *Economic Characterization of the Dietary Supplement Industry*, Research Triangle Institute (RTI), March 1999, p. 5–1.
7. Letter from Michael McGuffin, President, American Herbal Products Association, to Rhonda R. Kane, Consumer Safety Officer, FDA, May 13, 2002, pp. 1–6 with 3 attachments.
8. ''Consumer Use of Dietary Supplements,'' Prevention Magazine Survey, Table A, *Prevention Magazine*, 2000, p. 13.
9. *Statistical Abstract of the United States: 2000*, Table Number 13—Resident Population by Sex and Age: 1999, U.S. Census Bureau, Washington, DC, p. 14. Obtained data at the Internet site *http://www.census.gov/prod/2001pubs/statab/sec01.pdf* on June 19, 2002.
10. *National Employment, Hours, and Earnings*, Bureau of Labor Statistics, U.S. Department of Labor, Washington, DC. Obtained data from the Internet site *http://data.bls.gov/cgi-bin/srgate* on August 14, 2002. To view the data used, enter the number EES00510006 in the series id window, select the year 2001–2002 in the years to report window, and select the button ''retrieve data.''
11. ''The Power of Persuasion at the Moment of Truth,'' *Drug Store News*, 19(20):3–8, 22, and 24, December 8, 1997.
12. Robinson, J. P. and G. Godbey, *Time for Life: The Surprising Ways Americans Use Their Time*, Second Edition, The Pennsylvania State University Press, University Park, PA, 1997, Appendix A, 1985 column, categories 30 to 39, pp. 355 and 356.
13. Guthrie, J. F., K. M. Koehler, and R. A. Scharff: *Trends in the Consumption of Dietary Supplements 1994–2000*, Table 11–Growth in Market Size and Per Capita Consumption of Dietary Supplements, 1994–2000, Panel A, Unpublished document, Center for Food Safety and Applied Nutrition, FDA, Washington, DC, July 12, 2000, p. 29.

14. *Economic Report of the President*, Table B–16—Personal Consumption Expenditures, 1959–2001, U.S. Government Printing Office, Washington, DC, February 2002. Obtained data at the Internet site *http://w3.access.gpo.gov/usbudget/fy2003/sheets/b16.xls* on August 14, 2002.

15. ''Customer Behavior: How Consumers Shop,'' *Progressive Grocer*, December 1992, pp. 62–64.

16. ''A Shopping for Health Report, 1998: A Look at the Self-Care Movement,'' *Food Marketing Institute*, Research Department, Washington, DC, and *Prevention Magazine*, Research Department, Emmaus PA, 1998, p. 2.

17. *Consumer Expenditures in 1999*, Report 949, Table A—Average Annual Expenditures of All Consumer Units and Percent Changes, Consumer Expenditure Survey, 1997–99, Bureau of Labor Statistics, U.S. Department of Labor, Washington, DC, May 2001, p. 3. Obtained data from the Internet site *http://stats.bls.gov/cex/csxann99.pdf* on July 25, 2002.

List of Subjects in 21 CFR Part 101

Food labeling, Incorporation by reference, Nutrition, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

■ 1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371; 42 U.S.C. 243, 264, 271.

■ 2. Section 101.4 is amended by revising paragraph (h) to read as follows:

§ 101.4 Food; designation of ingredients.

* * * * *

(h) The common or usual name of a botanical ingredient (including fungi and algae) listed on the label of a dietary supplement must be consistent with the ''standardized common name'' listed in *Herbs of Commerce, 2nd Edition* (2000) for the plant from which the ingredient is derived. The use of the term ''ginseng'' as a common or usual name (or part thereof) for any dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus ''*Panax*.'' *Herbs of Commerce, 2nd Edition* (2000) is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this book may be obtained from the American Herbal Products Association, 8484 Georgia Ave., suite 370, Silver Spring, MD 20910, 301–588–1171, FAX: 301–588–1174, e-mail: *ahpa@ahpa.org*. Copies also may be examined at the Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(1) The listing of the common or usual name on the label must be followed by statements of:

(i) The part of the plant (e.g., root, leaves) from which the dietary ingredient is derived (e.g., ''Garlic bulb'' or ''Garlic (bulb)''), except that this designation is not required for algae. The name of the part of the plant must be expressed in English (e.g., ''flower'' rather than ''flos''); and

(ii) The Latin binomial name (i.e., genus and species) of the plant from which the botanical ingredient is derived, stated in parentheses, when no ''standardized common name'' for the plant is listed in *Herbs of Commerce, 2nd Edition* (2000). In such cases, this Latin binomial name may be listed before the part of the plant and must be stated in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*. When needed to positively identify the botanical ingredient, the Latin binomial name also must include the author citation (i.e., name(s) of the person(s) who described and published the Latin binomial name in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*). The *International Code of Botanical Nomenclature (Saint Louis Code) 2000*, a publication of the International Association for Plant Taxonomy, is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this book may be obtained from Koeltz Scientific Books, D–61453 Königstein, Germany; University Bookstore, Southern Illinois University, Carbondale, IL 62901–4422, 618–536–3321, FAX: 618–453–5207, e-mail: *siu@bkstr.com*; and from Lubrecht & Cramer, 18 East Main St., Port Jervis, NY 12771, 800–920–9334, FAX: 800–920–9334, e-mail: books@lubrechtcramer.com. Copies also may be examined at the Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(2) On labels of single-ingredient dietary supplements that do not include an ingredient list, the identification of the Latin binomial name, when needed, and the part of the plant may be prominently placed on the principal display panel or information panel, or included in the nutrition label.

Dated: August 14, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–21980 Filed 8–27–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Etodolac

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Fort Dodge Animal Health, Division of American Cyanamid Co. The supplemental NADA provides for a 500-milligram (mg) tablet size of etodolac for oral use in dogs.

DATES: This rule is effective August 28, 2003.

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

SUPPLEMENTARY INFORMATION: Fort Dodge Animal Health, Division of American Cyanamid Co., P.O. Box 1339, Fort Dodge, IA 50501, filed a supplement to NADA 141–108 that provides for a 500-mg tablet size of ETOGESIC (etodolac) Tablets used for the management of pain and inflammation associated with osteoarthritis in dogs. The supplemental application is approved as of May 8, 2003, and the regulations are amended in 21 CFR 520.870 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm.

1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 520

Animal drugs.

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

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

§ 520.870 [Amended]

■ 2. Section 520.870 *Etodolac* is amended in paragraph (a) by removing ''150 or 300'' and by adding in its place ''150, 300, or 500''.

Dated: August 13, 2003.

Steven D. Vaughn,

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

[FR Doc. 03–21835 Filed 8–27–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Lincomycin; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Veterinary Laboratories, Inc. The ANADA provides for the use of lincomycin injectable solution in swine for the treatment of infectious arthritis and mycoplasma pneumonia. Additional action is also being taken because we did not specify the concentration of lincomycin solution approved under the ANADA in the final rule that published in the **Federal Register** of May 14, 2002.

DATES: This rule is effective August 28, 2003.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: *lluther@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Veterinary Laboratories, Inc., 12340 Santa Fe Dr., Lenexa, KS 66215, filed ANADA 200–315 that provides for use of Lincomycin (lincomycin hydrochloride monohydrate) Injection in swine for the treatment of infectious arthritis and mycoplasma pneumonia. Veterinary Laboratories, Inc.'s Lincomycin Injection is approved as a generic copy of Pharmacia & Upjohn Co.'s LINCOMIX Injectable, approved under NADA 034–025. The ANADA is approved as of April 2, 3003, and the regulations are amended in 21 CFR 522.1260 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

Section 522.1260 is also being revised to specify the concentration of lincomycin solutioin approved under ANADA 200–274 (67 FR 34387, May 14, 2002).

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

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 522

Animal drugs.

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

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

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

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

■ 2. Section 522.1260 is amended by revising paragraphs (a) and (b) to read as follows:

§ 522.1260 Lincomycin.

(a) *Specifications.* Each milliliter of solution contains lincomycin hydrochloride monohydrate equivalent to:

(1) 25, 50, 100, or 300 milligrams (mg) lincomycin.

(2) 25, 100, or 300 mg lincomycin.

(3) 300 mg lincomycin.

(b) *Sponsors.* See sponsors in § 510.600(c) of this chapter for uses as in paragraph (e) of this section.

(1) No. 000009 for use of concentrations in paragraph (a)(1) of this section as in paragraph (e) of this section.

(2) No. 000857 for use of concentrations in paragraph (a)(2) of this section as in paragraph (e)(2) of this section.

(3) No. 046573 for use of concentration in paragraph (a)(3) of this section as in paragraph (e)(2) of this section.

* * * * *

Dated: August 7, 2003.

Linda Tollefson,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 03–21986 Filed 8–27–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA86

Coordination of Benefits Between TRICARE and the Department of Veterans Affairs

AGENCY: Department of Defense.

ACTION: Final rule; withdrawal.

SUMMARY: The Department of Defense published a final rule on Coordination

of Benefits Between TRICARE and the Department of Veterans Affairs. This rule should not have been published in accordance with the Regulatory Review Plan, therefore, this document is published to withdraw the rule. It will, however, be republished upon approval by the Office of Management and Budget.

DATES: The rule published on Tuesday, August 19, 2003 is withdrawn as of Tuesday, August 19, 2003.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum 703–601–4722 ext. 109.

Dated: August 21, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison, Department of Defense.

[FR Doc. 03–21987 Filed 8–27–03; 8:45 am]

BILLING CODE 5001–03–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[GN Docket No. 01–74; FCC 01–364]

Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59)

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Commission adopted new rules on the reallocation and service rules for the 698–746 MHz spectrum band (Lower 700 MHz Band). Certain rules contained new and modified information collection requirements and were published in the **Federal Register** on February 6, 2002. This document announces the effective date of the published rules.

DATES: The amendment to § 27.50 published at 67 FR 5511, February 6, 2002, became effective on July 30, 2002.

FOR FURTHER INFORMATION CONTACT: Nancy J. Brooks, Office of Engineering and Technology, Policy and Rules Division, (202) 418–2454.

SUPPLEMENTARY INFORMATION: On July 30, 2002, the Office of Management and Budget (OMB) approved the information collection requirements contained in Section 27.50 pursuant to OMB Control No. 3060–1008. Accordingly, the information collection requirements contained in these rules became effective on July 30, 2002.

Federal Communications Commission

William F. Caton,

Deputy Secretary.

[FR Doc. 03–22069 Filed 8–27–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2689, MM Docket No. 01–84, RM–10067]

Television Broadcast Service; Bay City, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Vista Communications, Inc. and Pelican Broadcasting Company, Inc. substitutes channel 46+ for channel 61+ at Bay City, Michigan. *See* 66 FR 20128, April 19, 2001. TV channel 46+ can be allotted to Bay City with a plus offset in compliance with the principal community coverage requirements of § 73.610 at coordinates 43–26–07 N. and 84–26–12 W. However, the allotment of channel 46+ does not provide protection to the DTV channel 46 allotments at Sarnia, Hanover and Straford, Ontario. Nevertheless, Canadian concurrence in the allotment of channel 46+, as a specially negotiated allotment, has been received since Vista Communications could limit its power in the direction of Sarnia, Hanover and Straford to avoid prohibited overlap. With this action, this proceeding is terminated.

DATES: Effective October 9, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–84, adopted August 18, 2003, and released August 25, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Television broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

■ 2. Section 73.606(b), the Table of Television Allotments under Michigan, is amended by removing TV channel 61+ and adding TV channel 46+ at Bay City.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–22014 Filed 8–27–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 02–12480; Notice 2]

[RIN 2127–AI86]

Federal Motor Vehicle Safety Standards; Head Impact Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Interim final rule, request for comments.

SUMMARY: This interim final rule amends the schedule for compliance by manufacturers of vehicles built in two or more stages with the upper interior head protection requirements of Federal Motor Vehicle Safety Standard No. 201, Occupant Protection in Interior Impact.

This interim final rule delays the date on which manufacturers of vehicles built in two or more stages must produce vehicles meeting the upper interior head protection performance requirements of Standard No. 201 from September 1, 2003, until September 1, 2006. The agency is issuing this interim final rule to provide time to complete a rulemaking action initiated by petitions for rulemaking requesting that NHTSA consider modifying the requirements of Standard No. 201 as they apply to vehicles manufactured in two or more stages. Since that rulemaking action may result in modification of Standard No. 201 as it applies to these multi-stage vehicles, the agency has decided to extend the compliance date until the final action is taken on the petitions. It

expects to take final action before September 1, 2006.

DATES: This interim final rule becomes effective on September 1, 2003. Comments on this interim rule are due no later than September 29, 2003.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number 12480] by any of 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 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. 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 Analyses and Notices.

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 am and 5 pm, Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT:

For non-legal issues, you may call Dr. William Fan, Office of Crashworthiness Standards, at (202) 366–4922, facsimile (202) 366–4329.

For legal issues, you may call Otto Matheke, Office of the Chief Counsel, at (202) 366–5263.

SUPPLEMENTARY INFORMATION:

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I. Background

NHTSA issued a final rule on August 18, 1995, amending Federal Motor Vehicle Safety Standard No. 201, Occupant Protection in Interior Impact, to require passenger cars, and trucks, buses and multipurpose passenger vehicles with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less, to provide head protection during a crash when an occupant's head strikes the upper interior, *i.e.,* the roof pillars, side rails, headers, and the roof itself of the vehicle. (60 FR 430341) The final rule responded to the NHTSA Authorization Act of 1991 (sections 2500–2509 of the Intermodal Surface Transportation Efficiency Act (''ISTEA''), Pub. L. 102–240). ISTEA required NHTSA to address several vehicle safety matters through rulemaking. One of these matters, set forth in section 2503(5), was improved head impact protection from interior components of passenger cars.

The final rule, which mandated compliance with the new requirements beginning on September 1, 1998, significantly expanded the scope of Standard No. 201. Previously, the standard applied to the instrument panel, seat backs, interior compartment doors, arm rests and sun visors. To determine compliance with the upper interior impact requirements, the final rule added procedures for a new in-vehicle component test in which a Free Motion Headform (FMH) is fired at certain target locations on the upper interior of a vehicle at an impact speed of up to and including 24 km/h (15 mph). Data collected from a FMH impact are translated into a value known as a Head Injury Criterion (HIC) score. The resultant HIC must not exceed 1000.

The standard, as further amended on April 8, 1997 (62 FR 16718), provided manufacturers with four alternate phase-in schedules for complying with the upper interior impact requirements. First, as set forth in S6.1.1, manufacturers could comply by having the following percentages of their production meet the upper interior impact requirements: 10 percent of production on or after September 1, 1998 and before September 1, 1999; 25 percent of production on or after September 1, 1999 and before September 1, 2000, 40 percent of production on or after September 1, 2000 and before September 1, 2001, 70 percent of production on or after September 1, 2001 and before September 1, 2002, and 100 percent of production after September 1, 2002.

Second, an alternative schedule set forth in S6.1.2 provided that manufacturers could comply by meeting the following phase-in schedule: 7 percent of the vehicles manufactured on or after September 1, 1998 and before September 1, 1999; 31 percent of vehicles manufactured on or after September 1, 1999 and before September 1, 2000; 40 percent of vehicles manufactured on or after September 1, 2000 and before September 1, 2001; 70 percent of vehicles manufactured on or after September 1, 2001 and before September 1, 2002; and 100 percent of all vehicles manufactured after September 1, 2002.

Third, under a third phase-in schedule set forth in S6.1.3, manufacturers did not have to produce any complying vehicles before September 1, 1999. However, all vehicles produced on or after that date had to comply.

Fourth, S6.1.4 of the April 8, 1997 final rule provided that multi-stage vehicles produced after September 1, 2002, were required to comply.

II. Petitions for Rulemaking and the June 2002 Interim Final Rule

The Recreation Vehicle Industry Association (RVIA) filed a petition for rulemaking on October 4, 2001 requesting that the agency modify Standard No. 201 to exclude conversion vans and motor homes with gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less from the application of the upper interior head protection requirements of the Standard. The National Truck Equipment Association (NTEA) filed a petition for rulemaking on November 27, 2001 seeking similar relief for vehicles manufactured in two or more stages. Both petitions requested that NHTSA extend the existing phase-in for manufacturers of multi-stage vehicles (*i.e.,* the fourth one described above) from September 1, 2002 to March 1, 2004. By letters dated March 28 and April 5, 2002, NHTSA indicated it was granting the petitions. The agency is currently embarking on a rulemaking proceeding to address the issues raised in the petitions.

NHTSA published an interim final rule in the **Federal Register** (67 FR 41348, June 18, 2002) extending the date by which vehicles manufactured in two or more stages must comply with the upper interior head protection requirements. As we explained in the

preamble to the June 18, 2002 interim final rule, the agency found that the RVIA and NTEA petitions raised questions regarding NHTSA's earlier estimates of the compliance costs that the upper interior head protection requirements imposed on multi-stage manufacturers. We indicated that some of the points raised by the RVIA and NTEA could have merit, including the possibility that NHTSA had overestimated the degree by which cooperative and component, rather than full vehicle, testing could lower compliance costs. We also observed that incomplete vehicle manufacturers who supply unfinished vehicles to intermediate and final stage manufacturers appeared to be certifying smaller areas of the upper interior of the vehicles than was anticipated when the upper interior head protection requirements were promulgated.

The Regulatory Flexibility Act of 1980 requires agencies to evaluate the potential impacts of their proposed and final rules on small businesses. When NHTSA issued the final rule establishing the upper interior head impact protection requirements of Standard No. 201 in August 1995, the agency determined that the new requirements would impose a burden on small manufacturers, but that this burden would not result in a significant economic impact. The October 2001 petition filed by RVIA and the November 2001 petition filed by NTEA disputed the agency's position that compliance with the upper interior head protection requirements of Standard No. 201 would not be unduly burdensome. Both petitioners argued that efforts by their member companies to meet the upper interior requirement suggest that NHTSA's prior estimates may have been incorrect.

The member companies of RVIA and NTEA are manufacturers who purchase incomplete vehicles from major manufacturers to serve as the basis for specialty vehicles to meet certain uses and markets. As such, they may face a variety of challenges in certifying that their vehicles meet applicable safety standards. To afford final stage manufacturers sufficient leadtime to comply with the new upper interior head protection requirements, the agency's August 18, 1995 final rule stated that final stage manufacturers did not have to meet the standard until the last year of the phase-in. Nonetheless, our June 2002 interim final rule indicated that NHTSA could, when establishing the aforementioned deadline, have underestimated the difficulties faced by final stage manufacturers in meeting the new requirements.

In particular, we indicated that cooperative testing—which we had considered as one option for reducing costs when we issued the final rule in 1995—might not be practicable depending on the uniqueness of the vehicle interior and the features incorporated into it. In this market, where the uniqueness of the interior and the features incorporated into that interior are primary concerns of buyers, competitors are not likely to share their designs. We also observed that reducing compliance test costs by testing components outside of a vehicle rather than testing a complete vehicle may not be as practical as we had estimated in the 1995 final rule. Finally, we noted that final stage manufacturer modifications, such as raising or replacing the original roof, would likely result in relocation of certain specified target areas and reduce the ability of these manufacturers to rely on the incomplete vehicle manufacturer's certification that the vehicle met the standard for the target areas at their original location.

Because NHTSA needed further time to complete rulemaking, we issued an interim final rule extending the existing compliance date for final stage manufacturers to September 1, 2003. Although RVIA and NTEA requested that the agency extend the compliance date to March 1, 2004, we indicated our belief that such an extension was not necessary and that any future rulemaking could further modify the deadline established by this interim final rule.

III. Comments in Response to the June 2002 Interim Final Rule

The comment period for the June 2002 interim final rule closed on August 19, 2002. NHTSA did not receive any comments regarding the June 2002 interim final rule. However, as noted below in Section V, the agency has received a comment opposing additional extensions to the compliance date as requested by the January 20, 2003 RVIA and February 6, 2003 NTEA petitions for rulemaking.

IV. RVIA and NTEA Petitions For Rulemaking

On January 20, 2003, RVIA submitted a petition for rulemaking requesting that NHTSA grant an extension of the September 1, 2003 compliance date applicable for vehicles built in two or more stages to September 1, 2004. The organization stated that conversion vehicle and motorhome manufacturers are often small business entities who need additional time to develop required safety devices and designs. These small businesses also, according to RVIA, would need additional time to conduct research and certification testing on their vehicles. RVIA noted that since NHTSA was still completing rulemaking that may involve changes to the Standard as it applies to multi-stage vehicles, its members could not complete all the necessary testing to conform to any new requirements. Accordingly, RVIA indicated that an additional extension would be appropriate.

On February 6, 2003, NTEA submitted a petition for rulemaking seeking to extend the compliance date for vehicles built in two or more stages from September 1, 2003 to a future date that would provide its members with sufficient time to comply with any new requirements imposed by the pending rulemaking. In support of its request, NTEA observed that the preamble to the agency's June 18, 2002 interim final rule indicated that extension of the compliance deadline for multi-stage manufacturers was necessitated by NHTSA's ongoing consideration of potential changes to the upper interior head protection requirements applicable to these manufacturers. Since NHTSA had not yet completed the rulemaking action that led to the original grant of an extension, NTEA stated that the agency should further extend the compliance date to complete the rulemaking and provide manufacturers of multi-stage vehicles with sufficient leadtime to meet any new requirements issued as a result of that rulemaking.

The petition also referred NHTSA to some of the issues raised by NTEA in its November 2001 petition. In particular, NTEA reiterated that its members are small businesses with limited financial resources. Given these limited resources and its estimate that compliance would impose costs of more than $160,000,000 on the work truck industry, NTEA argued that requiring its members to meet the existing upper interior head protection provisions of Standard No. 201 is economically impracticable. Moreover, NTEA argued again that the volume of testing that would have to be completed by its members—who produce large numbers of unique vehicles customized for different applications—also made compliance impracticable.

Since NHTSA had not completed its ongoing rulemaking action and would not do so in time for its members to comply with the September 1, 2003 compliance date, NTEA requested that NHTSA extend the compliance deadline for multi-stage manufacturers to an

appropriate date after NHTSA completes the pending rulemaking.

V. Interim Final Rule

When NHTSA issued the final rule establishing the upper interior head impact protection requirements of Standard No. 201 in August 1995, the agency determined that the new requirements would impose a burden on small manufacturers, but that this burden would not result in a significant economic impact. The petitions filed by RVIA and NTEA in the fall of 2001 disputed this finding and submitted information suggesting that NHTSA's prior estimate of the burdens imposed by the head impact protection requirements may have been incorrect. NHTSA has granted the NTEA and RVIA petitions and is now engaged in a rulemaking action. Unfortunately, NHTSA's consideration of the aforementioned rulemaking action has not yet been concluded. The compliance date set by our June 2002 interim final rule—September 1, 2003—is now only weeks away.

Given the imminence of the September 1, 2003 compliance date and the fact that NHTSA has not yet issued any formal proposal responding to the original NTEA and RVIA petitions for rulemaking, the agency has determined that it is appropriate to again extend the deadline. In order to minimize the possibility of an additional extension, this interim final rule extends the compliance date for vehicles built in two or more stages for an additional three years. Accordingly, vehicles built in two or more stages are required to meet the upper interior head protection requirements of Standard No. 201 on or after September 1, 2006. However, as we noted when issuing the June 2002 interim final rule, future rulemaking can, if needed, further modify the deadline.

The agency believes that there is good cause to find that providing notice and comment in connection with this rulemaking action is impracticable, unnecessary, and contrary to the public interest. NHTSA notes that time constraints prevent the completion of notice and comment rulemaking before the current September 1, 2003 compliance date. Moreover, this interim final rule does not alter any provisions other than the foregoing compliance date. Substantive changes to Standard No. 201, if any, will be addressed in a subsequent rulemaking.

Although NHTSA did not receive any comments regarding the extension of the compliance date contained in our June 2002 interim final rule, the agency has received a letter opposing further extensions. A manufacturer of motorhomes and camper vans, Home And Park Motorhomes (Home and Park), indicated that it understood that RVIA was requesting that NHTSA further extend the September 1, 2003 compliance date. Based on its belief that NHTSA had extended the compliance date to be sure that final stage manufacturers would have the opportunity to purchase incomplete vehicles offering pass-through certification, Home and Park indicated that it had brought its vehicles into compliance in anticipation of having to comply with the upper interior head protection requirements by September 1, 2003. Having expended considerable resources to do so, Home and Park stated that further extensions of the compliance deadline would penalize conscientious manufacturers and delay introduction of safer interiors for recreational vehicles.

NHTSA is aware that delaying the compliance date could arguably result in a decrease in safety if multi-stage manufacturers that have the capability to meet the upper interior head protection requirements do not do so. When we issued our June 2002 interim final rule, we estimated that the safety benefit of requiring one year's production of vehicles manufactured in two or more stages to meet the upper interior head protection requirements is approximately 18–24 equivalent lives saved each year for the front seats and one equivalent life saved each year for the rear seats. Although this estimate may overstate the safety risks of extending the compliance date due to the fact that many recreational vehicles and conversion vans are not driven as much as more conventional vehicles, these benefits could be lost during the period of the extension.

The potential safety loss would only be realized if multi-stage manufacturers would be able to meet the upper interior head protection requirements while maintaining production. When issuing our June 2002 interim final rule, we indicated that NHTSA may have underestimated the costs and difficulties faced by final stage manufacturers in meeting the upper interior head protection requirements. While Home and Park indicated that it had brought its vehicles into compliance, it appears to have done so based on the expectation that the compliance date was extended to increase the availability of pass-through certification. However, a limit on the ability to rely on pass-through certification was recognized by NHTSA as but one source of the challenges facing final stage manufacturers. Our June 2002 interim final rule cited a number of reasons why the agency believed that further relief for multi-stage manufacturers might be appropriate.

For reasons more fully discussed in our June 18, 2002 interim final rule, NHTSA has granted the NTEA and RVIA petitions and is now engaged in a rulemaking action considering whether to adopt further amendments to Standard No. 201. NHTSA has not yet resolved these issues, so this interim final rule extends the compliance date to September 1, 2006 to afford the agency time to take further action.

We note also that in extending the compliance date for vehicles built in two or more stages, NHTSA is also extending the compliance date for vehicles modified by alterers. Unlike final stage manufacturers, alterers begin with a certified vehicle and modify it to meet the needs of a particular market. Giving alterers additional time to comply with a standard allows the alterer to take a certified vehicle out of compliance, an action that NHTSA is normally reluctant to take. However, the challenges involved in meeting Standard No. 201 that are faced by final stage manufacturers also apply to alterers. If a vehicle manufacturer waits until the last possible moment to certify vehicles, alterers will not have the opportunity to do any engineering analysis to determine if the alterations affect compliance. Alterers also have limited engineering resources and testing capabilities. This may be telling where the alterer needs to change an original design to meet the demands of a particular application.

The agency requests written comments on extending the phase-in for vehicles manufactured for two or more stages. All comments submitted in response to this document will be considered by the agency. Following the close of the comment period, the agency will publish a document in the **Federal Register** responding to the comments and, if appropriate, will make further amendments to the extension of the phase-in requirements amended by this interim final rule.

VI. Public Participation

Interested persons are invited to comment on this interim final rule. It is requested, but not required, that two copies be submitted to the Office of Docket Management, Room PL–401, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15-page limit (49

CFR 553.21). This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

Written comments to the public docket must be received by September 29, 2003.

All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the above address before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date.

NHTSA will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons who wish to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Copies of all comments will be placed in the Docket for this interim final rule in the Office of Docket Management, Room PL–401, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

VII. Regulatory Analyses and Notices

A. Economic Impacts

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

This rulemaking document was not reviewed under Executive Order 12866. It is not significant within the meaning of the DOT Regulatory Policies and Procedures. It does not impose any burden on manufacturers and extends the compliance date for existing regulatory requirements for a period of three years. The agency believes that this impact is so minimal as to not warrant the preparation of a full regulatory evaluation.

B. Environmental Impacts

We have not conducted an evaluation of the impacts of this final rule under the National Environmental Policy Act. This rulemaking action extends the date by which manufacturers of vehicles built in two or more stages must comply with the upper interior head impact protection requirements of Standard No. 201. It does not impose any change that would have any environmental impacts. Accordingly, no environmental assessment is required.

C. Impacts on Small Entities

Pursuant to the Regulatory Flexibility Act, the agency has considered the impact this rulemaking will have on small entities. As this action will provide a short term benefit for small entities by delaying the compliance date, it will have a significant economic impact on a substantial number of small entities within the context of the Regulatory Flexibility Act.

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires each agency to evaluate the potential effects of a rule on small businesses. The Small Business Administration (SBA) has set size standards for determining if a business within a specific industrial classification is a small business. The Standard Industrial Classification code used by the SBA for Motor Vehicles and Passenger Car Bodies (3711) defines a small manufacturer as one having 1,000 employees or fewer.

Most of the intermediate and final stage manufacturers of vehicles built in two or more stages have 1,000 or fewer employees. This interim final rule extends the date by which these manufacturers must produce vehicles that meet the upper interior head protection requirements of Standard No. 201. Although this action does not modify those requirements, it provides these small businesses additional time to meet them. In the agency's view, issuance of this interim final rule is necessary to prevent adverse effects that may have been underestimated in a prior rulemaking establishing the requirements at issue. For this reason, this interim final rule regarding the compliance date will have a significant economic impact on a substantial number of small entities. The agency performed a Regulatory Flexibility Analysis for the previous one-year extension and placed a copy in the docket. *See* ''Final Regulatory Flexibility Analysis, Head Impact Protection, FMVSS 201,'' June 2002, Docket # 02–12480. That analysis is applicable to this three-year extension as well.

D. Federalism

E.O. 13132 requires NHTSA 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.'' E.O. 13132 defines the term ''Policies that have federalism implications'' 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.'' Under E.O. 13132, NHTSA may not issue a regulation that has federalism implication, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the proposed regulation.

This interim final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in E.O. 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This action, which extends the compliance date by which manufacturers of vehicles built in two or more stages must meet the upper interior head impact protection requirements of Standard No. 201, will not result in additional expenditures by

State, local or tribal governments or by any members of the private sector. Therefore, the agency has not prepared an economic assessment pursuant to the Unfunded Mandates Reform Act.

F. Paperwork Reduction Act

There are no information collection requirements in this rule.

G. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

H. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

If you have any responses to these questions, please forward them to Otto Matheke, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.*, the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. In meeting that requirement, we are required to consult with voluntary, private sector, consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

We are not aware of any available and potentially applicable voluntary consensus standards, *i.e.*, ones regarding the performance of vehicle interior components in protecting against head impacts. Therefore, this rule is not based on any voluntary consensus standards.

J. 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.*

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

■ In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571.201—[AMENDED]

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 21411, 21415, 21417, and 21466; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.201 is amended by revising S6.1 introductory text, S6.1.4.1, S6.1.4.2 and S6.2 introductory text to read as follows:

* * * * *

S6.1 *Vehicles manufactured on or after September 1, 1998.* Except as provided in S6.3 and S6.1.4, for vehicles manufactured on or after September 1, 1998 and before September 1, 2002, a percentage of the manufacturer's production, as specified in S6.1.1, S6.1.2, or S6.1.3 shall conform, at the manufacturer's option, to either S6.1(a) or S6.1(b). For vehicles manufactured by final stage manufacturers on or after September 1, 1998 and before September 1, 2006, a percentage of the manufacturer's production as specified in S6.1.4 shall, except as provided in S6.3, conform, to either S6.1(a) or S6.1(b). The manufacturer shall select the option by the time it certifies the vehicle and may not thereafter select a different option for the vehicle.

* * * * *

S6.1.4.1 Vehicles manufactured on or after September 1, 1998 and before September 1, 2006 are not required to comply with the requirements specified in S7.

S6.1.4.2 Vehicles manufactured on or after September 1, 2006 shall comply with the requirements specified in S7.

* * * * *

S6.2 *Vehicles manufactured on or after September 1, 2002 and vehicles built in two or more stages manufactured after September 1, 2006.* Except as provided in S6.1.4 and S6.3, vehicles manufactured on or after September 1, 2002 shall, when tested under the conditions of S8, conform, at the manufacturer's option, to either S6.2(a) or S6.2(b). Vehicles manufactured by final stage manufacturers on or after September 1, 2006 shall, except as provided in S6.3, when tested under the conditions of S8, conform, at the manufacturer's option, to either S6.2(a) or S6.2(b). The manufacturer shall select the option by the time it certifies the vehicle and may not thereafter select a different option for the vehicle.

* * * * *

Issued on August 22, 2003.

Jeffrey W. Runge,

Administrator.

[FR Doc. 03–22010 Filed 8–25–03; 2:09 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021213310–3170–02; I.D. 101702B]

RIN 0648–AP92

Individual Fishing Quota (IFQ) Program for Pacific Halibut and Sablefish; Technical Amendment

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

ACTION: Final rule; correction.

SUMMARY: This document corrects errors in the amendatory instructions and table titles of the final rule published in the **Federal Register** on July 29, 2003. That final rule implemented Amendment 72

to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (Amendment 72) and Amendment 64 to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (Amendment 64) (collectively, Amendments 72/64).

DATES: Effective August 28, 2003.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7228 or by E-mail at *patsy.bearden@noaa.gov*.

SUPPLEMENTARY INFORMATION: The final rule published in the **Federal Register** on July 29, 2003 (FR Doc. 03–19132) modified Table 14 to part 679 (68 FR 9907). However, Table 14 is a collection of three tables, each of which is included in a separate appendix to 50 CFR part 679: Tables14a, 14b, and 14c. The language contained in amendatory instruction number 9, referenced only a change in Table 14a, although text was provided that effectively modified both 14a and 14b and left 14c unchanged. This change did not reflect accurately the intended revision.

The intent of the revision in the final rule was to add the contents of Table 14c to Table 14b, remove Table 14c, and modify the contents of both Table 14a and 14b. The net effect of this action would have been to combine the Washington State Port of Landing Codes into the table containing those codes for non-Alaska ports, including Canada and the States of California and Oregon, and remove the CDQ/IFQ Primary Ports for Vessel Clearance information from Tables 14a and 14b. This correction modifies the table titles to accurately reflect the intent of the final rule.

In addition, the table title was inserted into the body of the table, rather than added to the table title. This action corrects the table titles.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: August 22, 2003.

Rebecca Lent,

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

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

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

Tables 14a and b [Amended]

■ 2. In FR Doc. 03–19132 (July 29, 2003), on page 44487, second column, second to last line, amendatory instruction 9 is corrected to read as follows:

''9. In part 679, Tables 14a and b are revised to read, and Table 14c is removed as follows:''

■ 3. On page 44487, third column, first line of the first column in Table 14a, the words ''a. Alaska:'' are removed, and the title of Table 14a is corrected to read as follows:

''Table 14a to Part 679. Port of Landing Codes: Alaska[1]''

■ 4. On page 44488, second column, second line of the first column in Table 14b, the words ''b. Non-Alaska (California, Oregon, Canada, Washington):'' are removed, and the title of Table 14b is corrected to read as follows:

''Table 14b to Part 679. Port of Landing Codes: Non-Alaska (California, Oregon, Canada, Washington''

[FR Doc. 03–22038 Filed 8–27–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 167
Thursday, August 28, 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.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 373

9 CFR Part 60

[Docket No. 02–062–2]

RIN 0579–AB50

Cost-Sharing for Animal and Plant Health Emergency Programs

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: We are extending the comment period for our proposed rule that would establish criteria to determine the Federal share of financial responsibility relative to States and other cooperators in an emergency in which an animal or plant pest or disease threatens the agricultural production of the United States. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before November 7, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–062–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–062–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–062–1'' on the subject line.

You may read any comments that we receive on Docket No. 02–062–1 in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Shea, Deputy Administrator, Policy and Program Development, APHIS, 1400 Independence Avenue, SW., Jamie L. Whitten Building, Room 316–E, Washington, DC 20250–3432; (202) 720–3668.

SUPPLEMENTARY INFORMATION:

Background

On July 8, 2003, we published in the **Federal Register** (68 FR 40541–40553, Docket No. 02–062–1) a proposed rule that would establish criteria to determine the Federal share of financial responsibility relative to States and other cooperators in an emergency in which an animal or plant pest or disease threatens the agricultural production of the United States.

Comments on the proposed rule were required to be received on or before September 8, 2003. We are extending the comment period for an additional 60 days. This action will allow interested persons additional time to prepare and submit comments.

Authority: 7 U.S.C. 7701–7772 and 8301–8317; 7 CFR 2.22, 2.80, 371.3, and 371.4.

Done in Washington, DC, this 21st day of August 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–21991 Filed 8–27–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 945

[Docket No. FV03–945–1 PR]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the Idaho-Eastern Oregon Potato Committee (Committee) for the 2003–04 and subsequent fiscal periods from $0.0026 to $0.0045 per hundredweight of potatoes handled. The Committee locally administers the marketing order which regulates the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon. Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and appropriate to administer the program. The fiscal period begins August 1 and ends July 31. The increased assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by September 12, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland,

Oregon 97204–2807; Telephone: (503) 326–2724, Fax: (503) 326–7440 or E-mail: *Barry.Broadbent@usda.gov;* or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 98 and Marketing Order No. 945, both as amended (7 CFR part 945), regulating the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Idaho-Eastern Oregon potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable potatoes beginning on August 1, 2003, and continue until amended, suspended, or terminated. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 2003–04 and subsequent fiscal periods from $0.0026 to $0.0045 per hundredweight of potatoes handled.

Section 945.40 of the order provides authority for the Committee, with the approval of the Secretary, to incur reasonable expenses for its maintenance and functioning. Section 945.41 requires the Committee to formulate an annual budget estimating its income and expenditures for the upcoming fiscal year and to present such budget to the Secretary for approval. Section 945.42(a) authorizes the Committee to assess handlers for their pro rata share of such expenses and § 945.42(b) provides that the rate of assessment be set by the Secretary based on the recommendation of the Committee. The members of the Committee are producers and handlers of potatoes grown in Idaho and Eastern Oregon. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are therefore in a position to formulate an appropriate budget and assessment rate. The assessment rate was discussed in a public meeting before the Committee members voted to recommend an increase. Thus, all directly affected persons had an opportunity to participate and provide input.

For the 1996–97 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 16, 2003, and unanimously recommended 2003–04 expenditures of $149,417 and an assessment rate of $0.0026 per hundredweight of potatoes handled, the same rate currently in effect. The Committee estimated the 2003–04 potato shipments at 36,500,000 hundredweight, which would generate $94,900 in assessment revenue. At that meeting, the Committee discussed increasing the assessment rate to respond to rising Committee expenses, declining assessment revenue, and shrinking operating reserves. After discussion, the Committee postponed any action until later in the fiscal period, believing that assessment revenue and operating reserves were sufficient to maintain Committee operations through the fiscal period.

As a consequence, the Committee conducted a telephone vote on July 18, 2003, and unanimously recommended a revised budget of $145,317 (down from $149,417) and to raise the assessment rate to $0.0045 per hundredweight of potatoes handled (up from $0.0026). In comparison, last fiscal period's budgeted expenditures were $137,094. The recommended assessment rate is $0.0019 higher than the rate currently in effect. The increase is necessary to offset an increase in salaries and operating expenses, declining potato shipments, and the depletion of operating reserves.

The major expenditures recommended by the Committee for the 2003–04 fiscal period include $95,067 for salaries and benefits, $16,500 for transportation, $13,500 for travel, $6,800 for rent and utilities, and $4,800 for office expenses. Budgeted expenses for these items in 2002–2003 were $92,144, $9,000, $14,000, $6,300, and $6,500, respectively. The transportation budget item covers the purchase of a new Committee vehicle and all of the operating and maintenance costs associated with it. The manager uses a Committee vehicle for handler compliance visits throughout the season, and other authorized Committee activities. Travel covers the cost of travel, lodging, and meals for the Committee manager and members when attending Committee meetings and conventions involving Committee authorized business.

The Committee estimates potato shipments for the 2003–04 fiscal period at 36,500,000 hundredweight, which should provide $164,250 in assessment income at the proposed assessment rate. This income would be adequate to cover budgeted expenses. The Committee estimates that monetary reserves will be approximately $33,000 at the beginning of the 2003–04 fiscal period and will potentially increase to $51,933 by the fiscal period end. The order permits an operating reserve in an amount not to exceed approximately one fiscal period's budgeted expenses (§ 945.44). Funds held in reserve would be kept within the maximum permitted by the order.

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the

Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2003–04 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 900 producers of potatoes in the production area and approximately 54 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on a three-year average fresh potato production of 35,448,000 hundredweight as calculated from Committee records, a three-year average of producer prices of $6.10 per hundredweight reported by the National Agricultural Statistics Service, and 900 Idaho-Eastern Oregon potato producers, the average annual producer revenue is approximately $240,259. It can be concluded, therefore, that most of these producers would be classified as small entities.

In addition, based on Committee records and 2002–03 f.o.b. shipping point prices ranging from $5.00 to $35.00 per hundredweight reported by USDA's Market News Service, many of the Idaho-Eastern Oregon potato handlers may ship over $5,000,000 worth of potatoes. In view of the foregoing, few of the handlers may be classified as small entities as defined by the SBA.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2003–04 and subsequent fiscal periods from $0.0026 to $0.0045 per hundredweight of potatoes handled. The Committee unanimously recommended 2003–04 expenditures of $145,317 and an assessment rate of $0.0045 per hundredweight. The proposed assessment rate is $0.0019 per hundredweight higher than the rate currently in effect. The quantity of assessable potatoes for the 2003–04 fiscal period is estimated to be 36,500,000 hundredweight. Income derived from handler assessments (approximately $164,250) would be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2003–04 fiscal period include $95,067 for salaries and benefits, $16,500 for transportation, $13,500 for travel, $6,800 for rent and utilities, and $4,800 for office expenses. Budgeted expenses for these items in 2002–2003 were $92,144, $9,000, $14,000, $6,300, and $6,500, respectively.

The assessment rate increase is necessary to offset increases in salaries and operating expenses, declining potato shipments, and the depletion of operating reserves. The Committee estimates the reserve to be $33,000 at the 2002–03 fiscal period end. At the current rate of $0.0026 per hundredweight, on the estimated potato production of 36,500,000 hundredweight for the 2003–04 fiscal period, the projected income for the 2003–04 fiscal period would be $94,900. This amount, along with the projected reserve of $33,000, would be approximately $19,417 less than required to fund the proposed 2003–04 budget and $9,194 less than the 2002–03 budgeted amount. Thus, the Committee believes that the projected assessment income at the current assessment rate and funds held in reserve would not be sufficient to fund the Committee's operations without increasing the assessment rate.

At the recommended rate of $0.0045 per hundredweight (assessment income of $164,250) and expenditures of $145,317, the Committee may increase its reserve by up to $18,933. The projected reserve would be approximately $51,933 on July 31, 2004, which the Committee determined to be both appropriate and acceptable.

The Committee considered alternate levels of assessment but determined that increasing the assessment rate to $0.0045 per hundredweight would allow the Committee to adequately fund operations and replenish the reserve to an acceptable level. The Committee decided that any assessment rate between $0.0026 per hundredweight and $0.0045 per hundredweight would not be sufficient to accomplish the Committee's goals. Prior to arriving at the budget and assessment rate recommendations, the Committee considered information from various sources, including the Committee's Finance and Executive Committees.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the producer price for the 2003–04 fiscal period could range between $4.50 and $6.00 per hundredweight of potatoes. Therefore, the estimated assessment revenue as a percentage of total producer revenue could range between 0.1 and 0.075 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, this cost would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Idaho-Eastern Oregon potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 16, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large production area commodity handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may

be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposed rule. Fifteen days is deemed appropriate because: (1) The fiscal period is August 1 to July 31 and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable potatoes handled during such fiscal period; (2) handlers usually begin shipping Idaho-Eastern Oregon potatoes on or about August 1; (3) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (4) handlers are aware of this action which was unanimously recommended by the Committee and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 945 is proposed to be amended as follows:

PART 945—POTATOES GROWN IN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 945 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 945.249 is revised to read as follows:

§ 945.249 Assessment rate.

On and after August 1, 2003, an assessment rate of $0.0045 per hundredweight is established for Idaho-Eastern Oregon potatoes.

Dated: August 22, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–21990 Filed 8–27–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 00–022–1]

Standards for Privately Owned Quarantine Facilities for Ruminants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations for the importation of ruminants into the United States to establish standards for privately owned quarantine facilities. The regulations authorize the establishment of privately operated quarantine facilities for ruminants, which are subject to approval and oversight by the Animal and Plant Health Inspection Service. However, the regulations do not provide specific standards for the approval, operation, and oversight of such facilities, with the exception of privately operated quarantine facilities for sheep or goats. Based on recent interest in establishing such facilities for cattle, we are proposing standards for privately owned quarantine facilities covering all ruminants to ensure public participation in their development and to ensure that any facilities that may be approved for this purpose operate in a manner that protects the health of the U.S. livestock population.

DATES: We will consider all comments that we receive on or before October 27, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 00–022–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–022–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 00–022–1'' on the subject line.

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

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Arnaldo Vaquer, Senior Staff Veterinarian, National Center for Import and Export, VS, APHIS, USDA, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–3277.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 govern the importation into the United States of specified animals and animal products in order to help prevent the introduction of various animal diseases into the United States. The regulations in part 93 require, among other things, that certain animals, as a condition of entry, be quarantined upon arrival in the United States. The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture operates animal quarantine facilities. We also authorize the use of quarantine facilities that are privately owned and operated for certain animal importations.

The regulations at subpart D of part 93 (9 CFR 93.400 through 93.435, and referred to below as the regulations) pertain to the importation of ruminants. Ruminants include all animals that chew the cud, such as cattle, buffaloes, sheep, goats, deer, antelopes, camels, llamas, and giraffes. Section 93.411 requires that ruminants imported into the United States be quarantined upon arrival for at least 30 days, with certain exceptions. Ruminants from Canada and Mexico are not subject to this quarantine requirement.

In § 93.412, paragraph (a) authorizes the establishment of privately operated quarantine facilities, subject to APHIS approval and oversight. Paragraph (a) provides, in part, that the ''quarantine facility must be suitable for the quarantine of such ruminants and must be approved by the Administrator prior to the issuance of any import permit.'' This paragraph also provides that APHIS will ''supervise the quarantine'' at such facilities.

Section 93.434 of the regulations contains standards for approval, operation, and APHIS oversight of privately operated quarantine facilities

for sheep or goats. The standards covering quarantine facilities for sheep or goats were first implemented in 1988 (53 FR 21794–21809, Docket No. 88–057, published June 10, 1988), based on considerable interest at that time in importing large numbers of sheep into the United States from New Zealand. Since then, privately operated quarantine facilities have been used from time to time for the importation of sheep and goats into the United States.

APHIS has recently received requests from livestock importers who wish to import cattle into the United States through private quarantine facilities. Because there are no approved privately operated quarantine facilities for cattle in operation at the present time, imported cattle subject to quarantine must enter the United States through facilities maintained by APHIS.

Given the interest in establishing private quarantine facilities for cattle, we are proposing specific standards for the approval, operation, and APHIS oversight of such facilities. The requirements contained in this proposed rule are designed to ensure that the health of the U.S. livestock population is not jeopardized by the release of unhealthy animals or communicable disease agents from quarantine facilities. We would refer to these facilities as ''privately owned'' instead of ''privately operated'' to underscore that these facilities are privately owned, operated, and financed, but subject to APHIS approval and oversight.

For purposes of consistency, we are proposing that these standards apply not only to privately owned quarantine facilities for imported cattle, but also to privately owned facilities that wish to handle other imported ruminants. Therefore, we would remove from our regulations the existing standards applicable to privately operated quarantine facilities for sheep or goats.

In this time of shrinking Federal resources, we believe that it is appropriate to allow the establishment of privately owned quarantine facilities for ruminants so long as inspection and other activities related to the quarantine are subject to APHIS oversight and direction. We further believe that these facilities, if carefully regulated and monitored by APHIS, would provide an effective and efficient means of bringing ruminants into the United States without compromising our ability to protect against the introduction of communicable animal diseases. The full text of the proposed regulations appears in the rule portion of this document. Our discussion of the proposed provisions follows.

Definitions

We are proposing to add to § 93.400 definitions for the terms *area veterinarian in charge (AVIC), Federal veterinarian, lot, lot-holding area, nonquarantine area, Office International des Epizooties (OIE), operator, privately owned medium security quarantine facility (medium security facility), privately owned minimum security quarantine facility (minimum security facility), quarantine area, State veterinarian*, and *temporary inspection facility.* We also would make several minor technical changes to the definitions of *immediate slaughter* and *recognized slaughtering establishment.*

The *area veterinarian in charge (AVIC)* would refer to the veterinary official of APHIS who is assigned by the Administrator to supervise and perform the official animal health work of APHIS in a particular State.

A *Federal veterinarian* would be defined as a veterinarian employed and authorized by the Federal Government to perform the tasks required by the regulations.

The term *lot* would be defined as a group of ruminants that, while held on a conveyance or premises, has opportunity for physical contact with each other or with each other's excrement or discharges at any time between arrival at the quarantine facility and 60 days prior to export to the United States. A *lot-holding* area would describe that area in a privately owned medium or minimum security quarantine facility in which a single lot of ruminants is held at one time.

The *nonquarantine area* would refer to that area of a privately owned medium or minimum security quarantine facility that includes offices, storage areas, and other areas outside the quarantine area, and that is off limits to ruminants, samples taken from ruminants, and any other objects or substances that have been in the quarantine area during the quarantine of ruminants.

The *Office International des Epizooties (OIE)* would refer to the international organization recognized by the World Trade Organization for setting animal health standards, reporting global animal situations and disease status, and presenting guidelines and recommendations on sanitary measures related to animal health.

We would define an *operator* as a person other than the Federal Government who owns or operates, subject to APHIS' approval and oversight, a privately owned medium or minimum security quarantine facility.

A *privately owned medium security quarantine facility (medium security facility)* would refer to a facility that:

- Is owned, operated, and financed by a person other than the Federal Government;
- Is subject to the strict oversight of APHIS representatives;
- Is constructed, operated, and maintained in accordance with the requirements for medium security facilities in § 93.412(d); and
- Provides the necessary level of quarantine services for the holding of ruminants in an indoor, vector-proof environment prior to the animals' entry into the United States. Quarantine services must include testing or observation for any OIE list A diseases and other livestock diseases exotic to the United States, as well as any other diseases, as necessary, to be determined by the Administrator.

A *privately owned minimum security quarantine facility (minimum security facility)* would refer to a facility that:

- Is owned, operated, and financed by a person other than the Federal Government;
- Is subject to the strict oversight of APHIS representatives;
- Is constructed, operated, and maintained in accordance with the requirements for minimum security facilities in § 93.412(d);
- Is used for the quarantine of ruminants that pose no significant risk, as determined by the Administrator, of introducing or transmitting to the U.S. livestock population any livestock disease that is biologically transmissible by vectors; and
- Provides the necessary level of quarantine services for the outdoor holding of ruminants, prior to the animals' entry into the United States. Quarantine services must include testing or observation for any OIE list A diseases and other livestock diseases exotic to the United States, as well as any other diseases, as necessary, to be determined by the Administrator.

The term *quarantine area* would refer to that area of a privately owned medium or minimum security quarantine facility that comprises all of the lot-holding areas in the facility and any other areas in the facility that ruminants have access to, including loading docks for receiving and releasing ruminants. The *quarantine area* also would include any areas in the facility that are used to conduct examinations of ruminants and take samples, as well as areas where samples are processed or examined.

A *State veterinarian* would be defined as a veterinarian employed and authorized by a State or political

subdivision of a State to perform the tasks required by the regulations.

The term *temporary inspection facility* would refer to a facility owned, operated, and financed by a person other than the Federal Government that is located within 1 mile of the port of entry and used for the inspection of ruminants imported into the United States in accordance with § 93.408.

We are also proposing to make several minor technical changes to the footnotes that accompany the existing definitions of immediate slaughter and recognized slaughtering establishment by providing additional information on how to find the names and addresses of the area veterinarian in charge in any State. We also would make a minor change to the definition of immediate slaughter for stylistic purposes.

Ports of Entry

Section 93.403, paragraph (g), of the regulations provides that sheep to be quarantined at privately operated facilities may be entered into the United States at any air and ocean port designated for the importation of ruminants under § 93.403(a), as well as any other international port or airport so designated by the U.S. Customs Service (now the Bureau of Customs and Border Protection, U.S. Department of Homeland Security). This provision appears in the regulations to ensure that sheep are imported into the United States only at those ports at which appropriate Federal personnel are available to provide necessary services.

We are proposing to amend § 93.403(g), including the paragraph heading, so that it applies to all ruminants, not just sheep, and so that it refers to ''privately owned quarantine facilities'' instead of ''privately operated quarantine facilities,'' for consistency with the use of the term ''privately owned quarantine facilities'' in the proposed standards to appear in § 93.412(d). These changes would clarify near what ports operators could potentially build a privately owned quarantine facility for imported ruminants.

We would make several more technical changes to § 93.403(g). First, for purposes of clarity, we would amend the phrase ''may be entered'' in § 93.403(g) by substituting the word ''imported'' in place of ''entered.'' ''Imported'' means moved into the United States, whereas ''entered'' can mean released into the commerce of the United States, which does not occur until release from quarantine. We would change the reference to ''U.S. Customs Service'' to appear as ''Bureau of Customs and Border Protection.'' We also would remove the cross references to § 93.433 and § 93.434 that appear in § 93.403(g). Section 93.433 is currently reserved and contains no regulatory text. Section 93.434 provides the standards for the approval of privately operated quarantine facilities for sheep or goats. As mentioned previously, in proposing to establish quarantine standards applicable to ruminants, we would remove from our regulations the existing standards applicable to privately operated quarantine facilities for sheep or goats.

Import Permits

Section 93.404 contains permit requirements for the importation of ruminants and ruminant test specimens for diagnostic purposes from certain regions. Paragraph (a)(1) specifies the information to be included in the application to APHIS for an import permit.

In order that we receive sufficient notice of the importer's intention to utilize the services of a privately owned quarantine facility, we would amend § 93.404(a)(1) to require that the permit application specify the name and address of the quarantine facility in cases where the ruminants are to be quarantined at a privately owned quarantine facility.

Privately Owned Quarantine Facilities

Paragraph (a) of § 93.412 authorizes the establishment of privately operated quarantine facilities, subject to APHIS approval and oversight. We are proposing to amend § 93.412(a), including the paragraph heading, by removing references to the word ''operated'' as it is used in the terms ''privately operated quarantine facility'' or ''privately operated quarantine facilities'' and substituting the word ''owned'' in each instance. We also would amend § 93.412(a) by substituting the word ''operator'' in place of ''importer or his or her agent,'' and substituting the words ''APHIS representative'or ''overseeing APHIS representative'' in place of ''inspector assigned to supervise,'' for purposes of consistency with the new provisions in proposed § 93.412(d). We also would make other minor technical changes, either to be consistent with proposed § 93.412(d), or for stylistic purposes.

Paragraph (c) of § 93.412 provides that amounts collected from the importer, or his or her agent, for quarantine services furnished by APHIS shall be deposited so as to be available to defray such services as they are rendered. We would amend § 93.412(c) and add a reference to ''operator'' alongside the current reference to importer, and also make a minor stylistic change. As a result, this provision would apply to operators of privately owned quarantine facilities under § 93.412(a) and importers of ruminants who utilize the services of APHIS quarantine facilities under § 93.412(b).

Standards for Privately Owned Quarantine Facilities for Ruminants

We are proposing to add a new paragraph (d) to § 93.412 that would set forth the standards for the establishment, operation, and maintenance of privately owned medium and minimum security quarantine facilities for ruminants imported into the United States. The risk of the spread of disease into, within, and from these facilities dictates that security, disease detection, and other prevention measures meet certain standards to ensure the biological security of approved facilities.

We are proposing standards for two types of quarantine facilities: Privately owned medium security quarantine facilities (medium security facilities) and privately owned minimum security quarantine facilities (minimum security facilities). Medium security facilities would need to be built to hold ruminants in an indoor, vector-proof environment that protects the animals against the spread of livestock diseases that are biologically transmitted by vectors.

A minimum security facility would allow for the outdoor holding of ruminants in quarantine. Unlike a medium security facility, the quarantine area of a minimum security facility would not have to be constructed to provide a vector-proof environment against livestock diseases that are transmissible by vectors. However, a minimum security facility could only accept imported animals that the Administrator determines pose no significant risk of harboring livestock diseases that are transmissible by vectors. The Administrator would make this determination on a case-by-case basis, taking into account such factors as the prevalence of diseases transmissible by vectors in the exporting country, and whether any steps have been taken in the exporting country to mitigate the disease risk (*i.e.*, holding the animals in a vector free zone over a prescribed time period prior to shipment).

Importers wishing to utilize the services of a privately owned quarantine facility would be required to state their intention on their application for a permit to import the ruminants. (See discussion under the heading ''Import Permits.'') We would determine whether the animals are eligible for importation

and the required level of quarantine security based on review of the application, as well as existing animal import regulations and any protocols that we have with the exporting country. For example, we view certain OIE list A diseases, such as rinderpest and foot-and-mouth disease, to be so serious that § 93.404(a)(2) prohibits the importation of domestic ruminants from regions where those diseases are known to exist. The presence of certain other infectious diseases in the exporting region, such as diseases of the respiratory complex or vesicular diseases such as vesicular stomatitis, could necessitate that the imported ruminants be quarantined in a medium security facility in the absence of mitigating factors such as testing. The Administrator would have the discretion to order testing or observation for any OIE list A diseases and other livestock diseases exotic to the United States, as well as any other diseases, as necessary. The Administrator also would have the discretion to decide what type of quarantine facility (medium or minimum security facility) to use for a particular importation of ruminants, based on the ruminant species and the health conditions in the region or regions from which the ruminants would be exported.

We are proposing that medium and minimum security facilities receive and hold imported ruminants as a ''lot'' on an ''all-in, all-out'' basis. The standards we are proposing would allow for medium security facilities to accommodate more than one lot of ruminants at a time, provided certain requirements are met. The option of holding multiple lots of ruminants simultaneously would not be available for minimum security facilities. We would limit minimum security facilities to one lot for purposes of biosecurity since there would be little, if any, separation between lots of animals. Also, because of the potentially larger number of animals that can be accommodated as a single lot at a minimum security facility, it would not be prudent to put such a large number of animals at risk by allowing another lot of imported ruminants to use the facility at the same time.

Proposed § 93.412(d) would be organized by subparagraphs addressing the following: (1) APHIS approval of facilities; (2) compliance agreement; (3) physical plant requirements; (4) operating procedures; (5) environmental quality; (6) other laws; and (7) variances.

APHIS Approval of Facilities

We would provide information in § 93.412(d)(1) on how to obtain APHIS approval to operate a medium or minimum security facility, as well as the basis for denying or withdrawing such approval. As explained earlier, obtaining our approval to operate a medium or minimum security facility, as discussed in this proposed rule, would be separate from the import permit application process for specific animal shipments, which is covered in § 93.404 and elsewhere in the regulations.

Approval Procedures

Under proposed § 93.412(d)(1)(i), interested persons would be required to make written application to the Administrator, c/o National Center for Import and Export, Veterinary Services, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737–1231. The application would need to include:

- The full name and mailing address of the applicant;
- The location and street address of the facility for which approval is sought;
- Blueprints of the facility;
- A description of the financial resources available for construction, operation, and maintenance of the facility;
- Copies of all approved State permits for construction and operation of the facility (but not local building permits), as well as copies of all approved Federal, State, and local environmental permits;
- The anticipated source(s) and origin(s) of ruminants to be quarantined, as well as the expected size and frequency of shipments; and
- A contingency plan for the possible destruction and disposal of all ruminants capable of being held in the facility.

The written application for facility approval would have to be submitted to APHIS at least 120 days prior to the date of application for local building permits in order to ensure that APHIS has adequate time to evaluate the plans for the facility, assess potential environmental effects, and determine that sufficient APHIS personnel are available to staff the facility.

Requests for approval of a proposed facility would be evaluated on a first-come, first-served basis.

If APHIS determines that an application is complete and merits further consideration, the person applying for facility approval would have to agree to pay the costs of all APHIS services associated with APHIS' evaluation of the application and facility. APHIS charges for evaluation services at hourly rates are listed in 9 CFR 130.30. If the facility is approved by APHIS, the operator would then enter into a compliance agreement, which is explained in more detail under the heading ''Compliance Agreement,'' under § 93.412(d).

Proposed § 93.412(d)(1)(ii) would set out the criteria for APHIS approval. Before granting approval, we would have to find, based on our own environmental assessment, as well as any required Federal, State, and local environmental permits or evaluations issued by Federal, State, or local authorities, that the operation of the facility would not have significant environmental effects. The operator would have to secure the required permits or evaluations and provide copies to APHIS before we would consider granting approval to build and operate the facility. The facility would also have to comply with all requirements in § 93.412(d). Approval would be subject to the facility meeting any additional conditions that the Administrator believes are necessary to ensure that adequate safeguards are in place to monitor the health status of the ruminants in quarantine and prevent the transmission of livestock diseases into, within, or from the facility. These additional conditions would be set forth in a compliance agreement required under § 93.412(d)(2). The compliance agreement provides us with further assurances that the privately owned quarantine facility would be operated in accordance with the regulations. Finally, the Administrator would have to determine whether sufficient APHIS personnel (including one or more APHIS veterinarians and other animal health technicians) are available to provide continuous oversight and other technical services to ensure the biological security of the facility. In assigning APHIS personnel to a facility, long-term personnel plans and arrangements would need to be made, including the possible hiring of personnel or the transfer of existing personnel. The operator of the facility, not APHIS, would be responsible for hiring other attendants and workers for the care and handling of ruminants and for the maintenance, operation, and administration of the facility.

If a facility meets all of these requirements, APHIS would approve the facility and assign personnel to it. The assignment of APHIS personnel would be handled on a first-come, first-served basis; therefore, the deployment of APHIS personnel at one facility could result in another facility not being staffed due to the lack of necessary

APHIS personnel. The Administrator would have sole discretion in determining the number of APHIS personnel to be assigned to a facility.

Proposed § 93.412(d)(1)(iii) would provide that the operator of a medium or minimum security facility, after receiving our approval, would have to continue to comply with all requirements of § 93.412(d), as well as the terms of the compliance agreement, in order for the facility to maintain its approved status.

Proposed § 93.412(d)(1)(iv) would cover the process for APHIS denying an initial application or withdrawing the approval of a medium or minimum security facility already in operation. Before we would deny or withdraw approval, we would first inform the operator, and include the reasons for our action. We would provide an opportunity for a hearing if there is a conflict as to any material fact regarding our action. The withdrawal of approval of an existing facility would become effective pending a final determination in the proceeding if the Administrator determines that such action is necessary to protect the public health, interest, or safety. Such withdrawal would take effect upon oral or written notification, whichever is earlier, to the operator of the facility. In the event of oral notification, we would also provide written confirmation to the operator as promptly as circumstances allow. The withdrawal of approval of a facility would continue in effect pending the completion of the proceeding and any judicial review, unless otherwise ordered by the Administrator.

Under proposed § 93.412(d)(1)(iv), we could deny an initial application or withdraw the approval of an existing facility for failure to comply with the requirements provided in § 93.412(d), or with the terms of the compliance agreement, or for failure to comply with any other requirement under the Animal Health Protection Act (7 U.S.C. 8301–8317) or the regulations thereunder. We would also withdraw approval if the operator notifies us that the facility has ceased operations, or, if the facility has not been used to quarantine ruminants for a period of at least 1 year. The operator's failure to remit outstanding charges for APHIS services at the facility would also be grounds for withdrawing approval. Finally, we could deny approval of an initial application, or withdraw the approval of an existing facility, if the operator or a person responsibly connected with the business of the facility is or has been convicted of a crime under any law regarding the importation or quarantine of any animal, or any crime involving fraud, bribery, extortion, or any other crime involving a lack of integrity needed for the conduct of operations affecting the importation of animals. A person is considered to be responsibly connected with the business of the facility if such person has an ownership, mortgage, or lease interest in the facility's physical plant, or if such person is a partner, officer, director, holder, or owner of 10 percent or more of its voting stock, or an employee in a managerial or executive capacity.

Compliance Agreement

We are proposing that all medium and minimum security facilities operate in accordance with a compliance agreement required under § 93.412(d)(2). We would require that the compliance agreement be executed by the operator or other designated representative of the facility and by the Administrator before the facility could commence operations. The compliance agreement would signify the operator's commitment to follow our regulations, as well as underscore the operator's financial responsibilities with respect to building and operating a privately owned quarantine facility.

Under the compliance agreement, the operator would be bound by § 93.412(d) and subject to the strict oversight of APHIS representatives. The operator would agree to be responsible for the cost of building the facility, as well as any costs associated with its maintenance and operation. These costs would include all expenses associated with the hiring of personnel to attend to the ruminants and maintain and operate the facility; all expenses associated with the care of quarantined ruminants, such as feed, bedding, medicines, inspections, testing, laboratory procedures, and necropsy examinations; all costs associated with the death or destruction and disposition of quarantined ruminants; and all charges for the services of APHIS representatives at the facility, in accordance with § 93.412 of the regulations and 9 CFR part 130.

The compliance agreement would provide that the operator obtained, prior to execution of the agreement, a financial instrument (insurance or surety bond) approved by APHIS that financially guarantees the operator's ability to cover all costs and other financial liabilities and obligations of the facility. This includes financial liability coverage in the event of a worst case scenario in which all quarantined ruminants would have to be destroyed and disposed of because of an animal health emergency, as determined by the Administrator.

The compliance agreement would also provide that, prior to commencing quarantine operations, the operator would deposit with the Administrator a certified check or U.S. money order to cover the estimated costs, as determined by the Administrator, of APHIS professional, technical, and support services at the facility over the duration of the quarantine. The compliance agreement would also provide that if the actual costs incurred by APHIS exceed the deposited amount, the operator would be liable for those additional costs, based on APHIS official accounting records. We would require the compliance agreement to specify that payment for our services received in connection with each lot of ruminants in quarantine must be made prior to the release of the ruminants. The operator would also be responsible for any other costs incurred by us with respect to the quarantine following the release of the ruminants, based on official records, within 14 days of receipt of the bill showing the balance due. Any unobligated funds deposited with us would be returned to the operator after the release of the lot of ruminants from the quarantine facility and termination or expiration of the compliance agreement, or, if requested, credited to the operator's account and applied towards payment of APHIS services at a future date. We would require that, prior to the entry of each subsequent lot of ruminants into the medium or minimum security facility, the operator execute a new compliance agreement with APHIS, as well as deposit a certified check or U.S. money order to cover our estimated costs over the duration of the quarantine for that lot of ruminants.

Physical Plant Requirements

Proposed § 93.412(d)(3) would set forth the standards for the physical plant at medium and minimum security facilities. These physical plant standards address issues related to location, construction, sanitation, and security. Any requirements that are applicable to only one type of facility would be clearly noted in the regulations. We would inspect a facility to ensure that these standards are met before imported ruminants could be admitted to the facility.

Location

Proposed § 93.412(d)(3)(i) would require that imported ruminants arrive at a port designated for the importation of ruminants under § 93.403(g) (discussed earlier under ''Ports of Entry''). Proposed § 93.412(d)(3)(i) also would require that a medium or

minimum security facility be located at a site approved by the Administrator and that the specific routes for the movement of ruminants from the port to the medium or minimum security facility be approved in advance by the Administrator. Approval would be based on a consideration of whether the site or routes would put animals in a position that could result in their transmitting communicable livestock diseases.

We have decided for several reasons not to require that the port and the medium or minimum security facility be located within a certain distance of one another. Some ports will be in large metropolitan areas where the nearest concentrations of livestock are many miles away, while other ports may be in towns with rural areas where concentrations of livestock are within very short distances of the port. Considering the diversity of places in which persons may consider locating quarantine facilities, it would be difficult to stipulate a maximum distance from the port. Doing so could prove unjustified and burdensome for the importer in some circumstances or, in other circumstances, allow construction of a quarantine facility in a location that could prove inadequate in ensuring against the spread of disease into or from the quarantine facility.

For medium security facilities only, the facility would have to be situated at least one-half mile from any premises holding livestock in order to prevent the possible transmission of diseases from ruminants in the facility to livestock outside the facility and vice versa. Our experience in operating indoor quarantine facilities for imported animals indicates that a distance of one-half mile is adequate to prevent the transmission of livestock diseases into and from a medium security facility. In the case of a minimum security facility (outdoor facility), the Administrator would establish the required minimum distance between the facility and other premises holding livestock on a case-by-case basis, taking into account such factors as possible diseases of concern and whether or not the facility is to be located in an agricultural region in proximity to other susceptible animals.

All imported ruminants, upon arrival at the port of entry, are subject to inspection in accordance with § 93.408 of the regulations. If the medium or minimum security facility is to be located more than 1 mile from a designated port, the operator would have to make arrangements for the imported ruminants to be held in a temporary inspection facility, which is within 1 mile of the port and approved by the Administrator, to allow for the inspection of the imported ruminants by a Federal or State veterinarian prior to the animals' movement to the quarantine facility. We would require that this inspection take place within 1 mile of the port so that in the event the ruminants are found to be infected with or exposed to a disease that precludes their entry, the lot of ruminants could be expeditiously re-exported, if necessary.

The temporary inspection facility would have to provide adequate space for Federal or State veterinarians to conduct examinations and testing of the imported ruminants. The examination space of the temporary inspection facility would have to be equipped with appropriate animal restraining devices for the safe inspection of ruminants. The temporary inspection facility also could hold no more than one lot of animals at the same time.

In seeking APHIS approval of the temporary inspection facility, the operator would have to provide APHIS with the following information: The location and street address, as well as blueprints or a description of the temporary inspection facility; a description of the financial resources available for its construction (if applicable), operation, and maintenance; copies of all approved State permits for construction and operation of the temporary inspection facility, as well as copies of all approved Federal, State, and local environmental permits; and the anticipated source(s) or origin(s), lot size, and frequency of shipments of imported ruminants to be handled at the facility. Following APHIS approval of the temporary inspection facility, the operator would also provide APHIS with a copy of the local building permit, when obtained.

If the ruminants, upon inspection at the temporary inspection facility, are determined to be infected with or exposed to a disease that precludes their entry into the United States, the ruminants would be refused entry. Ruminants refused entry would remain the responsibility of the operator, but subject to further handling or disposition as directed by the Administrator in accordance with § 93.408.

APHIS' approval to build and operate a medium or minimum security quarantine facility outside the 1-mile boundary of a designated port would be contingent upon APHIS' approval of a temporary inspection facility within 1 mile of the port of entry, as well as approval of the routes for the movement of ruminants from the port to the medium or minimum security facility.

The operator or the operator's designated representative would have the opportunity to confirm with us that the location requirements for the facility would be satisfactory before moving ahead with any firm decisions about the site of the facility.

Construction

Proposed § 93.412(d)(3)(ii) would provide the basic construction and design standards for medium and minimum security facilities. We would require that each facility be of sound construction, good repair, and designed to prevent the escape of quarantined ruminants. The facility would have to provide adequate capacity to receive and hold ruminants as a ''lot'' on an ''all-in, all-out'' basis.

We are proposing that medium and minimum security facilities must provide separate docks for animal receiving and releasing and for general receiving and pickup of supplies and materials such as feed, bedding, disinfectants, pesticides, and equipment. Alternatively, a single dock may be used for both purposes if the dock is cleaned and disinfected after each use with a disinfectant that is either authorized in 9 CFR part 71, § 71.10(a)(5), or is otherwise approved by the Administrator. Paragraph (a)(5) of § 71.10 authorizes, for general use purposes, disinfectants that are registered under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 *et seq.*) with tuberculocidal claims.

We are proposing that medium and minimum security facilities must be surrounded by double-security perimeter fencing separated by at least 30 feet and of sufficient height and design to prevent the entry of unauthorized persons and animals from outside the facility and to prevent the escape of ruminants in quarantine. The fence's height and design should take into consideration the species of wildlife in the surrounding area, as well as the impact of snowfall and other climatic changes. Double-security fencing would further ensure against possible contact between quarantined ruminants and animals outside the facility.

Medium and minimum security facilities would have to provide pens, chutes, and other animal restraining devices, as appropriate, for inspection and identification of each animal, as well as for segregation, treatment, or both, of any ruminant exhibiting signs of illness. We also are proposing that the lot-holding areas in medium and minimum security facilities be of sufficient size to prevent overcrowding.

A medium security facility could hold more than one lot of ruminants at the same time so long as the lots are separated by physical barriers so that ruminants in one lot would not have physical contact with ruminants in another lot, or with their excrement or discharges. A minimum security facility could not hold more than one lot of animals at the same time. These measures would help prevent ruminants infected with or exposed to a disease from spreading it to other ruminants in the facility.

Because of the need for APHIS representatives to examine ruminants and draw samples for testing, we would require that medium and minimum security facilities provide adequate space for such purposes, and that the space include appropriate animal restraining devices for the safe inspection of ruminants. The facility would have to provide sufficient storage space for necessary examination equipment and supplies, work space for preparing and packaging samples for mailing, and storage space for duplicate samples. The facility also would have to provide a secure, lockable office for APHIS use with enough room for a desk, chair, and filing cabinet.

Medium and minimum security facilities would also have to provide sufficient storage space for equipment and supplies used in quarantine operations, including separate, secure storage areas for pesticides and for medical and other biological supplies, as well as a separate storage area for feed and bedding, if feed and bedding are to be stored at the facility.

Medium and minimum security facilities would also have to include work areas for the repair of equipment and for cleaning and disinfecting equipment used in the facility.

Additional Construction Requirements for Medium Security Facilities

Proposed § 93.412(d)(3)(iii) would contain additional physical plant requirements that would apply to medium security facilities only. These additional requirements, which primarily relate to building design, windows and other openings, surfaces, and ventilation and climate control, would help ensure that a medium security facility is capable of providing an indoor environment for ruminants in quarantine that is free of vectors, biologically secure, and safe for the animals.

A medium security facility would have to be constructed so that the quarantine area is located in a secure, self-contained building that includes appropriate control measures against the spread of livestock diseases biologically transmissible by vectors. All entryways into the nonquarantine area of the building would have to be equipped with a secure and lockable door. While ruminants are in quarantine, all access to the quarantine area would have to be from within the building. Each entryway to the quarantine area would have to be equipped with a solid, self-closing door. Separate access would have to be provided within the quarantine area to each lot-holding area so that it is not necessary to move through one lot-holding area to gain access to another lot-holding area. Entryways to each lot-holding area within the quarantine area would also have to be equipped with a solid lockable door. Emergency exits to the outside would be permitted in the quarantine area if required by local fire ordinances. Such emergency exits would have to be constructed so as to permit their opening from the inside of the facility only.

We would require that all windows and other openings in the quarantine area of a medium security facility be double-screened with screening (separated by at least 3 inches or 7.62 centimeters) of sufficient gauge and mesh to prevent the entry or exit of insects and other vectors of livestock diseases, as well as provide ventilation sufficient to ensure the comfort and safety of all ruminants in the facility. All screening would have to be easily removable for cleaning, yet otherwise remain locked and secure at all times in a manner satisfactory to APHIS representatives in order to ensure the biological security of the facility.

We would also require that the floor, wall, and ceiling surfaces in a medium security facility meet certain standards. The floor surfaces with which the ruminants have contact would have to be nonslip and wear-resistant. In addition, all floor surfaces with which the ruminants, their excrement, or discharges have contact would have to slope gradually to the center, where one or more drains of at least 8 inches in diameter are located for adequate drainage, or alternatively, be of slatted or other floor design that allows for adequate drainage. We are also proposing that any floor and wall surfaces in a medium security facility with which the ruminants, their excrement, or discharges have contact would have to be impervious to moisture and be able to withstand frequent cleaning and disinfection without deterioration. Other ceiling and wall surfaces with which the ruminants, their excrement, or discharges do not have contact would have to be able to withstand cleaning and disinfection between shipments of ruminants. Since the animals would be housed in an enclosed building for the duration of the quarantine, the cleaning and disinfection of floor and wall surfaces would be necessary to help maintain the general health of the ruminants in quarantine, as well as reduce the risk of diseases spreading from one lot of ruminants to another. Finally, all floor and wall surfaces would also have to be free of sharp edges that could cause injury to ruminants.

We would also require that a medium security facility be equipped with a heating, ventilation, and air conditioning (HVAC) system that would be capable of controlling and maintaining the ambient temperature, air quality, moisture, and odor at levels not injurious or harmful to the health of ruminants in quarantine. Air supplied to lot-holding areas could not be recirculated or reused for other ventilation needs. The HVAC systems used for lot-holding areas would have to be separate from air handling systems for other operational and administrative areas of the facility. In addition, if a medium security facility is approved to handle more than one lot of ruminants at a time, each lot-holding area would have to be equipped with its own separate HVAC system in order to prevent cross-contamination between the separate lot-holding areas. Physical separation alone is not always an adequate safeguard against the transmission of diseases from one lot to another.

Medium security facilities would have to be adequately illuminated. This would include lighting in the lot-holding areas, as well as other areas where animals would be inspected or examined. We would also require that a medium security facility, including the lot-holding areas, be equipped with a fire alarm and voice communication system so that personnel working in those areas can be readily warned of any potential emergency and vice versa. A medium security facility would also have to provide a television monitoring system or other arrangement sufficient to provide a full view of the lot-holding areas. In addition, we are proposing that a medium security facility would have to be equipped with a communication system between the nonquarantine and quarantine areas of the facility so that persons inside the quarantine area can readily communicate with persons elsewhere in the facility in cases of emergency without necessarily leaving the quarantine area, and vice versa.

Each medium security facility would have to include an area that is of

sufficient size to perform necropsies on ruminants. We would require that the necropsy area have adequate lighting and be equipped with hot and cold running water, a drain, a cabinet for storing instruments, a refrigerator-freezer for storing specimens, and an autoclave to sterilize veterinary equipment. The necropsy area would be used to perform postmortem inspection of animals that die in the medium security facility and to collect samples for laboratory diagnosis. Having the capability to conduct necropsies at the facility would reduce the risk of diseases being transmitted to animals outside the facility.

In addition to the storage requirements discussed previously, the feed storage areas of a medium security facility would have to be vermin-proof. Also, if the medium security facility has multiple lot-holding areas, we would require that separate storage space for supplies and equipment be provided for each lot-holding area. This would help prevent equipment and supplies used on quarantined ruminants in one lot from coming in contact with ruminants in another lot or with the equipment or supplies used on those other ruminants. Such contact could cause the spread of diseases between lots of ruminants.

Medium security facilities would have to provide adequate shower facilities for use by those individuals who have access to the quarantine area. In a medium security facility, there would have to be a shower at the entrance to the quarantine area. A shower also would have to be located at the entrance to the necropsy area. We would also require that a clothes-storage and clothes-changing area be located at each end of each shower area. In addition, there would have to be one or more receptacles near each shower so that clothing that has been worn into a lot-holding area or elsewhere in the quarantine area can be deposited in the receptacle(s) prior to entering the shower.

Medium security facilities would have to provide permanent restrooms in both the nonquarantine and quarantine areas of the facility, and also provide an area for breaks and meals within the quarantine area. We would also require that medium security facilities provide a separate area for washing and drying clothes, linens, and towels used in the facility.

Sanitation

Proposed § 93.412(d)(3)(iv) would require that all medium and minimum security facilities meet certain sanitation standards as another safeguard against the transmission of livestock diseases into, within, or from the facility. Operators would have to have adequate equipment and supplies on hand to clean, disinfect, and maintain the facility and control pests. If more than one lot of ruminants is to be held in the facility at the same time (applies to medium security facilities only), then the facility would have to maintain separate equipment and supplies for carrying out such tasks in the different lot-holding areas. We would also require that the facility have a sufficient supply of potable water to meet the watering needs of the ruminants, as well as any cleaning needs at the facility. Water faucets for hoses would have to be located throughout the facility so that personnel would not have to drag hoses across areas that have already been cleaned and disinfected. We also would require that facilities maintain an emergency supply of water for the ruminants in quarantine, as well as a supply of disinfectant that is sufficient to disinfect the entire facility. Disinfectants would have to be authorized under 9 CFR part 71, § 71.10(a)(5), or otherwise approved by the Administrator.

Medium and minimum security facilities would have to be capable of disposing of wastes, including urine, manure, and used bedding, by means of burial, incineration, or public sewer. Other waste material would have to be handled in such a manner that would minimize spoilage and the attraction of pests and then disposed of by incineration, public sewer, or other preapproved manner that prevents the spread of disease. Waste disposal would have to be carried out under the direct oversight of APHIS representatives. Each facility would also have to be capable of disposing of ruminant carcasses in a manner approved by the Administrator and under conditions that would prevent the spread of disease from the carcasses.

If incineration is to be carried out on the premises of a medium or minimum security facility, we are proposing that the incineration equipment would have to be detached from other facility structures and be capable of burning wastes as required. The incineration site would also have to provide an area sufficient for solid waste holding. Incineration also may occur at a local site away from the facility. All incineration activities would have to take place under the direct oversight of an APHIS representative.

We are proposing that medium and minimum security facilities have the capability to adequately control surface drainage and effluent in order to prevent the spread of disease into, within, and from the facility. If a facility is approved to handle more than one lot of ruminants at the same time, we would require that separate drainage systems be provided for each lot-holding area in order to prevent cross-contamination. A facility's capability to adequately control surface drainage and effluent would depend on a number of factors including the water table, water pressure, angles at which the pipes are placed, number and location of drain openings, and the frequency in cleaning manure and other excreta from drains.

Security

Under proposed § 93.412(d)(3)(v), a medium or minimum security facility would ave to exercise certain security measures in order to prevent unauthorized persons, as well as animals, from coming in contact with quarantined ruminants. The facility and premises would have to be locked and secure at all times while the ruminants are in quarantine. In addition, the facility and premises would have to have posted signs indicating that the facility is a quarantine area and that no visitors are allowed. We would also require that the operator furnish us with one or more telephone numbers at which the operator or his or her agent can be reached at all times.

This paragraph would state that APHIS may place seals on any or all entrances and exits of the facility, as necessary to ensure security, and to take all necessary steps to ensure that the seals are broken only in the presence of an APHIS representative. Should someone other than an APHIS representative break such seals, we would consider such action a breach in security and would carry out an immediate accounting of all ruminants in the facility. If a breach of security occurs, we could extend the quarantine period as long as necessary to determine that the ruminants are free of communicable livestock diseases.

In the event that a communicable livestock disease is diagnosed in quarantined ruminants, the Administrator would have the discretion to order the facility to be guarded by a bonded security company, at the expense of the operator of the facility, in a manner that the Administrator deems is necessary to ensure the biological security of the facility.

In the case of medium security facilities only, we would also require that the facility be guarded at all times by one or more representatives of a bonded security company or, alternatively, the facility have an electronic security system that prevents

the entry of unauthorized persons into the facility and prevents animals outside the facility from having contact with ruminants in quarantine. If an electronic security system is used, we would require that the system be coordinated through or with the local police so that monitoring of the facility is maintained whenever APHIS representatives are not at the facility. The electronic security system would have to be of the ''silent type,'' approved by Underwriter's Laboratories, and triggered to ring at the monitoring site and, if the operator chooses, at the facility. The operator would have to provide written instructions to the monitoring agency that specify that the police and an APHIS representative designated by APHIS would have to be notified by the monitoring agency if the alarm is triggered. The operator would have to provide a copy of those instructions to the Administrator. The operator would also have to notify the designated APHIS representative whenever a break in security occurs or is suspected of occurring.

Operating Procedures

Proposed § 93.412(d)(4) would set forth the operating procedures that medium and minimum security facilities would have to observe with respect to APHIS oversight, personnel, authorized access, sanitary practices, handling of quarantined ruminants, and recordkeeping. We would require that these procedures be followed at all times in order to ensure the overall biological security of the quarantine operation, as well as to maintain the health of the animals in quarantine.

APHIS Oversight

In proposed § 93.412(d)(4)(i), we would make clear that while the facility would be owned, operated, and maintained by the operator, the quarantine of ruminants at the facility would be subject to the strict oversight of APHIS representatives. The deployment of APHIS representatives to oversee and provide other professional, technical, and support services at a facility would be determined solely by the Administrator.

APHIS representatives would retain ultimate authority over the quarantine of ruminants at the facility. If, for any reason, the operator fails to properly care for, feed, or handle the quarantined ruminants as required in § 93.412(a), or in accordance with animal health and husbandry standards provided elsewhere in 9 CFR chapter 1, or fails to maintain and operate the facility as provided in proposed § 93.412(d), APHIS representatives would be authorized to furnish such neglected services or make arrangements for the sale or disposal of quarantined ruminants at the operator's expense, as authorized in § 93.412(a).

Personnel

Under proposed § 93.412(d)(4)(ii), the operator of a medium or minimum security facility would be responsible for hiring personnel to attend to the animals and otherwise maintain, operate, and administer the facility. We would require that the operator provide us with an updated list of all personnel who have access to the facility. The list would have to include the names, current residential addresses, and identification numbers of each person, and must be updated with any changes or additions in advance of such person having access to the quarantine facility. We also would require that the operator provide us with signed statements from all personnel having access to the facility in which the person agrees to comply with proposed § 93.412(d) and other provisions of part 93, all terms of the compliance agreement, and any related instructions from APHIS representatives pertaining to quarantine operations, including contact with animals both inside and outside the facility. We would require these signed statements so that personnel are made aware of their responsibilities and obligations while working with the animals in quarantine.

Authorized Access

To ensure the biological security of medium and minimum security facilities, proposed § 93.412(d)(4)(iii) would restrict facility access to APHIS representatives and other persons specifically authorized to work at the facility. All others would be prohibited from the premises unless specifically granted access by an APHIS representative. We would also require that an APHIS representative accompany at all times any visitors granted access to the facility.

In addition, we would require that all visitors, except veterinary practitioners who enter the facility to provide emergency care, would have to sign an affidavit before entering the quarantine area, if determined necessary by the overseeing APHIS representative, declaring that they will not have contact with any susceptible animals outside the facility for at least 7 days after contact with the ruminants in quarantine, or for a period of time determined by the overseeing APHIS representative as necessary to prevent the transmission of communicable livestock diseases of ruminants.

Sanitary Practices

Proposed § 93.412(d)(4)(iv) sets forth certain sanitary practices that would need to be followed by all those persons granted access to a medium or minimum security facility. We would require that everyone entering the quarantine area of the facility wear clean protective clothing and footwear. Disposable gloves would have to be worn when handling sick animals. Persons would have to wash their hands after removing the gloves. Persons also would have to change out of protective clothing, footwear, and gloves that have become soiled or contaminated.

If determined necessary by the overseeing APHIS representative, we also would prohibit persons having contact with quarantined ruminants from coming in contact with susceptible animals outside the facility for at least 7 days after their last contact with ruminants in quarantine, or, alternatively, for a longer period of time determined necessary by the overseeing APHIS representative. The period of time may vary, depending on the health status of the quarantined ruminants at the time the person had access to that lot of ruminants. The overseeing APHIS representative would be familiar with the health status of the ruminants under quarantine to determine whether there should be a prohibition against contact with animals outside the facility for a period of 7 days or longer.

We would require that any equipment (including tractors) to be used in the quarantine area of a medium or minimum security facility would first have to be cleaned and disinfected, and would then have to remain dedicated to the facility for the entire quarantine period. In addition, any equipment used with quarantined ruminants would have to remain dedicated to that particular lot of ruminants for the duration of the quarantine period or be cleaned and disinfected before coming in contact with ruminants from another lot. Prior to its use on another lot of ruminants or its removal from the quarantine area, such equipment would have to be cleaned and disinfected to the satisfaction of an APHIS representative.

Vehicles would also have to be cleaned and disinfected immediately prior to entering and leaving the quarantine area of the facility. If the facility utilizes a single loading dock, the loading dock would have to be immediately cleaned and disinfected after each use under the oversight of an APHIS representative. And upon the release of a lot of ruminants from quarantine, the operator would be required to clean and disinfect the lot-

holding area and other portions of the facility in which the ruminants had access before a new lot of ruminants could be placed in that same area of the facility. When disinfecting equipment, vehicles, or other areas of the facility, operators would have to use a disinfectant that is authorized in 9 CFR part 71, § 71.10(a)(5), or is otherwise approved by the Administrator. These measures would be necessary in order to minimize the risk of transmitting diseases into, within, or from the facility.

In addition to the sanitary practices already discussed, medium security facilities would be subject to the following additional requirements. Any persons granted access to the quarantine area would have to shower when entering and leaving the quarantine area, as well as when moving from one lot-holding area to another within the quarantine area. Persons also would have to shower when leaving the necropsy area, if a necropsy is in the process of being performed or has just been completed, or if all or portions of the examined animal remain exposed in the necropsy area. For medium security facilities that handle more than one lot of animals at the same time, all persons entering the quarantine area of the facility would be prohibited, unless specifically allowed otherwise by the overseeing APHIS representative, from coming in contact with any ruminants in quarantine, other than the lot or lots of ruminants to which the person is assigned or granted access.

The operator of a medium security facility would have to provide a sufficient supply of clothing and footwear to ensure that persons with access to the facility's quarantine area have clean, protective clothing and footwear after showering. We would also make the operator responsible for the proper handling, washing, and disposal of soiled and contaminated clothing worn in the quarantine area in a manner approved by an APHIS representative as adequate to preclude the transmission of diseases within and from the facility. At the end of each workday, all work clothing worn into each lot-holding area and other areas of the quarantine area would have to be collected and bagged until the clothing is washed. Used footwear would have to either be left in the clothes changing area or cleaned with hot water (148 °F minimum) and detergent and disinfected as directed by an APHIS representative.

Handling of Quarantined Ruminants

Our standards for the care and handling of ruminants in a medium or minimum security facility would appear in proposed § 93.412(d)(4)(v). Each lot of ruminants would have to be placed in the facility on an ''all-in, all-out'' basis. Once in quarantine, no ruminants would be removed from the lot except for diagnostic purposes, and no ruminants could be added to the lot during the quarantine period. These requirements would simplify the management of ruminants in the facility while reducing the risk of disease spread. The operator would be responsible for providing adequate feed and bedding from APHIS-approved sources. The feed and bedding would have to be free of vermin and not spoiled. In addition, breeding of ruminants or collection of germ plasm from ruminants would be prohibited during the quarantine period unless required for an import testing procedure.

Ruminants in quarantine in a medium or minimum security facility would be subject to such tests and procedures as directed by the overseeing APHIS representative to determine whether the ruminants are free of communicable livestock diseases. The use of vaccines for ruminants in quarantine would have to be approved by the APHIS representative, licensed in accordance with 9 CFR part 102, and administered by an APHIS veterinarian or an accredited veterinarian under the direct supervision of an APHIS representative.

The death or suspected illness of ruminants in quarantine would have to be reported to the overseeing APHIS representative. The affected ruminants would have to be disposed of as the Administrator may direct or, depending on the nature of the disease, would have to be cared for as directed by APHIS to prevent the spread of disease. We are proposing that animals that require specialized medical attention or additional postmortem testing may be transported off the quarantine site, if authorized by APHIS. If this occurs, a second quarantine site would be established at the off-site location where the affected animal(s) are being held. In such cases, APHIS could extend the quarantine period until the results of the outstanding tests or postmortems are received.

Should the Administrator determine that an animal health emergency exists at the facility, we would require that arrangements for the final disposition of the infected or exposed lot of ruminants be accomplished within 4 workdays following disease confirmation. The ultimate disposition of the ruminants would then have to occur under the direct oversight of APHIS representatives.

Recordkeeping

In proposed § 93.412(d)(4)(vi), operators of a medium or minimum security facility would have to follow certain recordkeeping practices while ruminants are in quarantine. For purposes of security, we would require the operator to maintain a current daily log to record the entry and exit of all persons entering and leaving the facility. We would also require that the operator retain the daily security log, as well as any logs maintained by APHIS and deposited with the operator, for at least 2 years following the date of release of the ruminants from quarantine. These logs would have to be made available to APHIS representatives upon request.

Environmental Quality

To ensure that APHIS would not assent to or facilitate activities that are not in conformance with environmental quality control standards, proposed § 93.412(d)(5) would provide that if APHIS determines that a privately owned medium or minimum security quarantine facility does not meet applicable local, State, or Federal environmental regulations, APHIS may deny or suspend approval of the facility until appropriate remedial measures have been applied.

Other Laws

Proposed § 93.412(d)(6) would put operators of a medium or minimum security facility on notice that they would be responsible for complying with any other applicable Federal, State, and local laws and regulations with respect to the construction, operation, and maintenance of the facility.

Variances

In proposed § 93.412(d)(7), we would permit variances from the proposed standards of § 93.412(d) on a case-by-case basis, subject to approval by the Administrator. The Administrator would be authorized to grant a variance to existing facility requirements relating to location, construction and design, sanitation, security, operating procedures, recordkeeping, or other provisions in proposed § 93.412(d), but only if the Administrator determines that there would be no detrimental effect on the health of the ruminants or to the overall biological security of the quarantine operations. The operator would have to submit any request for variance in writing to the Administrator at least 30 days in advance of the arrival of ruminants at the facility. Any variance would also have to be provided for in the compliance agreement.

Miscellaneous Changes

Section 93.413 generally restricts visitors from entering the quarantine area of a quarantine facility while ruminants are in quarantine. Section 93.413 does provide that importers whose animals are in quarantine may be admitted to the quarantine area, as necessary, subject to any conditions imposed by the inspector in charge. We are proposing to amend § 93.413 by inserting references to ''APHIS representative'' alongside ''inspector in charge.'' ''APHIS representative'' is the term we propose to use in describing APHIS personnel assigned to oversee and provide other technical services at privately owned medium or minimum security quarantine facilities. We also propose to make a minor technical change by revising ''quarantine station'' to read ''quarantine facility or station.''

Section 93.414 restricts the use of milk or cream from quarantined ruminants. We are proposing to amend § 93.414 by inserting ''APHIS representative'' alongside ''inspector in charge'' for the same reason as noted previously for amending § 93.413.

We are also proposing to redesignate the footnote numbers of several footnotes that appear in the regulations. Footnote 7, which appears in the heading ''Canada'' immediately above § 93.417, would be redesignated as footnote 9. Footnote 8, which appears in the heading ''Central America And West Indies'' immediately above § 93.422, would be redesignated as footnote 10. And footnote 9, which appears in the heading ''Mexico'' immediately above § 93.424, would be redesignated as footnote 11. These redesignations would be necessary because of two new footnotes that would be added to the regulations if § 93.412(d) is implemented.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

The regulations for the importation of ruminants appear at 9 CFR part 93, subpart D, §§ 93.400 through 93.435 (the regulations). Section 93.411 requires that ruminants arriving in the United States, with certain exceptions, be quarantined upon arrival for at least 30 days. Ruminants from Canada and Mexico are not subject to this quarantine requirement.

Section 93.412, paragraph (a), authorizes the establishment of privately operated quarantine facilities for ruminants, subject to APHIS approval and oversight. Section 93.434 contains standards for the approval, operation, and oversight of privately operated quarantine facilities for sheep or goats. After these standards were first established in 1988, privately operated quarantine facilities were briefly used for the importation of sheep and goats into the United States. However, there are currently no approved private quarantine facilities for sheep or goats, or for other ruminants. Therefore, imported ruminants subject to quarantine must enter the United States through facilities maintained by APHIS.

We have received requests to import cattle into the United States through quarantine facilities that are privately owned and operated.

Given the current interest in establishing privately owned quarantine facilities for cattle, we are proposing to amend our regulations and publish standards for approval and oversight of such facilities. The standards would have to be consistent with the standards followed at APHIS quarantine facilities to ensure that the health of the U.S. livestock population is not jeopardized by the release of unhealthy animals or communicable disease agents from quarantine facilities.

We are proposing that these standards apply not only to privately owned facilities intended for imported cattle, but for privately owned and operated facilities that wish to handle other imported ruminants, including sheep and goats. Therefore, as part of this proposal, we would remove from our regulations the existing standards for the approval of privately operated quarantine facilities for sheep or goats.

In 2001, about 2,440,000 live cattle worth an estimated $1.1 billion were imported into the United States. Over a 10-year period, 1992–2001, U.S. bovine imports averaged more than 2.2 million head per year, with an annual average value of $1.2 billion. In comparison, the U.S. cattle inventory has averaged about 100 million head over the last 10 years. According to the 1997 Census of Agriculture, the value of U.S. cattle sales in that year was approximately $40.5 billion, based on the sale of 74 million head. Thus, cattle imports represent about 2 percent of the U.S. cattle and calf population, and about 3 percent, by value, of domestic sales.

Almost all U.S. imports of cattle come from Canada and Mexico. In 2001, Canada exported 1,308,670 animals into the United States, while Mexico exported 1,130,168 animals in that same year. The only other sources of imports in 2001 were Norway (350 head) and Australia (12 head). The only other source of imports besides Canada and Mexico in 1999 and 2000 was Australia, which exported a total of 21 and 15 head to the United States in those two years. Based on the historic record, the number of cattle imported into the United States that would be affected by this rule would likely be small, given that ruminants from Canada and Mexico are generally not subject to quarantine as a condition of entry into the United States. However, the number of imports from countries other than Canada and Mexico may be more substantial, depending on the number and type of facilities (medium or minimum security facility) that are approved for operation.

Over the 10-year period, 1991–2000, U.S. sheep imports averaged 39,106 head annually, showing a steady increase from about 23,000 head in 1991, to about 52,000 head in 2000. In 2001, there was a significant increase in sheep imports, to 85,042 head. Canada dominates this market, supplying over 99 percent of U.S. sheep imports over the past 5 years. Very small numbers of sheep are imported from Mexico and New Zealand, and there have been imports previously from Australia, the Republic of South Africa, and the European Union. The annual average value of sheep imports over the 1991–2000 period was approximately $4 million (about $104 per head). Hence, the number of imported sheep affected by this rule would likely be small, given that almost all U.S. imports come from Canada.

Goats imported into the United States numbered only 6 head in 1991, while in 1994, they totaled 28,500 head (27,935 from New Zealand). These extreme import numbers during the early 1990s distort a more steady import pattern over the latter half of the 1990s. Therefore, annual averages over the 6-year period, 1995–2000, are appropriate. During this period, an average of 1,459 goats were imported into the United States yearly. Since 1999, all goat imports have come from Canada. Prior to 1999, Canada dominated the market, but Mexico and New Zealand were also significant in some years. The annual average value of goat imports over the 1996–2001 period was about $535,000 (about $244 per head). Hence, the number of imported goats affected by this rule would likely be small, given that the majority of goats imported into the United States typically come from Canada and Mexico.

U.S. imports of sheep and goats represent a small fraction of total U.S. domestic production of these animals. In 2000, the U.S. sheep population numbered about 7 million, with an

approximate value of $668 million. Based on average sheep imports of 39,106 head per year over the 1991–2000 period, U.S. sheep imports represent less than 1 percent of total U.S. domestic production. In 2000, there were approximately 436,000 Angora goats in the United States with a value of about $17 million. Based on average goat imports of 1,459 head per year over the 1995–2000 period, U.S. goat imports comprise less than 1 percent of total U.S. domestic production, and represent about 3.1 percent of the value of domestically-produced goats (signifying the generally higher value of imported goats).

APHIS and other Federal agencies are required to evaluate whether proposed regulations are likely to have a significant economic impact on a substantial number of small entities. Privately owned and operated quarantine facilities have been used from time to time for the importation of sheep and goats into the United States. However, no such approved facilities are currently in operation. Therefore, the standards contained in this proposed rule would not adversely affect any such entities, large or small. However, should one or more privately owned quarantine facilities be approved for operation, importers should benefit by having additional options for the placement of ruminants to be imported into the United States. And, particularly in the case of minimum security facilities, importers may have the opportunity to import ruminants from certain regions in larger lot sizes as compared to the current situation of having the animals placed in an APHIS indoor quarantine facility.

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment has not been prepared for this proposed rule. Because the environmental impacts that could result from implementation of this proposal would vary according to the location and design of the facility being approved, APHIS has determined site-specific environmental assessments must be conducted for each privately owned quarantine facility for ruminants prior to approval of the facility. APHIS will publish a notice in the **Federal Register** for each environmental assessment we conduct in this regard if this proposed rule is finalized, and we would invite public comment on each site-specific environmental assessment.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 00–022–1. Please send a copy of your comments to: (1) Docket No. 00–022–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are proposing standards for the establishment and operation of privately owned quarantine facilities for imported ruminants prior to their release into the United States. Satisfying the proposed requirements in this rule would entail several information collection activities, including an application for facility approval, a compliance agreement explaining the conditions under which the facility must be operated, certification that the facility meets all applicable environmental regulations, and maintenance of certain records covering quarantine operations.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as 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).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 9.64 hours per response.

Respondents: Operators of privately owned quarantine facilities for ruminants.

Estimated annual number of respondents: 25.

Estimated annual number of responses per respondent: 1.8.

Estimated annual number of responses: 45.

Estimated total annual burden on respondents: 434 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS'' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 93 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

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

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

2. In part 93, subpart D, footnotes 7, 8, and 9 would be redesignated as footnotes 9, 10, and 11, respectively.

3. Section 93.400 would be amended by revising the footnote and the definition of *immediate slaughter* and the footnote to *recognized slaughtering establishment* and by adding, in alphabetical order, new definitions for *area veterinarian in charge, Federal veterinarian, lot, lot-holding area, nonquarantine area, Office International des Epizooties (OIE), operator, privately owned medium security quarantine facility (medium security facility), privately owned minimum security quarantine facility (minimum security facility), quarantine area, State veterinarian,* and *temporary inspection facility* to read as follows:

§ 93.400 Definitions.

* * * * *

Area veterinarian in charge (AVIC). The veterinary official of the Animal and Plant Health Inspection Service, who is assigned by the Administrator to supervise and perform the official animal health work of the Animal and Plant Health Inspection Service in the State concerned.

* * * * *

Federal veterinarian. A veterinarian employed and authorized by the Federal Government to perform the tasks required by this subpart.

* * * * *

Immediate slaughter. Consignment directly from the port of entry to a recognized slaughtering establishment [1] and slaughtered within 2 weeks from the date of entry.

* * * * *

Lot. A group of ruminants that, while held on a conveyance or premises, has opportunity for physical contact with each other or with each other's excrement or discharges at any time between arrival at the quarantine facility and 60 days prior to export to the United States.

Lot-holding area. That area in a privately owned medium or minimum security quarantine facility in which a single lot of ruminants is held at one time.

* * * * *

Nonquarantine area. That area of a privately owned medium or minimum security quarantine facility that includes offices, storage areas, and other areas outside the quarantine area, and that is off limits to ruminants, samples taken from ruminants, and any other objects or substances that have been in the quarantine area during the quarantine of ruminants.

Office International des Epizooties (OIE). The international organization recognized by the World Trade Organization for setting animal health standards, reporting global animal situations and disease status, and presenting guidelines and recommendations on sanitary measures related to animal health.

Operator. A person other than the Federal Government who owns or operates, subject to APHIS' approval and oversight, a privately owned medium or minimum security quarantine facility.

* * * * *

Privately owned medium security quarantine facility (medium security facility). A facility that:

(1) Is owned, operated, and financed by a person other than the Federal Government;

(2) Is subject to the strict oversight of APHIS representatives;

(3) Is constructed, operated, and maintained in accordance with the requirements for medium security facilities in § 93.412(d); and

(4) Provides the necessary level of quarantine services for the holding of ruminants in an indoor, vector-proof environment prior to the animals' entry into the United States. Quarantine services would have to include testing or observation for any OIE list A diseases and other livestock diseases exotic to the United States, as well as any other diseases, as necessary, to be determined by the Administrator.

Privately owned minimum security quarantine facility (minimum security facility). A facility that:

(1) Is owned, operated, and financed by a person other than the Federal Government;

(2) Is subject to the strict oversight of APHIS representatives;

(3) Is constructed, operated, and maintained in accordance with the requirements for minimum security facilities in § 93.412(d);

(4) Is used for the quarantine of ruminants that pose no significant risk, as determined by the Administrator, of introducing or transmitting to the U.S. livestock population any livestock disease that is biologically transmissible by vectors; and

(5) Provides the necessary level of quarantine services for the outdoor holding of ruminants, prior to the animals' entry into the United States. Quarantine services would have to include testing or observation for any OIE list A diseases and other livestock diseases exotic to the United States, as well as any other diseases, as necessary, to be determined by the Administrator.

Quarantine area. That area of a privately owned medium or minimum security quarantine facility that comprises all of the lot-holding areas in the facility and any other areas in the facility that ruminants have access to, including loading docks for receiving and releasing ruminants, and any areas used to conduct examinations of ruminants and take samples and any areas where samples are processed or examined.

Recognized slaughtering establishment.[2] * * *

* * * * *

State veterinarian. A veterinarian employed and authorized by a State or political subdivision of a State to perform the tasks required by this subpart.

* * * * *

Temporary inspection facility. A facility owned and operated by a person other than the Federal Government that is located within 1 mile of the port of entry and used for the inspection of ruminants imported into the United States in accordance with § 93.408 of this subpart.

* * * * *

4. In § 93.403, paragraph (g) would be revised to read as follows:

§ 93.403 Ports designated for the importation of ruminants.

* * * * *

(g) *Ports and privately owned quarantine facilities.* Ruminants may be imported into the United States at any port specified in paragraph (a) of this section, or at any other port designated as an international port or airport by the Bureau of Customs and Border Protection, and quarantined at an APHIS-approved privately owned quarantine facility, provided the applicable provisions of §§ 93.401,

[1] The name of recognized slaughtering establishments approved under this part may be obtained from the area veterinarian in charge for the State of destination of the shipment. The name and address of the area veterinarian in charge of any State is available from the Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import and Export, 4700 River Road, Unit 38, Riverdale, MD 20737–1231.

[2] See footnote 1.

93.404(a), 93.407, 93.408, and 93.412 are met.

§ 93.404 [Amended]

5. In § 93.404, paragraph (a)(1) would be amended by adding the words ''the name and address of the quarantine facility, if the ruminants are to be quarantined at a privately owned quarantine facility;'' after the words ''and the port of entry in the United States;''.

6. In § 93.412, paragraphs (a) and (c) would be revised and a new paragraph (d) would be added to read as follows:

§ 93.412 Ruminant quarantine facilities.

(a) *Privately owned quarantine facilities.* The operator of a privately owned medium or minimum security quarantine facility subject to the regulations in this subpart shall arrange for acceptable transportation from the port to the privately owned quarantine facility and for the care, feeding, and handling of the ruminants from the time of unloading at the port to the time of release from the quarantine facility. Such arrangements shall be agreed to in advance by the Administrator. All expenses related to these activities shall be the responsibility of the operator. The privately owned quarantine facility must be suitable for the quarantine of the ruminants and must be approved by the Administrator prior to the issuance of any import permit. The facilities occupied by the ruminants should be kept clean and sanitary to the satisfaction of the APHIS representatives. If for any cause, the care, feeding, or handling of ruminants, or the sanitation of the facilities is neglected, in the opinion of the overseeing APHIS representative, such services may be furnished by APHIS in the same manner as though arrangements had been made for such services as provided by paragraph (b) of this section, and/or the ruminants may be disposed of as the Administrator may direct, including through their sale in accordance with the procedure described in paragraph (b) of this section. The operator must request in writing inspection and other services as may be required, and shall waive all claims against the United States and APHIS or any employee of APHIS for damages which may arise from such services. The Administrator may prescribe reasonable rates for the services provided under this paragraph. When APHIS finds it necessary to extend the usual minimum quarantine period, APHIS shall advise the operator in writing, and the operator must pay for such additional quarantine and other services required. The operator must pay for all services received in connection with each separate lot of ruminants by certified check or U.S. money order prior to release of the ruminants. If such payment is not made, the ruminants may be sold in accordance with the procedure described in paragraph (b) of this section, or otherwise disposed of as directed by the Administrator.

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(c) APHIS collection of payments from the importer, or his or her agent, or the operator, for service rendered shall be deposited so as to be available for defraying the expenses involved in this service.

(d) *Standards for privately owned quarantine facilities for ruminants.*—(1) *APHIS approval of facilities.*—(i) *Approval procedures.* Persons seeking APHIS approval of a privately owned medium or minimum security quarantine facility for ruminants must make written application to the Administrator, c/o National Center for Import and Export, Veterinary Services, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737–1231. The application must include the full name and mailing address of the applicant; the location and street address of the facility for which approval is sought; blueprints of the facility; a description of the financial resources available for construction, operation and maintenance of the facility; copies of all approved State permits for construction and operation of the facility (but not local building permits), as well as copies of all approved Federal, State, and local environmental permits; the anticipated source(s) or origin(s) of ruminants to be quarantined, as well as the expected size and frequency of shipments, and a contingency plan for the possible destruction and disposal of all ruminants capable of being held in the facility.

(A) If APHIS determines that an application is complete and merits further consideration, the person applying for facility approval must agree to pay the costs of all APHIS services associated with APHIS' evaluation of the application and facility. APHIS charges for evaluation services at hourly rates are listed in § 130.30 of this chapter. If the facility is approved by APHIS, the operator must enter into a compliance agreement in accordance with paragraph (d)(2) of this section.

(B) Requests for approval must be submitted at least 120 days prior to the date of application for local building permits. Requests for approval will be evaluated on a first-come, first-served basis.

(ii) *Criteria for approval.* Before a facility may be built to operate as a privately owned medium or minimum security quarantine facility for ruminants, it must be approved by APHIS. To be approved:

(A) APHIS must find, based on an environmental assessment, and based on any required Federal, State, and local environmental permits or evaluations secured by the operator and copies of which are provided to APHIS, that the operation of the facility will not have significant environmental effects;

(B) The facility must meet all the requirements of paragraph (d) of this section;

(C) The facility must meet any additional requirements that may be imposed by the Administrator in each specific case, as specified in the compliance agreement required under paragraph (d)(2) of this section, to ensure that the quarantine of ruminants in the facility will be adequate to enable determination of their health status, as well as to prevent the transmission of livestock diseases into, within, and from the facility; and

(D) The Administrator must determine whether sufficient personnel, including one or more APHIS veterinarians and other professional, technical, and support personnel, are available to serve as APHIS representatives at the facility and provide continuous oversight and other technical services to ensure the biological security of the facility, if approved. APHIS will assign personnel to facilities requesting approval in the order that the facilities meet all of the criteria for approval. The Administrator has sole discretion on the number of APHIS personnel to be assigned to the facility.

(iii) *Maintaining approval.* To maintain APHIS approval, the operator must continue to comply with all the requirements of paragraph (d) of this section as well as the terms of the compliance agreement executed in accordance with paragraph (d)(2) of this section.

(iv) *Withdrawal or denial of approval.* Approval of a proposed privately owned medium or minimum security quarantine facility may be denied or approval of a facility already in operation may be withdrawn at any time by the Administrator for any of the reasons provided in paragraph (d)(1)(iv)(C) of this section.

(A) Before facility approval is denied or withdrawn, APHIS will inform the operator of the proposed or existing facility and include the reasons for the proposed action. If there is a conflict as to any material fact, APHIS will afford

the operator, upon request, the opportunity for a hearing with respect to the merits or validity of such action in accordance with rules of practice that APHIS adopts for the proceeding.

(B) Withdrawal of approval of an existing facility will become effective pending final determination in the proceeding when the Administrator determines that such action is necessary to protect the public health, interest, or safety. Such withdrawal will be effective upon oral or written notification, whichever is earlier, to the operator of the facility. In the event of oral notification, APHIS will give written confirmation to the operator of the facility as promptly as circumstances allow. This withdrawal will continue in effect pending the completion of the proceeding and any judicial review, unless otherwise ordered by the Administrator. In addition to withdrawal of approval for the reasons provided in paragraph (d)(1)(iv)(C) of this section, the Administrator will also automatically withdraw approval when the operator of any approved facility notifies the area veterinarian in charge for the State in which the facility is located, in writing, that the facility is no longer in operation.[7]

(C) The Administrator may deny or withdraw the approval of a privately owned medium or minimum security quarantine facility if:

(*1*) Any requirement of paragraph (d) of this section or the compliance agreement is not met; or

(*2*) The facility has not been in use to quarantine ruminants for a period of at least 1 year; or

(*3*) The operator fails to remit any charges for APHIS services rendered; or

(*4*) The operator or a person responsibly connected with the business of the facility is or has been convicted of any crime under any law regarding the importation or quarantine of any animal; or

(*5*) The operator or a person responsibly connected with the business of the facility is or has been convicted of a crime involving fraud, bribery, extortion, or any other crime involving a lack of integrity needed for the conduct of operations affecting the importation of animals; or

(*6*) Any other requirement under the Animal Health Protection Act (7 U.S.C. 8301–8317) or the regulations thereunder are not met.

[7] The name and address of the area veterinarian in charge of any State is available from the Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231.

(D) For the purposes of paragraph (d)(1)(iv) of this section, a person is deemed to be responsibly connected with the business of the facility if such person has an ownership, mortgage, or lease interest in the facility, or if such person is a partner, officer, director, holder, or owner of 10 percent or more of its voting stock, or an employee in a managerial or executive capacity.

(2) *Compliance agreement.* (i) A privately owned medium or minimum security quarantine facility must operate in accordance with a compliance agreement executed by the operator or other designated representative of the facility and by the Administrator. The compliance agreement must be signed by both parties before a facility may commence operations. The compliance agreement must provide that:

(A) The facility must meet all applicable requirements of paragraph (d) of this section;

(B) The facility's quarantine operations are subject to the strict oversight of APHIS representatives;

(C) The operator agrees to be responsible for the cost of building the facility; all costs associated with its maintenance and operation; all costs associated with the hiring of personnel to attend to the ruminants, as well as to maintain and operate the facility; all costs associated with the care of quarantined ruminants, such as feed, bedding, medicines, inspections, testing, laboratory procedures, and necropsy examinations; all costs associated with the death or destruction and disposition of quarantined ruminants; and all APHIS charges for the services of APHIS representatives in accordance with this section and part 130 of this chapter;

(D) The operator obtained, prior to execution of this agreement, a financial instrument (insurance or surety bond) approved by APHIS that financially guarantees the operator's ability to cover all costs and other financial liabilities and obligations of the facility, including a worst case scenario in which all quarantined ruminants must be destroyed and disposed of because of an animal health emergency, as determined by the Administrator.

(E) The operator will deposit with the Administrator, prior to commencing quarantine operations, a certified check or U.S. money order to cover the estimated costs, as determined by the Administrator, of professional, technical, and support services to be provided by APHIS at the facility over the duration of the quarantine. If actual costs incurred by APHIS over the quarantine period exceed the deposited amount, the operator will pay for any additional costs incurred by APHIS, based on official accounting records. Payment for all services received in connection with each lot of ruminants in quarantine shall be made prior to release of the ruminants. The operator must pay for any other costs incurred by APHIS with respect to the quarantine following the release of the ruminants, based on official records, within 14 days of receipt of the bill showing the balance due. APHIS will return to the operator any unobligated funds deposited with APHIS, after the release of the lot of ruminants from the facility and termination or expiration of the compliance agreement, or, if requested, credit to the operator's account such funds to be applied towards payment of APHIS services at a future date.

(ii) Prior to the entry of each subsequent lot of ruminants into the medium or minimum security facility, a new compliance agreement must be executed, and a certified check or U.S. money order to the Administrator must be deposited to cover the estimated costs, as determined by the Administrator, of professional, technical, and support services to be provided by APHIS at the facility over the duration of the quarantine.

(3) *Physical plant requirements.* A privately owned medium or minimum security quarantine facility must meet the following requirements as determined by an APHIS inspection before ruminants may be admitted to it.

(i) *Location.* (A) The medium or minimum security facility must be located at a site approved by the Administrator, and the specific routes for the movement of ruminants from the port must be approved in advance by the Administrator, based on consideration of whether the site or routes would put the animals in a position that could result in their transmitting communicable livestock diseases.

(B) In the case of a medium security facility, the facility must be located at least one-half mile from any premises holding livestock. In the case of a minimum security facility, the Administrator will establish the required minimum distance between the facility and other premises holding livestock on a case-by-case basis.

(C) If the medium or minimum security facility is to be located more than 1 mile from a designated port, the operator must make arrangements for the imported ruminants to be held in a temporary inspection facility, which is within 1 mile of the port and approved by the Administrator, to allow for the inspection of the imported ruminants by a Federal or State veterinarian prior to

the animals' movement to the medium or minimum security facility.

(*1*) The temporary inspection facility must have adequate space for Federal or State veterinarians to conduct examinations and testing of the imported ruminants.

(*2*) The examination space of the temporary inspection facility must be equipped with appropriate animal restraining devices for the safe inspection of ruminants.

(*3*) The temporary inspection facility may not hold more than one lot of animals at the same time.

(*4*) In seeking APHIS approval of the temporary inspection facility, the operator must provide APHIS with the following information: The location and street address, as well as blueprints or a description of the temporary inspection facility; a description of the financial resources available for its construction (if applicable), operation, and maintenance; copies of all approved State and local permits for construction and operation of the temporary inspection facility, as well as copies of all approved Federal, State, and local environmental permits; and the anticipated source(s) or origin(s), lot size, and frequency of shipments of imported ruminants to be handled at the facility. Following APHIS approval of the temporary inspection facility, the operator will also provide APHIS with a copy of the local building permit, when obtained.

(*5*) If the ruminants, upon inspection at the temporary inspection facility, are determined to be infected with or exposed to a disease that precludes their entry into the United States, the animals will be refused entry. Ruminants refused entry remain the responsibility of the operator, but subject to further handling or disposition as directed by the Administrator in accordance with § 93.408 of this subpart.

(*6*) APHIS' approval to build and operate medium or minimum security facility outside the immediate vicinity of a designated port is contingent upon APHIS' approval of the temporary inspection facility at the port, as well as approval of the routes for the movement of ruminants from the port to the medium or minimum security facility.

(ii) *Construction.* The medium or minimum security facility must be of sound construction, in good repair, and properly designed to prevent the escape of quarantined ruminants. It must have adequate capacity to receive and hold a shipment of ruminants as a lot on an ''all-in, all-out'' basis and must include the following:

(A) *Loading docks.* The facility must include separate docks for animal receiving and releasing and for general receiving and pickup, or, alternatively, a single dock may be used for both purposes if the dock is cleaned and disinfected after each use in accordance with paragraph (d)(4)(iv)(D) of this section.

(B) *Perimeter fencing.* The facility must be surrounded by double-security perimeter fencing separated by at least 30 feet and of sufficient height and design to prevent the entry of unauthorized persons and animals from outside the facility and to prevent the escape of any ruminants in quarantine.

(C) *Means of isolation.* The facility must provide pens, chutes, and other animal restraining devices, as appropriate, for inspection and identification of each animal, as well as for segregation, treatment, or both, of any ruminant exhibiting signs of illness. The medium or minimum security facility must also have lot-holding areas of sufficient size to prevent overcrowding. A medium security facility may hold more than one lot of ruminants as long as the lots are separated by physical barriers such that ruminants in one lot do not have physical contact with ruminants in another lot or with their excrement or discharges. A minimum security facility may not hold more than one lot of animals at the same time.

(D) *APHIS space.* The facility must have adequate space for APHIS representatives to conduct examinations and draw samples for testing of ruminants in quarantine, prepare and package samples for mailing, and store duplicate samples and the necessary equipment and supplies for each lot of ruminants. The examination space must be equipped with appropriate animal restraining devices for the safe inspection of ruminants. The facility must also provide a secure, lockable office for APHIS use with enough room for a desk, chair, and filing cabinet.

(E) *Storage.* The facility must have sufficient storage space for equipment and supplies used in quarantine operations. Storage space must include separate, secure storage for pesticides and for medical and other biological supplies, as well as a separate storage area for feed and bedding, if feed and bedding are stored at the facility.

(F) *Other work areas.* The facility must include work areas for the repair of equipment and for cleaning and disinfecting equipment used in the facility.

(iii) *Additional construction requirements for medium security facilities.* For medium security facilities only, the following requirements must also be met:

(A) *Self-contained building.* The medium security facility must be constructed so that the quarantine area is located in a secure, self-contained building that contains appropriate control measures against the spread of livestock diseases biologically transmissible by vectors. All entryways into the nonquarantine area of the building must be equipped with a secure and lockable door. While ruminants are in quarantine, all access to the quarantine area must be from within the building. Each entryway to the quarantine area must be equipped with a solid self-closing door. Separate access must be provided within the quarantine area to each lot-holding area so that it is not necessary to move through one lot-holding area to gain access to another lot-holding area. Entryways to each lot-holding area within the quarantine area would also have to be equipped with a solid lockable door. Emergency exits to the outside may exist in the quarantine area if required by local fire ordinances. Such emergency exits must be constructed so as to permit their opening from the inside of the facility only.

(B) *Windows and other openings.* Any windows or other openings in the quarantine area must be double-screened with screening of sufficient gauge and mesh to prevent the entry or exit of insects and other vectors of livestock diseases and to provide ventilation sufficient to ensure the comfort and safety of all ruminants in the facility. The interior and exterior screens must be separated by at least 3 inches (7.62 cm). All screening of windows or other openings must be easily removable for cleaning, yet otherwise remain locked and secure at all times in a manner satisfactory to APHIS representatives in order to ensure the biological security of the facility.

(C) *Surfaces.* The medium security facility must be constructed so that the floor surfaces with which ruminants have contact are nonslip and wear-resistant. All floor surfaces with which the ruminants, their excrement, or discharges have contact must slope gradually to the center, where one or more drains of at least 8 inches in diameter are located for adequate drainage, or, alternatively, must be of slatted or other floor design that allows for adequate drainage. All floor and wall surfaces with which the ruminants, their excrement, or discharges have contact must be impervious to moisture and be able to withstand frequent cleaning and disinfection without deterioration. Other ceiling and wall

surfaces with which the ruminants, their excrement, or discharges do not have contact must be able to withstand cleaning and disinfection between shipments of ruminants. All floor and wall surfaces must be free of sharp edges that could cause injury to ruminants.

(D) *Ventilation and climate control.* The medium security facility must be constructed with a heating, ventilation, and air conditioning (HVAC) system capable of controlling and maintaining the ambient temperature, air quality, moisture, and odor at levels that are not injurious or harmful to the health of ruminants in quarantine. Air supplied to lot-holding areas must not be recirculated or reused for other ventilation needs. HVAC systems for lot-holding areas must be separate from air handling systems for other operational and administrative areas of the facility. In addition, if the facility is approved to handle more than one lot of ruminants at a time, each lot-holding area must have its own separate HVAC system that is designed to prevent cross-contamination between the separate lot-holding areas.

(E) *Lighting.* The medium security facility must have adequate lighting throughout, including in the lot-holding areas and other areas used to examine ruminants and conduct necropsies.

(F) *Fire protection.* The medium security facility, including the lot-holding areas, must have a fire alarm and voice communication system.

(G) *Monitoring system.* The medium security facility must have a television monitoring system or other arrangement sufficient to provide a full view of the lot-holding areas.

(H) *Communication system.* The medium security facility must have a communication system between the nonquarantine and quarantine areas of the facility.

(I) *Necropsy area.* The medium security facility must have an area that is of sufficient size to perform necropsies on ruminants and that is equipped with adequate lighting, hot and cold running water, a drain, a cabinet for storing instruments, a refrigerator-freezer for storing specimens, and an autoclave to sterilize veterinary equipment.

(J) *Additional storage requirements.* Feed storage areas in the medium security facility must be vermin-proof. Also, if the medium security facility has multiple lot-holding areas, then separate storage space for supplies and equipment must be provided for each lot-holding area.

(K) *Showers.* In a medium security facility, there must be a shower at the entrance to the quarantine area. A shower also must be located at the entrance to the necropsy area. A clothes-storage and clothes-changing area must be provided at each end of each shower area. There also must be one or more receptacles near each shower so that clothing that has been worn in a lot-holding area or elsewhere in the quarantine area can be deposited in the receptacle(s) prior to entering the shower.

(L) *Restrooms.* The medium security facility must have permanent restrooms in both the nonquarantine and quarantine areas of the facility.

(M) *Break room.* The medium security facility must have an area within the quarantine area for breaks and meals.

(N) *Laundry area.* The medium security facility must have an area for washing and drying clothes, linens, and towels.

(iv) *Sanitation.* To ensure that proper animal health and biological security measures are observed, a privately owned medium or minimum security quarantine facility must provide the following:

(A) Equipment and supplies necessary to maintain the facility in a clean and sanitary condition, including pest control equipment and supplies and cleaning and disinfecting equipment with adequate capacity to disinfect the facility and equipment.

(B) Separately maintained sanitation and pest control equipment and supplies for each lot-holding area if the facility will hold more than one lot of ruminants at a time (applicable to medium security facilities only).

(C) A supply of potable water adequate to meet all watering and cleaning needs, with water faucets for hoses located throughout the facility. An emergency supply of water for ruminants in quarantine also must be maintained.

(D) A stock of disinfectant authorized in § 71.10(a)(5) of this chapter or otherwise approved by the Administrator that is sufficient to disinfect the entire facility.

(E) The capability to dispose of wastes, including manure, urine, and used bedding, by means of burial, incineration, or public sewer. Other waste material must be handled in such a manner that minimizes spoilage and the attraction of pests and must be disposed of by incineration, public sewer, or other preapproved manner that prevents the spread of disease. Disposal of wastes must be carried out under the direct oversight of APHIS representatives.

(F) The capability to dispose of ruminant carcasses in a manner approved by the Administrator and under conditions that prevent the spread of disease from the carcasses.

(G) For incineration to be carried out at the facility, incineration equipment that is detached from other facility structures and is capable of burning wastes or carcasses as required. The incineration site must include an area sufficient for solid waste holding. Incineration may also take place at a local site away from the facility premises. All incineration activities must be carried out under the direct oversight of an APHIS representative.

(H) The capability to control surface drainage and effluent into, within, and from the facility in a manner that prevents the spread of disease into, within, and from the facility. If the facility is approved to handle more than one lot of ruminants at the same time, there must be separate drainage systems for each lot-holding area in order to prevent cross contamination.

(v) *Security.*

(A) A privately owned medium or minimum security quarantine facility must provide the following security measures:

(*1*) The facility and premises must be kept locked and secure at all times while the ruminants are in quarantine.

(*2*) The facility and premises must have signs indicating that the facility is a quarantine area and no visitors are allowed.

(*3*) The operator must furnish a telephone number or numbers to APHIS at which the operator or his or her agent can be reached at all times.

(*4*) APHIS is authorized to place seals on any or all entrances and exits of the facility, when determined necessary by APHIS to ensure security, and to take all necessary steps to ensure that the seals are broken only in the presence of an APHIS representative. If the seals are broken by someone other than an APHIS representative, it will be considered a breach in security, and an immediate accounting of all ruminants in the facility will be made by an APHIS representative. If a breach in security occurs, APHIS may extend the quarantine period as long as necessary to determine that the ruminants are free of communicable livestock diseases.

(*5*) In the event that a communicable livestock disease is diagnosed in quarantined ruminants, the Administrator may require that the operator have the facility guarded by a bonded security company, at the expense of the operator of the facility, in a manner that the Administrator deems necessary to ensure the biological security of the facility.

(B) A privately owned medium security facility also must provide the following security measures:

(*1*) The medium security facility and premises must be guarded at all times by one or more representatives of a bonded security company, or, alternatively, the medium security facility must have an electronic security system that prevents the entry of unauthorized persons into the facility and prevents animals outside the facility from having contact with ruminants in quarantine;

(*2*) If an electronic security system is used, the electronic security system must be coordinated through or with the local police so that monitoring of the facility is maintained whenever APHIS representatives are not at the facility. The electronic security system must be of the ''silent type'' and must be triggered to ring at the monitoring site and, if the operator chooses, at the facility. The electronic security system must be approved by Underwriter's Laboratories. The operator must provide written instructions to the monitoring agency stating that the police and an APHIS representative designated by APHIS must be notified by the monitoring agency if the alarm is triggered. The operator also must submit a copy of those instructions to the Administrator. The operator must notify the designated APHIS representative whenever a break in security occurs or is suspected of occurring.

(4) *Operating procedures.* The following procedures must be followed at a privately owned medium or minimum security quarantine facility at all times:

(i) *APHIS oversight.* (A) The quarantine of ruminants at the facility will be subject to the strict oversight of APHIS representatives authorized to perform the services required by this subpart.

(B) If, for any reason, the operator fails to properly care for, feed, or handle the quarantined ruminants as required in paragraph (d) of this section, or in accordance with animal health and husbandry standards provided elsewhere in this chapter, or fails to maintain and operate the facility as provided in paragraph (d) of this section, APHIS representatives are authorized to furnish such neglected services or make arrangements for the sale or disposal of quarantined ruminants at the operator's expense, as authorized in paragraph (a) of this section.

(ii) *Personnel.* (A) The operator must provide adequate personnel to maintain the facility and care for the ruminants in quarantine, including attendants to care for and feed ruminants, and other personnel as needed to maintain, operate, and administer the facility.

(B) The operator must provide APHIS with an updated list of all personnel who have access to the facility. The list must include the names, current residential addresses, and identification numbers of each person, and must be updated with any changes or additions in advance of such person having access to the quarantine facility.

(C) The operator must provide APHIS with signed statements from all personnel having access to the facility in which the person agrees to comply with paragraph (d) of this section and applicable provisions of this part, all terms of the compliance agreement, and any related instructions from APHIS representatives pertaining to quarantine operations, including contact with animals both inside and outside the facility.

(iii) *Authorized access.* (A) Access to the facility premises as well as inside the quarantine area will be granted only to APHIS representatives and other persons specifically authorized to work at the facility. All other persons are prohibited from the premises unless specifically granted access by an APHIS representative. Any visitors granted access must be accompanied at all times by an APHIS representative while on the premises.

(B) All visitors, except veterinary practitioners who enter the facility to provide emergency care, must sign an affidavit before entering the quarantine area, if determined necessary by the overseeing APHIS representative, declaring that they will not have contact with any susceptible animals outside the facility for at least 7 days after contact with the ruminants in quarantine, or for a period of time determined by the overseeing APHIS representative as necessary to prevent the transmission of communicable livestock diseases of ruminants.

(iv) *Sanitary practices.* (A) All persons granted access to the quarantine area must:

(*1*) Wear clean protective work clothing and footwear upon entering the quarantine area.

(*2*) Wear disposable gloves when handling sick animals and then wash hands after removing gloves.

(*3*) Change protective clothing, footwear, and gloves when they become soiled or contaminated.

(*4*) Be prohibited, if determined necessary by the overseeing APHIS representative, from having contact with any susceptible animals outside the facility for at least 7 days after the last contact with ruminants in quarantine, or for a longer period of time determined necessary by the overseeing APHIS representative to prevent the transmission of livestock diseases.

(B) All equipment (including tractors) must be cleaned and disinfected prior to being used in the quarantine area of the facility with a disinfectant that is authorized in § 71.10(a)(5) of this chapter or that is otherwise approved by the Administrator. The equipment must remain dedicated to the facility for the entire quarantine period. Any equipment used with quarantined ruminants must remain dedicated to that particular lot of ruminants for the duration of the quarantine period or be cleaned and disinfected before coming in contact with ruminants from another lot. Prior to its use on another lot of ruminants or its removal from the quarantine area, such equipment must be cleaned and disinfected to the satisfaction of an APHIS representative.

(C) Any vehicle, before entering or leaving the quarantine area of the facility, must be immediately cleaned and disinfected under the oversight of an APHIS representative with a disinfectant that is authorized in § 71.10(a)(5) of this chapter or that is otherwise approved by the Administrator.

(D) If the facility has a single loading dock, the loading dock must be immediately cleaned and disinfected after each use under the oversight of an APHIS representative with a disinfectant that is authorized in § 71.10(a)(5) of this chapter or that is otherwise approved by the Administrator.

(E) That area of the facility in which a lot of ruminants had been held or had access must be thoroughly cleaned and disinfected under the oversight of an APHIS representative upon release of the ruminants, with a disinfectant that is authorized in § 71.10(a)(5) of this chapter or that is otherwise approved by the Administrator, before a new lot of ruminants is placed in that area of the facility.

(F) For medium security facilities only, the following additional sanitary practices also must be followed:

(*1*) All persons granted access to the quarantine area, must:

(*i*) Shower when entering and leaving the quarantine area.

(*ii*) Shower before entering a lot-holding area if previously exposed from access to another lot-holding area.

(*iii*) Shower when leaving the necropsy area if a necropsy is in the process of being performed or has just been completed, or if all or portions of the examined animal remain exposed.

(*iv*) Be prohibited, unless specifically allowed otherwise by the overseeing APHIS representative, from having contact with any ruminants in the facility, other than the lot or lots of ruminants to which the person is assigned or is granted access.

(*2*) The operator is responsible for providing a sufficient supply of clothing and footwear to ensure that workers and others provided access to the quarantine area of the facility have clean, protective clothing and footwear after showering.

(*3*) The operator is responsible for the proper handling, washing, and disposal of soiled and contaminated clothing worn in the quarantine area in a manner approved by an APHIS representative as adequate to preclude the transmission of disease within and from the facility. At the end of each workday, work clothing worn into each lot-holding area and elsewhere in the quarantine area must be collected and kept in bags until the clothing is washed. Used footwear must either be left in the clothes changing area or cleaned with hot water (148 °F minimum) and detergent and disinfected as directed by an APHIS representative.

(v) *Handling of ruminants in quarantine.* (A) Each lot of ruminants to be quarantined must be placed in the facility on an ''all-in, all-out'' basis. No ruminant may be taken out of a lot while the lot is in quarantine, except for diagnostic purposes, and no ruminant may be added to a lot while in quarantine.

(B) The facility must provide sufficient feed and bedding for the ruminants in quarantine, and it must be free of vermin and not spoiled. Feed and bedding must originate from a region that has been approved by APHIS as a source for feed and bedding.

(C) Breeding of ruminants or collection of germ plasm from ruminants is prohibited during the quarantine period unless necessary for a required import testing procedure.

(D) Ruminants in quarantine will be subjected to such tests and procedures as directed by an APHIS representative to determine whether the ruminants are free of communicable livestock diseases. While in quarantine, ruminants may be vaccinated only with vaccines that have been approved by the APHIS representative and licensed in accordance with § 102.5 of this chapter.[8] Vaccines must be administered either by an APHIS veterinarian or an accredited veterinarian under the direct oversight of an APHIS representative.

(E) Any death or suspected illness of ruminants in quarantine must be reported immediately to the overseeing APHIS representative. The affected ruminants must be disposed of as the Administrator may direct or, depending on the nature of the disease, must be cared for as directed by APHIS to prevent the spread of disease.

(F) Quarantined ruminants requiring specialized medical attention or additional postmortem testing may be transported off the quarantine site, if authorized by APHIS. A second quarantine site must be established to house the ruminants at the facility of destination (*e.g.*, veterinary college hospital). In such cases, APHIS may extend the quarantine period until the results of any outstanding tests or postmortems are received.

(G) Should the Administrator determine that an animal health emergency exists at the facility, arrangements for the final disposition of the infected or exposed lot of ruminants must be accomplished within 4 workdays following disease confirmation. Subsequent disposition of the ruminants must occur under the direct oversight of APHIS representatives.

(vi) *Recordkeeping.* (A) The operator must maintain a current daily log, to record the entry and exit of all persons entering and leaving the facility.

(B) The operator must retain the daily log, along with any logs kept by APHIS and deposited with the operator, for at least 2 years following the date of release of the ruminants from quarantine and must make such logs available to APHIS representatives upon request.

(5) *Environmental quality.* If APHIS determines that a privately owned medium or minimum security quarantine facility does not meet applicable local, State, or Federal environmental regulations, APHIS may deny or suspend approval of the facility until appropriate remedial measures have been applied.

(6) *Other laws.* A privately owned medium or minimum security quarantine facility must comply with other applicable Federal laws and regulations, as well as with all applicable State and local codes and regulations.

(7) *Variances.* The Administrator may grant variances to existing requirements relating to location, construction, and other design features of a privately owned medium security quarantine facility or minimum security quarantine facility as well as to sanitation, security, operating procedures, recordkeeping, and other provisions in paragraph (d) of this section, but only if the Administrator determines that the variance causes no detrimental impact to the health of the ruminants or to the overall biological security of the quarantine operations. The operator must submit a request for a variance to the Administrator in writing at least 30 days in advance of the arrival of the ruminants to the facility. Any variance also must be expressly provided for in the compliance agreement.

7. Section 93.413 would be revised to read as follows:

§ 93.413 Quarantine stations, visiting restricted; sales prohibited.

Visitors are not permitted in the quarantine enclosures during any time that ruminants are in quarantine unless the APHIS representative or inspector in charge specifically grants access under such conditions and restrictions as may be imposed by the APHIS representative or inspector in charge. An importer (or his or her accredited agent or veterinarian) may be admitted to the yards and buildings containing his or her quarantined ruminants at such intervals as may be deemed necessary, and under such conditions and restrictions as may be imposed, by the APHIS representative or the inspector in charge of the quarantine facility or station. On the last day of the quarantine period, owners, officers, or registry societies, and others having official business or whose services may be necessary in the removal of the ruminants may be admitted upon written permission from the APHIS representative or inspector in charge. No exhibition or sale shall be allowed within the quarantine grounds.

§ 93.414 [Amended]

8. In § 93.414, the first sentence would be amended by adding the words ''APHIS representative or'' immediately before the words ''inspector in charge''.

§ 93.434 [Removed and Reserved]

9. Section 93.434 would be removed and reserved.

Done in Washington, DC, this 21st day of August 2003.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–21857 Filed 8–27–03; 8:45 am]

BILLING CODE 3410–34–P

[8] A list of approved vaccines is available from the Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import and Export, 4700 River Road, Unit 38, Riverdale, MD 20737–1231.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–173–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400, –400D, and –400F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–400, –400D, and –400F series airplanes. This proposal would require reviewing airplane maintenance records; inspecting the yaw damper actuator portion of the upper and lower rudder power control modules (PCM) for cracking, and replacing the PCMs if necessary; and reporting airplane maintenance records review and inspection results to the manufacturer. This action is necessary to detect and correct cracking in the yaw damper actuator portion of the upper and lower rudder PCMs, which could result in an uncommanded left rudder hardover, consequent increased pilot workload, and possible runway departure upon landing. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 29, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–173–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–173–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Doug Tsuji, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6487; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

• Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the proposed AD is being requested.

• Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–173–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–173–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report that the lower rudder of a Boeing Model 747–400 series airplane made an uncommanded move to the full left position (hardover) during flight. The flight crew used lateral and upper rudder controls to compensate for the lower rudder hardover. The flight crew used these controls and differential engine thrust to land the airplane. Investigation revealed that the yaw damper actuator portion of the lower rudder power control module (PCM) manifold was broken. The broken manifold is attributed to fatigue cracking in the lower rudder PCM, which caused the yaw damper to move out of its correct position and generate the uncommanded lower rudder hardover. An uncommanded left rudder hardover could result in increased pilot workload and possible runway departure upon landing.

The upper rudder PCM has the same design as the lower rudder PCM and can fail in the same manner. An upper rudder PCM failure will result in an upper rudder surface hardover to the left and would create a similar unsafe condition as for a failure of the lower rudder PCM.

The PCM part numbers installed on the 747–400D and 747–400F series airplanes are the same part numbers installed on the affected Model 747–400 series airplane. Therefore those airplanes may be subject to the unsafe condition identified on the Model 747–400 series airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–27A2397, dated July 24, 2003. This service bulletin describes the following procedures:

• Reviewing airplane maintenance records to determine if each PCM has a main manifold with less than 15,000 total flight hours or 2,000 total flight cycles.

• Performing ultrasonic inspections for cracking of the yaw damper actuator portion of upper and lower rudder PCMs that have 15,000 or more total flight hours and 2,000 or more total flight cycles.

• Recording the results of the ultrasonic inspections and reporting them to Boeing.

• Replacing subject PCMs that have evidence of possible cracking.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or

develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between This Proposed AD and the Service Bulletin

The Boeing service bulletin recommends accomplishing the review of airplane maintenance records and ultrasonic inspection within 6 months of the issue date of the service bulletin. We have determined that that interval would address the identified unsafe condition soon enough to ensure an adequate level of safety for the affected fleet. In developing an appropriate compliance time for this AD, we considered the 6-month compliance time recommended by the manufacturer, as well as the time required for the rulemaking process. In consideration of these factors, we find that 3 months after the effective date of this final rule will fall approximately at the same time for compliance as recommended by the manufacturer. We find that a 3-month compliance time represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

Interim Action

We consider this proposed AD interim action. The inspection reports that are required by this AD will enable the manufacturer and the FAA to obtain better insight into the nature, cause, and extent of the cracking, and eventually to develop final action to address the unsafe condition. Once final action has been identified, we may consider further rulemaking.

Changes to 14 CFR Part 39/Effect on the Proposed 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 airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 180 airplanes of the affected design in the worldwide fleet. The FAA estimates that 13 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed airplane maintenance records review, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed airplane maintenance records review on U.S. operators is estimated to be $845, or $65 per airplane.

Should an operator be required to accomplish the inspection, it would take approximately 4 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed inspection is estimated to be $260 per airplane.

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

Regulatory Impact

The regulations proposed herein 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. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed 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) if promulgated, 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 copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2003–NM–173–AD.

Applicability: Model 747–400, –400D, and –400F series airplanes; as listed in Boeing Alert Service Bulletin 747–27A2397, dated July 24, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking in the yaw damper actuator portion of the upper and lower rudder power control modules (PCM), which could result in an uncommanded left rudder hardover, consequent increased pilot workload, and possible runway departure upon landing, accomplish the following:

Review of Airplane Maintenance Records

(a) Within 3 months after the effective date of this AD: Review the airplane maintenance records to determine if each PCM has a main manifold with less than 15,000 total flight hours or fewer than 2,000 total flight cycles, or do the inspection required by paragraph (c) of this AD.

Follow-On Actions: PCMs With Less Than 15,000 Total Flight Hours or Less Than 2,000 Flight Cycles

(b) If it can be positively determined from the review of the airplane maintenance records that each rudder PCM is below either of the thresholds specified in paragraph (a) of this AD: Submit a report to the manufacturer in accordance with paragraph (d) of this AD.

Follow-On Actions: PCMs With 15,000 Total Flight Hours or More and 2,000 Flight Cycles or More

(c) If it cannot be positively determined that each rudder PCM is below either of the thresholds specified in paragraph (a) of this AD: Within 3 months after the effective date of this AD, do an ultrasonic inspection of the yaw damper actuator portion of the upper

and lower rudder PCMs in accordance with the Accomplishment Instructions specified in Boeing Alert Service Bulletin 747–27A2397, dated July 24, 2003. After completing the actions required by paragraphs (c)(1) or (c)(2) of this AD, as applicable, submit a report to the manufacturer in accordance with paragraph (d) of this AD.

(1) If no cracking is found: Apply sealant and a torque stripe and install a lockwire on the applicable rudder PCM per Figure 1 or Figure 2, as applicable, and the Accomplishment Instructions specified in Boeing Alert Service Bulletin 747–27A2397, dated July 24, 2003.

(2) If any cracking is found: Before further flight, replace the affected PCM with a PCM having less than 15,000 total flight hours and less than 2,000 total flight cycles, or a PCM that has been ultrasonically inspected (either by the operator or the supplier) in accordance with the Accomplishment Instructions specified in Boeing Alert Service Bulletin 747–27A2397, dated July 24, 2003.

Reporting Requirements

(d) At the applicable time specified in paragraph (d)(1) or (d)(2) of this AD, accomplish paragraph (e).

(1) If the inspection was done after the effective date of this AD: Submit the report and PCM, if applicable, within 20 days after the inspection.

(2) If the inspection was accomplished prior to the effective date of this AD: Submit the report and PCM, if applicable, within 20 days after the effective date of this AD.

(e) Do the requirements of paragraphs (e)(1) and (e)(2) of this AD. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) Submit a report of the airplane maintenance records review or the inspection findings (positive and negative) to: The Boeing Company, Service Engineering—Mechanical Systems, Attn: R. Adams, fax: (425) 342–5224. The report must contain the airplane and rudder PCM serial numbers, the total flight hours and flight cycles for each rudder PCM, and a description of any damage found. Submission of the Inspection Report Form (Figure 3 of Boeing Alert Service Bulletin 747–27A2397, dated July 24, 2003) is an acceptable method of complying with this requirement.

(2) Send parts to Parker Hannifin Corporation in accordance with the shipping instructions specified in Appendix A of the service bulletin.

Parts Installation

(f) As of the effective date of this AD, no person shall install on any airplane a rudder PCM with 15,000 total flight hours or more, or 2,000 total flight cycles or more, unless it has been ultrasonically inspected (either by the operator or the supplier) in accordance with the Accomplishment Instructions specified in Boeing Alert Service Bulletin 747–27A2397, dated July 24, 2003.

Alternative Methods of Compliance

(g) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on August 22, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–22001 Filed 8–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15529; Airspace Docket No. 03–ANM–03]

RIN 2120–AA66

Proposed Establishment of VOR Federal Airway 584

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Very High Frequency Omnidirectional Range (VOR) Federal Airway 584 (V–584) between the Helena, MT, Very High Frequency Omnidirectional Radio Range and Tactical Air Navigation Aid (VORTAC), and the Missoula, MT, VORTAC. This proposed airway would allow aircraft to fly a direct route between Helena, MT, and Missoula, MT, during outages of the Drummond VOR. This airway is intended to improve the management of aircraft operations in Montana.

DATES: Comments must be received on or before October 14, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify ''FAA Docket No. FAA–2003–15529, and Airspace Docket No. 03–ANM–03,'' at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers (FAA Docket No. FAA–2003–15529, and Airspace Docket No. 03–ANM–03) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2003–15529, and Airspace Docket No. 03–ANM–03.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received.

All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the **Federal Register**'s Web page at *http://www.gpoaccess.gov/fr/index.html.*

You may review the public docket containing the proposal; any comments received; and any final disposition in person at the Dockets Office (see address in ''Comments Invited'' section) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation

Administration, 15000 Aviation Boulevard, Hawthorne, CA 90261.

Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (CFR) part 71 (part 71) to establish V–584 between the Helena, MT, VORTAC, and the Missoula, MT, VORTAC. This proposed airway would provide a direct route between Helena, MT, and Missoula, MT, during outages of the Drummond VOR. V–584 would also allow for lower enroute altitudes through the mountainous terrain of Montana.

Domestic VOR Federal airways are published in paragraph 6010(a), of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airway listed in this document would be published subsequently in the order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–584 [New]

From Helena, MT; to Missoula, MT.

* * * * *

Issued in Washington, DC, August 21, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–22042 Filed 8–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 2003N–0346]

Food Labeling: Ingredient Labeling of Dietary Supplements That Contain Botanicals

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulation on declaring botanical ingredients in dietary supplements to incorporate by reference the latest editions of two books. Currently, the regulation incorporates by reference *Herbs of Commerce* (1992) and the *International Code of Botanical Nomenclature (Tokyo Code) 1994*. FDA proposes to replace the references to these editions with the 2000 editions of the same books. This action is intended to provide industry with current and more comprehensive references to use in identifying on product labels the common or usual name of each botanical ingredient contained in dietary supplements. In addition, FDA is proposing to incorporate new statutory restrictions on the use of the word ''ginseng'' in dietary supplement labeling. Finally, FDA is proposing to make minor wording changes in its regulation on declaring botanical ingredients in dietary supplements. These proposed changes are intended to improve the reader's understanding, consistent with the principles of plain English, or to be more technically accurate, consistent with internationally accepted botanical terminology. This proposed rule is a companion to a direct final rule published elsewhere in this issue of the **Federal Register**.

DATES: Submit written or electronic comments on this proposed rule by November 12, 2003. See section XI of this document for the proposed effective date of a final rule based on this proposed rule.

ADDRESSES: Submit written comments on this companion proposed rule to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Victoria Lutwak, Office of Nutritional Products, Labeling, and Dietary Supplements, Center for Food Safety and Applied Nutrition (HFS–810), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2375.

SUPPLEMENTARY INFORMATION:

I. Background

A. Rulemaking Process

This proposed rule is a companion to a direct final rule on the same topic published in the final rules section of this issue of the **Federal Register**. The companion proposed rule and its related direct final rule are substantively identical. This proposed rule provides the procedural framework to finalize the rule in the event that the direct final rule is withdrawn because FDA receives significant adverse comments.

A significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or why it would be ineffective or unacceptable without a change. In determining whether a significant adverse comment is sufficient to terminate a direct final rulemaking, FDA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. Comments

that are frivolous, insubstantial, or outside the scope of the rule will not be considered adverse under this procedure. A comment recommending additional changes in the rule will not be considered a significant adverse comment, unless the comment states why the rule would be ineffective without the recommended revision. In addition, if a significant adverse comment applies to an amendment, paragraph, or section of the rule and that provision can be severed from the remainder of the rule, FDA may adopt as final those provisions of the rule that are not the subject of a significant adverse comment.

The comment periods for this proposed rule and its related direct final rule run concurrently. We have identified and discussed the proposed regulatory changes in the preambles to both rules. Any comments received under this proposed rule will be treated as comments regarding the direct final rule and vice versa. FDA is publishing a direct final rule because the rule does not contain controversial changes and FDA does not anticipate receiving significant adverse comments about it. If no significant adverse comments are received in response to either rule, FDA will take no further action on the proposed rule. Instead, after the comment period ends, FDA intends to publish a document in the **Federal Register** to confirm the January 1, 2006, effective date of the direct final rule. This is the applicable uniform effective date for compliance with food labeling requirements published in the **Federal Register** (see the **Federal Register** of December 31, 2002 (67 FR 79851), designating January 1, 2006, as the effective date for food labeling regulations issued between January 1, 2003, and December 31, 2004). However, if FDA receives significant adverse comment on either rule, FDA will withdraw the direct final rule and will proceed to respond to all comments received on both rules under this companion proposed rule using the usual notice-and-comment procedures. A full description of FDA's policy on direct final rule procedures appears in a guidance document published in the **Federal Register** on November 21, 1997 (62 FR 62466).

B. Current Regulatory and Legislative Requirements Related to Proposed Rule Amendments

FDA issued a final rule entitled ''Food Labeling: Statement of Identity, Nutrition Labeling and Ingredient Labeling of Dietary Supplements'' in the **Federal Register** on September 23, 1997 (62 FR 49826). This rule incorporated by reference under § 101.4(h) (21 CFR 101.4(h)) the two books entitled *Herbs of Commerce* (1992) (Ref. 1) and *International Code of Botanical Nomenclature (Tokyo Code) 1994* (Ref. 2) for industry's use in identifying on product labels the common or usual name of each botanical ingredient contained in dietary supplements. Both books were incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

Section 101.4(h) currently requires that a dietary supplement that contains one or more botanical ingredients (including fungi and algae) state the common or usual name for each of these ingredients on the label. This common or usual name must be consistent with the ''standardized common name'' listed in *Herbs of Commerce* (1992) for the corresponding plant from which the botanical ingredient is derived. Therefore, the ''standardized common name'' of each botanical used as an ingredient of a dietary supplement is its common or usual name for labeling purposes.

Current § 101.4(h)(2) also requires that if no standardized common name for a particular botanical ingredient is listed in *Herbs of Commerce* (1992), the label must state the Latin binomial name of the plant from which that ingredient is derived. All names in Latin binomial form must be stated on the label in accordance with internationally accepted rules on nomenclature, such as those found in the *International Code of Botanical Nomenclature (Tokyo Code) 1994*. Further, the name in Latin binomial form must include the designation of the author or authors who published the Latin name [hereafter referred to as author citation] when a positive identification of the dietary ingredient cannot be made without identifying the author(s).

Since 1997, both of the books incorporated by reference for use by industry in the labeling of dietary supplements that contain botanical ingredients have been updated and now the 2000 editions supersede the earlier ones. *Herbs of Commerce, 2nd Edition* (2000) (Ref. 3) added standardized common names for approximately 1,500 more botanicals than were included in the earlier edition, and changed the standardized common names for approximately 140 botanicals listed in the earlier edition. *The International Code of Botanical Nomenclature (Saint Louis Code) 2000* (Ref. 4) reflects the International Botanical Congress's latest decisions on the rules for the scientific naming of plants. Botanical nomenclature is an evolving science that is influenced by new discoveries and the correction of past misidentifications of plants.

Further, in 2002, Congress passed and the President signed into law the Farm Security and Rural Investment Act of 2002 (Public Law 107–171) [hereafter referred to as the Farm Bill]. Section 10806 of the Farm Bill amended the misbranding provisions in section 403 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343) by adding a new paragraph (u), which states that a dietary supplement is misbranded ''[i]f it purports to be or is represented as ginseng, unless it is an herb or herbal ingredient derived from a plant classified within the genus Panax.'' Section 10806(b)(1)(A) of the Farm Bill states that ''the term 'ginseng' may only be considered to be a common or usual name (or part thereof) for any herb or herbal ingredient derived from a plant classified within the genus Panax.'' Section 10806(b)(1)(B) further provides that ''only labeling or advertising for herbs or herbal ingredients classified within that genus may include the term 'ginseng.'''

The Farm Bill requirements about use of the term ''ginseng'' are in effect today because the law is self-executing. Congress did not direct FDA to issue regulations in order to implement these new requirements; therefore, industry must comply with them currently.

C. Updated Books To Be Incorporated by Reference

Herbs of Commerce, 2nd Edition (2000) establishes a ''standardized common name,'' expressed primarily in English, for each plant used in commerce, including fungi and algae. However, in a few instances, the standardized common name is expressed in another language or is the same as the plant's Latin binomial name (i.e., genus and species) when that name has become common. For example, the Spanish word ''maté'' is the standardized common name for the plant ''*Ilex paraguariensis* A. St.-Hil.,'' and the Latin binomial name ''*Phyllanthus amarus*'' is the standardized common name for the plant ''*Phyllanthus amarus* Schumach.'' The standardized common name generally applies to the whole plant, but in some instances it applies to a plant part. For example, the standardized common names ''mace'' and ''nutmeg'' pertain specifically to the plant parts ''aril'' and ''seed,'' respectively, of the same plant ''*Myristica fragrans* Houtt.''

All standardized common names listed in *Herbs of Commerce, 2nd Edition* (2000) are printed in boldface letters. In this book under ''Section One: Latin Binomials,'' each plant name is

listed first alphabetically by its Latin binomial name. The plant's corresponding standardized common name is stated after the acronym ''SCN'' on the first indented line of text underneath its Latin binomial name. Under ''Section Two: Standardized Common Names,'' each plant name is listed first alphabetically by its standardized common name. The plant's corresponding Latin binomial name is stated on the first indented line of text underneath its standardized common name.

In addition to the standardized common name, *Herbs of Commerce, 2nd Edition* (2000) identifies the currently recognized Latin binomial name and four other categories of common names for each of the plants listed, as applicable. These other categories are:

- ''botanical synonym,''
- ''Ayurvedic name,''
- ''pinyin name,'' and
- ''other common name.''

The botanical synonym, if any, represents one or more examples of other Latin binomial names that have been broadly used for the plant in the past. The Ayurvedic name, if any, generally represents the plant's Sanskrit name; however, the Hindi name may be cited if the plant is primarily known by it instead. The pinyin name, if any, may be one or more of the plant's Chinese common names. Other common names, if any, represent any additional names frequently used for the plant.

The ''standardized common name'' is different and distinct from all of the other categories of common names for a plant. There is only one *standardized* common name that is selected for each plant listed in *Herbs of Commerce, 2nd Edition* (2000); however, there may be several names cited within one or more of the other categories of common names that are associated with the same plant.

The *International Code of Botanical Nomenclature (Saint Louis Code) 2000* (the Code) establishes the current internationally accepted rules that govern the scientific naming of plants, including fungi and algae. The scientific name, which identifies the plant's genus and species, is expressed in Latin and applies to the whole plant without exception. The Latin binomial name of a plant is followed by the name(s) of the person(s) who described and published the plant name in accordance with the Code's guidelines. The Code refers to such notation about authors as an ''author citation.''

II. Proposed Rule

FDA is proposing to revise § 101.4(h) to substitute *Herbs of Commerce, 2nd Edition* (2000) for its 1992 edition, and the *International Code of Botanical Nomenclature (Saint Louis Code) 2000* for its 1994 edition, as books incorporated by reference. Requirements on how these references are to be used for dietary supplement labeling purposes remain the same and are not affected by this proposed rule, with one minor exception.

Currently, § 101.4(h)(2) uses the phrase ''such as'' when referring to the *International Code of Botanical Nomenclature* as a reference that industry may use to ensure that any Latin binomial name of a botanical ingredient listed on the label of a dietary supplement conforms to the internationally accepted rules of botanical nomenclature. As presently worded, the regulation could be interpreted to allow other references to be consulted for this purpose. We are proposing to revise the language in the Code of Federal Regulations (CFR) to make the *International Code of Botanical Nomenclature* the only reference that may be used on the rules for determining and formatting the Latin binomial name of a botanical ingredient for dietary supplement labeling purposes. This book is internationally recognized by botany experts from nations around the world as the foremost authoritative reference on botanical nomenclature. We are not aware of any comparable reference that comprehensively addresses the rules on the scientific naming of plants and has as broad international support. The *International Code of Botanical Nomenclature* is regulated by the Nomenclature Section of an International Botanical Congress. This group meets under the auspices of the International Union of Biological Sciences, of which the U.S. National Research Council/National Academy of Sciences is a member. The XVI International Botanical Congress brought together more than 4,000 scientists from more than 100 countries at its most recent meeting held in Saint Louis, MO in 1999 when the *International Code of Botanical Nomenclature (Saint Louis Code) 2000* was voted on and adopted. Therefore, to be in harmony with this international cooperation and to be consistent with FDA's science-based philosophy, FDA is proposing to incorporate by reference the *International Code of Botanical Nomenclature (Saint Louis Code) 2000* as the one that industry must follow on the rules to determine and format the Latin binomial names of any botanical ingredients stated on dietary supplement labels.

Some dietary supplements may contain a botanical ingredient that is not listed in the 2000 edition of *Herbs of Commerce* and therefore does not have a standardized common name. Like the current regulation, in such cases the proposed rule would require that the common or usual name for that botanical ingredient listed on the label be accompanied, in parentheses, by the Latin binomial name of the plant from which it is derived. When needed to positively identify the botanical ingredient, the proposed rule would similarly require that the Latin binomial name also include the author citation, stated in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*.

FDA is aware that there may be instances when a botanical ingredient belongs to a subspecies or variety of a species that is not listed in the 2000 edition of *Herbs of Commerce*. In those cases, the Latin binomial name and author citation alone will not identify the subspecies or variety of that species. Although not a proposed requirement, FDA encourages industry to voluntarily state the following on dietary supplement labels directly after the Latin binomial name when needed to positively identify a botanical ingredient below the species level: The name of any applicable subspecies, variety, or other subdivision and its corresponding author citation, stated in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*.

FDA is proposing to further revise § 101.4(h) to incorporate statutory restrictions on the use of the term ''ginseng'' that were imposed by section 10806 of the Farm Bill. Specifically, we are proposing to include the following statement in § 101.4(h): ''The use of the term 'ginseng' as a common or usual name (or part thereof) for any dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus '*Panax*.'''

Finally, FDA is proposing to make minor wording changes in § 101.4(h) to improve the reader's understanding, consistent with the principles of plain English, or to improve technical accuracy, consistent with internationally accepted botanical terminology. Examples of changes we are proposing to improve the reader's understanding are using simpler language throughout, substituting the word ''must'' for ''shall,'' and dividing

very long sentences into shorter ones. To be more technically accurate, the proposal would replace the current wording under § 101.4(h)(2) that refers to the ''designation of the author or author(s) who published the Latin name'' with the term ''author citation'' to refer to the ''name(s) of the person(s) who described and published the Latin binomial name in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000.*'' For technical clarity, we are proposing to also add the notation ''(i.e., genus and species)'' after the first reference to the term ''Latin binomial name'' under § 101.4(h).

III. Use of the Incorporated References and Implementation of Pertinent Farm Bill Provisions

Over the years, FDA has received several inquiries from representatives of the dietary supplement industry about the use of *Herbs of Commerce* and the *International Code of Botanical Nomenclature*. These books are references for industry to use in determining the common or usual name of each botanical ingredient or to consult on the rules for determining and formatting any required Latin binomial names corresponding to the botanical ingredients declared on dietary supplement labels. The act of ''incorporation by reference,'' however, does not imply that all of the botanicals that have standardized common names listed in *Herbs of Commerce* or that follow the scientific naming rules found in the *International Code of Botanical Nomenclature* are safe for consumption as dietary supplements or other foods by man or other animals. Citation of these books in the CFR is specific and limited to the sole purpose of identifying authoritative references for industry to use to determine the correct plant nomenclature. Neither reference addresses the safety or uses of plants.

This proposed rule focuses only on the naming of botanical ingredients of dietary supplements for labeling purposes. It is the responsibility of manufacturers and distributors to ensure that the particular botanicals they use as ingredients of dietary supplements are safe for human consumption, do not contain contaminants, are properly identified on the label, are legally marketed, and conform to all governing regulations.

In addition, *Herbs of Commerce, 2nd Edition* (2000) does not represent an authoritative compilation of botanical dietary ingredients that were marketed in the United States before October 15, 1994 (i.e., botanicals that are not new dietary ingredients under section 413(c) of the act (21 U.S.C. 350b(c))). The book's disclaimer explains that the publisher did not verify whether or not the companies that submitted botanical information for inclusion in this reference had valid documentation that supported such marketing. The book's disclaimer further states: ''The listing of a particular species of plant in this work is not, therefore, in and of itself, evidence that such species was marketed in the United States prior to October 15, 1994'' (Ref. 3, page xx). This proposed rule does not confer FDA endorsement of *Herbs of Commerce, 2nd Edition* (2000) for any other purpose than to serve as a reference on the common or usual names of botanical ingredients contained in dietary supplements.

In most cases, *Herbs of Commerce, 2nd Edition* (2000) assigns a unique standardized common name to each plant. However, the book indicates that the same standardized common name is given to more than one plant when the plants are used interchangeably in commerce. There are over 100 instances in *Herbs of Commerce, 2nd Edition* (2000) where the same standardized common name applies to two or more different species, subspecies, or varieties of the same genus of plant.

In other cases in *Herbs of Commerce, 2nd Edition* (2000), a name listed under one of the categories of common names (e.g., Pinyin names) for one botanical may be shared by another botanical from a different genus of plants. For example, the botanical *Ammi majus L.* has the standardized common name bishop's weed, whereas bishop's weed is also listed as the other common name for the botanical *Aegopodium podagraria* L. that has the standardized common name ash weed.

Confusion and mistakes in the identity of botanicals can be caused when the ingredients have the same or similar common names. Therefore, it is important that manufacturers know a botanical's true identity, including its Latin binomial name with author citation and its biological and chemical properties, before substituting one botanical for another as an ingredient of a dietary supplement. It is the responsibility of manufacturers and distributors to ensure that any botanical used as an ingredient of a dietary supplement or other food marketed in the United States is safe for consumption and complies with all applicable requirements of the act and related regulations.

The ''standardized common names'' of botanicals listed in both the 1992 and 2000 editions of *Herbs of Commerce* are consistent with the Farm Bill's definition of the term ''ginseng.'' However, both editions note that the term ''ginseng'' has been used as part of ''other common names'' associated with botanicals from genera other than *Panax*, including blue ginseng, lesser ginseng, prince ginseng, and Siberian ginseng. We remind industry that names that include the term ''ginseng'' may be used as the common or usual name for a botanical ingredient only if the botanical is derived from the plant genus ''*Panax*.''

IV. Environmental Impact

FDA has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environment assessment nor an environmental impact statement is required.

V. Preliminary Regulatory Impact Analysis

FDA has examined the economic implications of this proposed rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive order classifies a regulatory action as significant if it meets any one of a number of specified conditions, including: having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. The Executive order also classifies a regulatory action as significant if it raises novel legal or policy issues. We have determined that this proposed rule is not a significant regulatory action as defined by the Executive order.

A. Regulatory Options

We have identified the following major regulatory alternatives or options: (1) Take no action, (2) take the proposed action, and (3) take an alternative action. These options are explained in the next section of this document.

1. Option One: Take No Action

The incorporation by reference citations under § 101.4(h) would remain unchanged. Under this option, the following requirements and provisos apply:

• The label of a dietary supplement containing a botanical ingredient must use the ''standardized common name'' for that botanical ingredient listed in the 1992 edition of *Herbs of Commerce*.

• For a botanical ingredient not listed in the 1992 edition of *Herbs of Commerce*, the label could use any appropriately descriptive name as the common or usual name, with the following exception. In accordance with section 10806 of the Farm Bill, the use of the term ''ginseng'' as a common or usual name (or part thereof) for any dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus ''*Panax*.''

• Any common or usual name *other than* the ''standardized common name'' for a botanical ingredient may be used only if the botanical ingredient is not listed in *Herbs of Commerce* (1992), and must be accompanied by the Latin binomial name of the plant from which it is derived.

• The Latin binomial name must be stated in accordance with the internationally accepted rules on botanical nomenclature, such as those found in the *International Code of Botanical Nomenclature (Tokyo Code) 1994*.

• The Latin binomial name of a botanical ingredient also must include the designation of the author or authors who published the Latin name, when a positive identification of the botanical cannot be made in its absence.

2. Option Two: Take the Proposed Action

The proposed action is to update the incorporation by reference citations under § 101.4(h). Under this option, the following requirements and provisos apply:

• The label of a dietary supplement containing a botanical ingredient must use the ''standardized common name'' for that botanical ingredient listed in the 2000 edition of *Herbs of Commerce*.

• For a botanical ingredient not listed in the 2000 edition of *Herbs of Commerce*, the label could use any appropriately descriptive name as the common or usual name, with the following exception. As in Option One, in accordance with section 10806 of the Farm Bill, the use of the term ''ginseng'' as a common or usual name (or part thereof) for any dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus ''*Panax*.''

• Any common or usual name *other than* the ''standardized common name'' for a botanical ingredient may be used only if the botanical ingredient is not listed in *Herbs of Commerce* (2000), and must be accompanied by the Latin binomial name of the plant from which it is derived.

• The Latin binomial name must be stated in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*.

• When needed to positively identify the botanical ingredient, the Latin binomial name also must include the author citation (i.e., name(s) of the person(s) who described and published the Latin binomial name in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*).

3. Option Three: Take an Alternative Action

This option is similar to the proposed action. We would still update the incorporation by reference citations under § 101.4(h), but firms would have slightly more flexibility when labeling supplements containing a botanical ingredient. Under this option, the following requirements and provisos apply:

• As in Option Two, if the ''standardized common name'' for a botanical ingredient has changed from the 1992 to the 2000 edition of *Herbs of Commerce*, firms must use the revised ''standardized common name'' listed in the 2000 edition of *Herbs of Commerce*.

• If a botanical ingredient listed in the 2000 edition of *Herbs of Commerce* was not previously listed in the 1992 edition of that reference, firms could elect to use any of the names (i.e., botanical synonym, Ayurvedic name, pinyin name, or other common name) listed for that botanical in the 2000 edition as the common or usual name, with the following exception. As in Options One and Two, in accordance with section 10806 of the Farm Bill, the use of the term ''ginseng'' as a common or usual name (or part thereof) for a dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus ''*Panax*.''

• Similar to Options One and Two, if the botanical ingredient is not listed in either the 1992 or 2000 edition of *Herbs of Commerce*, firms could use any appropriately descriptive name as the common or usual name for that ingredient with the following exception. In accordance with section 10806 of the Farm Bill, the use of the term ''ginseng'' as a common or usual name (or part thereof) for a dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus ''*Panax*.''

• As in Option Two, any common or usual name used *other than* the ''standardized common name'' for a botanical ingredient may be used only if the botanical ingredient is not listed in *Herbs of Commerce* (2000), and must be accompanied by the Latin binomial name of the plant from which it is derived.

• As in Option Two, the Latin binomial name must be stated in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*.

• As in Option Two, when needed to positively identify the botanical ingredient, the Latin binomial name also must include the author citation (i.e., name(s) of the person(s) who described and published the Latin binomial name in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*).

We request comments on these and other plausible alternatives.

B. Impacts of Regulatory Options

1. Option One: Take No Action

This option would retain the 1992 edition of *Herbs of Commerce* as the source for standardized common names and the 1994 edition of the *International Code of Botanical Nomenclature* as the reference on how to state the Latin binomial names of botanical ingredients of dietary supplements. By convention, we treat the option of taking no action as the baseline for defining the costs and benefits of the other options. Therefore, we discuss the impacts of this option indirectly via the costs and benefits of the other options.

For this proposed rule, we include as part of the baseline costs for Option One (take no action) the cost of section 10806 of the Farm Bill, which restricts the use of the term ''ginseng'' in the labeling of dietary supplements as discussed under section II, Proposed Rule, of this document. This is because the requirements of the Farm Bill are already in effect and are not dependent upon this rule for implementation.

2. Option Two: Take the Proposed Action

a. *Costs of option two*. The proposed rule would generate two basic types of costs: (1) Costs associated with changing certain dietary supplement labels and (2) potential one-time increases in product search costs for some consumers.

We estimate the first type of cost by using a model developed for that purpose by Research Triangle Institute (RTI) under contract to us (Ref. 5). This model estimates the total cost to change product labels by estimating and then adding together the following types of costs: (1) Internal administrative, (2) graphic design, (3) pre-press, (4) plate or cylinder engraving or etching, and (5) inventory disposal. The first four costs depend, in part, on the number of stockkeeping units (SKUs) involved. According to this model, dietary supplements are associated with 29,514 SKUs (Ref. 5).

The proposed rule would not affect all of these SKUs, only those associated with dietary supplements containing botanicals. We do not have direct estimates of the number of SKUs associated specifically with dietary supplements containing botanicals. However, a 1999 report by RTI on the economic characteristics of the dietary supplement industry found that herbals and botanicals made up 28 percent of sales in the dietary supplement market (Ref. 6). A statement submitted to us by the American Herbal Products Association (AHPA) noted that the *Nutrition Business Journal* ''has consistently stated that herbal products represent approximately 25 percent of the sales of all supplements'' (Ref. 7). In the following analysis, we use the 28 percent figure rather than the 25 percent figure because it is better documented and because the 28 percent figure is consistent with the phrase ''approximately 25 percent.'' In the absence of other information, we assume that the share of SKUs associated with products containing botanicals is similar to the share of sales associated with such products; that is, we assume that 28 percent of the total number of SKUs associated with dietary supplements is associated with dietary supplements containing botanicals. Therefore, we assume that approximately 8,300 SKUs (29,514 SKUs x 28 percent) are associated with dietary supplements containing botanicals.

In addition, the proposed rule would only affect dietary supplements containing the following botanicals: (1) Any of the 1,500 additional botanicals for which the 2000 edition of *Herbs of Commerce* establishes standardized common names, if the labels of those products do not already list those botanicals under those names, (2) any of the 140 botanicals that the 2000 edition of *Herbs of Commerce* lists under a different standardized common name than in the 1992 edition, and (3) any botanical that the 2000 edition of the *Herbs of Commerce* does not list and for which using the naming conventions in the 2000 edition of the *International Code of Botanical Nomenclature* would result in a different Latin binomial name or author citation than using the naming conventions in the 1994 edition.

We do not know how many Latin binomial names the 2000 edition of the *International Code of Botanical Nomenclature* has changed, because that reference contains naming conventions rather than a list of names that we could compare with another list of names. Firms may need to change the labels of products containing botanicals that were listed under the same standardized common names in both the 1992 and 2000 editions of *Herbs of Commerce*, if the firms voluntarily listed the Latin binomial names of those botanicals and the 2000 edition of the *International Code of Botanical Nomenclature* has changed those names.

We do not have information on the number of dietary supplements this proposed rule would likely affect. AHPA reportedly reviewed the labels of several hundred dietary supplements containing botanicals and found that 85 percent fully conformed to the 2000 edition of *Herbs of Commerce* (Ref. 7). Additional samples might find higher or lower rates of compliance. In addition, labels that are already in compliance with the 2000 edition of *Herbs of Commerce* might not be in compliance with the 2000 edition of the *International Code of Botanical Nomenclature*. To better reflect the uncertainty about the number of dietary supplements this proposed rule would be likely to affect, we assume it would affect between 10 and 20 percent of the 8,300 SKUs associated with botanical supplements or from 830 SKUs (8,300 SKUs x 10 percent) to 1,660 SKUs (8,300 SKUs x 20 percent). This range corresponds to an overall percentage of 3 (830 SKUs ÷ 29,514 SKUs) to 6 percent (1,660 SKUs ÷ 29,514 SKUs) of dietary supplement SKUs.

The labeling cost model we use does not base inventory disposal costs specifically on SKUs, but on the types of labels firms generally use for different types of products and assumptions about the amount of inventory remaining under different compliance periods for different types of products. We assume that the proposed rule would generate between 3 and 6 percent of the inventory disposal costs the model estimates for changing all dietary supplement SKUs.

The cost of changing product labels also varies with the amount of time we give firms to change the labels. The proposed effective date for any final rule based upon this proposed rule is January 1, 2006, which is the uniform effective date for food labeling regulations published between January 1, 2003, and December 31, 2004. We have chosen this effective date in part because it would provide a compliance period of at least 1 year following the publication of the direct final rule. Under this compliance period, the label cost model estimates that the proposed rule would generate one-time relabeling costs of between $2 million (830 SKUs x $2,400 per SKU) and $7 million (1,660 SKUs x $4,200 per SKU).

In addition, the proposed rule may generate a one-time increase in product search costs for some consumers. Affected consumers would include those who currently identify desired botanical ingredients by: (1) Common or usual names that are different from the 1,500 new standardized common names listed in the 2000 edition of the *Herbs of Commerce*, (2) one of the 140 standardized common names changed by the 2000 edition of the *Herbs of Commerce*, or (3) one of the Latin binomial names changed by the 2000 edition of the *International Code of Botanical Nomenclature*. These consumers would need to learn the new names for desired ingredients. We do not know the number of affected consumers, but approximately 100 million adults (49 percent of adults times 202,493,000 adults ages 18 and older in the United States in 1999) consumed dietary supplements containing botanicals in 1999 (Refs. 8 and 9). Probably only a small percentage of these consumers would be interested in one or more of the botanicals whose names would be affected by this proposed rule. In the absence of other information, we assume that the proportion of consumers using the botanical ingredient names that the proposed rule would change is the same as the proportion of labels bearing those names or 3 to 6 percent. These percentages correspond to 3 to 6 million consumers.

We do not know the amount of time these consumers would need to discover that they cannot locate a product containing a desired botanical ingredient by the name under which they were accustomed to finding it, investigate the cause, and discover the new name. The methods consumers would use to resolve these issues are probably: (1) Asking a salesperson, (2) reading information on current botanical names in books or the Internet, or (3) reading additional product labels or brochures, some of which might voluntarily indicate the

relevant name changes. The amount of time particular consumers devote to finding ingredients that have different names will vary with their interest in the ingredient and the number of ingredients involved. Consumers interested in multiple affected ingredients would probably spend the greatest amount of time on the first change they encounter because they could use some of the information they discover about that change to deal with additional changes. For example, they might learn that names have changed and develop a method for finding the new name. We assume that each affected consumer might spend between 0 and 30 minutes to process the name changes. The average value of 1 hour of leisure time should be similar to the average value of 1 hour of working time, which was $15.66 in January 2001 (Ref. 10). Therefore, we estimate a maximum search cost increase of between $23 million (3 million x 0.5 hours x $15.66 per hour) and $47 million (6 million x 0.5 hours x $15.66 per hour). This burden is a one-time cost, because future consumers of these products would not need to switch from the old name to the new name.

Combining the two types of costs, relabeling and search costs, gives a range of total one-time costs of $25 to $54 million.

b. *Benefits of option two*. The proposed rule would reduce product search costs for consumers who currently shop for dietary supplements containing desired botanical ingredients by using Latin binomial names or the nonstandardized names that might appear along with Latin binomial names, but who would be able to use one or more of the 1,500 additional standardized common names in the 2000 edition of the *Herbs of Commerce*. The proposed rule would reduce these consumers' search costs because standardized common names tend to be shorter and more distinctive than Latin binomial names, and the same ingredients would always appear under the same standardized common name.

Other consumers who would benefit from the proposed rule are those who shop for dietary supplements containing botanical ingredients by using the standardized common names listed in the 1992 edition of *Herbs of Commerce*, but who are currently unable to differentiate desired ingredients from undesired ingredients using those standardized names. Some of these consumers might be better able to differentiate these ingredients using the more specific standardized common names in the 2000 edition. As noted previously, the 2000 edition reports that it has changed 140 names to improve specificity, accuracy, or both.

Additional consumers who would benefit are those who shop for dietary supplements containing botanical ingredients using: (a) One or more of the standardized common names that the 2000 edition of *Herbs of Commerce* has changed to improve accuracy or (b) one or more of the Latin binomial names that the 2000 edition of the *International Code of Botanical Nomenclature* has changed due to a better understanding about the taxonomic relationships between plants. These consumers shop for dietary supplements using the botanical ingredient names in the 2000 edition of *Herbs of Commerce* or stated in accordance with the rules in the 2000 edition of the *International Code of Botanical Nomenclature* but sometimes have difficulty finding those dietary supplements because the product labeling may use a name from or stated in accordance with previous editions of those texts. The proposed rule would reduce search costs for these consumers by reducing inconsistencies between the botanical names in the 2000 editions of *Herbs of Commerce* and the *International Code of Botanical Nomenclature* and the names used to refer to those botanicals on dietary supplement labels.

We do not know the number of consumers in each of these categories. Therefore, we again assume that the total number of consumers in all affected categories would be between 3 and 6 percent of the estimated 100 million consumers who used a dietary supplement containing a botanical ingredient in 1999, or 3 to 6 million consumers.

We also do not know the decrease in search costs that the consumers in each of these categories would experience. However, we estimate the possible range of total search cost reductions using three studies on consumer behavior. The first study recorded the amount of time people in drug stores spent looking at an item on the shelf before making a purchase (Ref. 11) and found that customers, on average, spent approximately 4 minutes studying a product before purchasing it. According to data from RTI, adult consumers bought an average of six units of dietary supplements containing a botanical ingredient in 1999. Therefore, this study suggests that consumers of dietary supplements containing botanicals spend an average of 24 minutes per year (six units per year x 4 minutes per unit) looking at these products on shelves before purchasing them.

The second study, called the Americans' Use of Time Project, used time diaries to study how over 3,500 adults spent their time (Ref. 12). This study found that adult Americans spent about 371 minutes per week shopping for personal consumption items in 1985, such as groceries and other household products. This study did not provide information on time spent searching specifically for dietary supplements. To estimate this time, we assume that the share of shopping time devoted to dietary supplements is proportional to the share of consumers' budgets spent on dietary supplements. According to an industry source and FDA projections, consumers spent about $4.8 billion on dietary supplements containing botanical ingredients in 1999 (Ref. 13). Consumers spent $6,250 billion on personal consumption in 1999 (Ref. 14). We do not know the personal consumption expenditures of people who specifically purchase dietary supplements containing botanicals. Therefore, we assume that the personal consumption expenditures of those consumers are 49 percent of the personal consumption expenditures of all consumers. We base this assumption on the estimate that 49 percent of adult consumers used such a supplement in 1999, and the assumption that those consumers spent about the same amount on personal consumption as did other consumers. Under these assumptions, we estimate on the basis of this study that consumers spend an average of 30 minutes per year [($4.8 billion ÷ [$6,250 billion X 0.49]) x 371 minutes per week x 52 weeks per year] shopping for supplements containing botanicals.

The third study used hidden observers to track and record shopping time in grocery stores (Ref. 15). This study found that people spent an average of about 21 minutes shopping in the grocery store per trip to the grocery store. By combining the estimated time per trip with the Food Marketing Institute's finding that consumers average about 2.2 grocery shopping trips per week, we estimate shopping time for all grocery store purchases to be 46.2 minutes per week (2.2 trips per week x 21 minutes per trip) (Ref. 16). Again, we assume that the proportion of shopping time devoted to dietary supplements equals the proportion of grocery store expenditures on dietary supplements. In 1999, consumers spent approximately $711 billion on grocery store purchases (here defined as food, alcoholic beverages, housekeeping supplies, personal care products, and tobacco products and smoking supplies) (Ref. 17).

We again assume that 49 percent of this amount was spent by adults who consumed dietary supplements containing botanicals. Based upon this study and the stated assumptions, we estimate that consumers spend about 33 minutes per year [($4.8 billion ÷ [$711 billion X 0.49]) x 46 minutes per week x 52 weeks per year] shopping for dietary supplements containing botanical ingredients.

All of the estimates of search costs are imprecise. None of these studies looks at product search activity that does not involve shopping, such as looking up material in books or on the Internet. The grocery store and use of time studies both addressed shopping time, which includes activities other than reading product labels. Nevertheless, in the absence of additional information, we estimate that this rule could reduce one's shopping time by a maximum of about 33 minutes (0.55 hours) per year. Applying this time savings to the estimated 3 to 6 million affected consumers and the average value of time of $15.66 gives maximum search cost savings of between $26 million (0.55 hours per year x 3 million x $15.66 per hour) and $52 million (0.55 hours per year x 6 million x $15.66 per hour) per year. The proposed rule, however, would not eliminate all search costs associated with dietary supplements containing botanical ingredients for consumers interested in the affected products. To reflect this fact, we tentatively assume that this proposed rule would eliminate between 10 and 20 percent of those search costs, which would result in a range of search cost savings of $3 to $10 million per year ($2.6 million x 10 percent to $52 million x 20 percent). These benefits would recur annually because they would apply whenever a consumer actively searched for products containing the relevant ingredients, unlike the one-time increases in search costs that some consumers might face because the proposed rule would change existing botanical ingredient names.

Based on the preceding discussion, we estimate this proposed rule would generate net costs in the first year of between $15 to $51 million, and net benefits of $3 to $10 million every year after the first year. Under a discount rate of 7 percent, the present value of an infinite stream of benefits of $3 million per year is $43 million ($3 million ÷ 7 percent), and the present value of an infinite stream of benefits of $10 million per year is $143 million ($10 million ÷ 7 percent). Therefore, over time, this option would generate net benefits of negative $8 million ($43 million - $51 million) to $128 million ($143 million - $15 million). The stream of benefits that would exactly offset the maximum estimated cost of $51 million to give zero net costs is $4 million ($4 million ÷ 7 percent = $57 million) per year out of the potential range of $3 to $10 million per year. Therefore, this rule would probably generate net benefits.

3. Option Three: Take an Alternative Action (as described under section V.A, Regulatory Options, of this document)

As discussed under section I, Background, of this document, in addition to standardized common names and Latin binomial names, the 2000 edition of *Herbs of Commerce* includes up to four other categories of names (i.e., botanical synonyms, Ayurvedic names, pinyin names and other common names) for each plant listed, when applicable. In order to reduce the number of label and name changes that we would require under Option Two, we could allow firms using any of the 1,500 botanicals that were not listed in the 1992 edition of *Herbs of Commerce*, but that are listed in the 2000 edition, to continue to label their products as they do now, as long as the name used for a botanical ingredient meets one of the following requirements: (1) Is among the names for the respective botanical listed in the 2000 edition and complies with the Farm Bill requirement concerning the use of the term ''ginseng'' and (2) is accompanied by the corresponding Latin binomial name, stated to conform to the naming conventions of the 2000 edition of the *International Code of Botanical Nomenclature*, including the author citation when needed for a positive identification of the botanical.

a. *Costs of option three*. This option would generate the same labeling costs as Option Two, except that some firms manufacturing or labeling dietary supplements containing one or more of the 1,500 botanical ingredients for which the 2000 edition of *Herbs of Commerce* establishes new standardized common names would not need to revise the labels of those products. The product whose labels would not need to be revised are with some exceptions, those that currently list botanical ingredients by any one of their corresponding names found in the 2000 edition of *Herbs of Commerce*. The exceptions, whose labels would nonetheless need to be revised, are those with names that conflict with the Farm Bill restriction on the use of the term ''ginseng,'' or that do not state the correct Latin binomial names in accordance with the naming conventions of the 2000 edition of the *International Code of Botanical Nomenclature* and include the author citations when needed for a positive identification of the botanicals. We do not know the number of such products. Using the cost estimated for Option Two, we estimate that the label change costs for Option Three would also be between $2 and $7 million, except that the cost of this option must be the same or less than the costs of Option Two.

Option Three would also generate the same short-term increases in product search costs as Option Two, except that some consumers who currently use one of the other names listed in the 2000 edition of *Herbs of Commerce* to identify botanical ingredients would be able to continue to use those names to identify those ingredients. We do not know the number of such consumers. Using the cost estimated for Option Two, we estimate that the increase of search costs under Option Three would also be between $23 and $47 million, except that these costs must be the same or less than the corresponding costs of Option Two, because the consumers affected by this cost under Option Three are a subset of the consumers affected by this cost under Option Two.

b. *Benefits of option three*. This option would generate the same reduction in long-term search costs as Option Two, except that fewer consumers who currently shop for dietary supplements using nonstandardized names would instead be able to use standardized common names to more easily identify those ingredients in other supplements. Again, we do not have sufficiently detailed information to distinguish the size of this benefit from that of Option Two, so we again estimate the benefits to be between $3 and $10 million per year, except that they must be the same or less than the benefits of Option Two because the source of benefits under Option Three is a subset of the sources of benefits under Option Two.

We cannot compare the net benefits of Option Three to those of Option Two because the costs and benefits of Option Three are both lower, and we do not know the relative size of the changes in costs and benefits. If, however, the costs and benefits of this option were below those of Option Two by the same proportion, then this option would probably have lower net benefits than Option Two.

VI. Initial Regulatory Flexibility Analysis

FDA has examined the economic implications of this proposed rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a

substantial number of small entities, the Regulatory Flexibility Act requires us to analyze regulatory options that would minimize the economic effect of the rule on small entities. We tentatively conclude that this proposed rule would have a significant economic impact on a substantial number of small entities.

A. Regulatory Options

In the preceding preliminary regulatory impact analysis under section V.A, Regulatory Options, of this document, we identified the following major regulatory alternatives or options: (1) Take no action, (2) take the proposed action, and (3) take an alternative action. We request comments on these and any other plausible alternatives.

B. Impacts of Regulatory Options

1. Option One: Take No Action

The incorporation by reference citations under § 101.4(h) would remain unchanged. Under this option, the following requirements and provisos apply:

• The label of a dietary supplement containing a botanical ingredient must use the ''standardized common name'' for that botanical ingredient listed in the 1992 edition of *Herbs of Commerce*.

• For a botanical ingredient not listed in the 1992 edition of *Herbs of Commerce*, the label could use any appropriately descriptive name as the common or usual name, with the following exception. In accordance with section 10806 of the Farm Bill, the use of the term ''ginseng'' as a common or usual name (or part thereof) for any dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus ''*Panax*.''

• Any common or usual name *other than* the ''standardized common name'' for a botanical ingredient may be used only if the botanical ingredient is not listed in *Herbs of Commerce* (1992), and must be accompanied by the Latin binomial name of the plant from which it is derived.

• The Latin binomial name must be stated in accordance with the internationally accepted rules on botanical nomenclature, such as those found in the *International Code of Botanical Nomenclature (Tokyo Code) 1994*.

• The Latin binomial name of a botanical ingredient also must include the designation of the author or authors who published the Latin name, when a positive identification of the botanical cannot be made in its absence.

Taking no additional action beyond the current regulatory regime that we described in the previous paragraphs would have no effect on small entities relative to the status quo.

2. Option Two: Take the Proposed Action

The proposed action is to update the incorporation by reference citations under § 101.4(h). Under this option, the following requirements and provisos apply:

• The label of a dietary supplement containing a botanical ingredient must use the ''standardized common name'' for that botanical ingredient listed in the 2000 edition of *Herbs of Commerce*.

• For a botanical ingredient not listed in the 2000 edition of *Herbs of Commerce*, the label could use any appropriately descriptive name as the common or usual name, with the following exception. As in Option One, in accordance with section 10806 of the Farm Bill, the use of the term ''ginseng'' as a common or usual name (or part thereof) for any dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus ''*Panax*.''

• Any common or usual name *other than* the ''standardized common name'' for a botanical ingredient may be used only if the botanical ingredient is not listed in *Herbs of Commerce* (2000), and must be accompanied by the Latin binomial name of the plant from which it is derived.

• The Latin binomial name must be stated in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*.

• When needed to positively identify the botanical ingredient, the Latin binomial name also must include the author citation (i.e., name(s) of the person(s) who described and published the Latin binomial name in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*).

The proposed rule would cause some small businesses to change product labels as described in the preceding regulatory impact analysis. It would not affect any other class of small entities. RTI developed a Dietary Supplement Enhanced Establishment Database (DS–EED) under contract to us. RTI based the DS–EED on our official establishment inventory and supplemented it with information from trade organizations, trade shows, and electronic databases (Ref. 6). According to these data, approximately 350 to 1,260 establishments might manufacture, repackage, or relabel supplements containing botanicals.

The Small Business Administration (SBA) defines a small business in the dietary supplement industry as a business having 500 or fewer employees. RTI traced the establishments to the parent company to determine how many establishments belonged to small firms. Based on that study, between 60 and 90 percent of the 1,260 establishments belong to small firms, or between approximately 700 and 1,200 establishments. However, the RTI study did not provide information on the total number of firms associated with those establishments.

In a letter to FDA, AHPA claims that between 600 and 1,100 firms produce at least one dietary supplement product containing an herbal ingredient and are also involved in labeling products (Ref. 7). The letter also states that the editor of the *Nutrition Business Journal* told APHA that between 95 and 96 percent of dietary supplement companies have 500 or fewer employees. This information appears consistent with the information on establishments provided by RTI. We do not know how many of these firms would actually need to revise their labels. Therefore, we estimate that the proposed rule would affect between 0 and 1,045 small firms.

We assume that these firms would face 96 percent of the maximum total labeling costs for all firms we estimated in this document's preceding section V.B.2.a, Costs of Option Two, which were $2 to $7 million. Therefore, we estimate that this proposed rule would generate one-time costs for small firms of between $2 and $7 million, after rounding to the nearest million.

3. Option Three: Take an Alternative Action

This option is similar to the proposed action. We would still update the incorporation by reference citations under § 101.4(h), but firms would have slightly more flexibility when labeling dietary supplements containing a botanical ingredient. Under this option, the following requirements and provisos apply:

• As in Option Two, if the ''standardized common name'' for a botanical ingredient has changed from the 1992 to the 2000 edition of *Herbs of Commerce*, firms must use the revised ''standardized common name'' listed in the 2000 edition of *Herbs of Commerce*.

• If a botanical ingredient listed in the 2000 edition of *Herbs of Commerce* was not previously listed in the 1992 edition of that reference, firms could elect to use any of the names (i.e., botanical synonym, Ayurvedic name, pinyin

name, or other common name) listed for that botanical in the 2000 edition as the common or usual name, with the following exception. As in Options One and Two, in accordance with section 10806 of the Farm Bill, the use of the term ''ginseng'' as a common or usual name (or part thereof) for a dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus ''*Panax*.''

• Similar to Options One and Two, if the botanical ingredient is not listed in either the 1992 or 2000 edition of *Herbs of Commerce*, firms could use any appropriately descriptive name as the common or usual name for that ingredient with the following exception. In accordance with section 10806 of the Farm Bill, the use of the term ''ginseng'' as a common or usual name (or part thereof) for a dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus ''*Panax*.''

• As in Option Two, any common or usual name *other than* the ''standardized common name'' for a botanical ingredient may be used only if the botanical is not listed in *Herbs of Commerce* (2000), and must be accompanied by the Latin binomial name of the plant from which it is derived.

• As in Option Two, the Latin binomial name must be stated in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*.

• As in Option Two, when needed to positively identify the botanical ingredient, the Latin binomial name also must include the author citation (i.e., name(s) of the person(s) who described and published the Latin binomial name in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*).

We discussed this option under this document's preceding section V.B.3.a, Costs of Option Three, and concluded that it would generate lower relabeling costs for all firms than the proposed action. However, we were unable to estimate the size of the cost reduction and again concluded that labeling costs could be anywhere from $2 to $7 million, except that the costs of this option must be the same or less than the costs of Option Two. These conclusions also hold for small firms, which make up the vast majority of the affected firms. Although Option Three would reduce the impact of the proposed rule on small firms, it would also reduce the benefits by an unknown amount. We have tentatively decided not to pursue this option because the potential cost savings for small firms would be modest and we do not know the impact on benefits.

VII. Paperwork Reduction Act of 1995

FDA tentatively concludes that the labeling requirements proposed in this document are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Rather, the proposed dietary supplement labeling requirements would be a ''public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

VIII. Unfunded Mandates Reform Act of 1995

Section 202(a) of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation).

The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for the proposed rule, because the proposed rule is not expected to result in any one-year expenditure that would exceed $100 million adjusted for inflation. The current inflation-adjusted statutory threshold is $112 million.

IX. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule would have a preemptive effect on State law. Section 4(a) of the Executive Order requires agencies to:

> * * * construe * * * a Federal Statute to preempt State law only where the statute contains an express preemption provision, or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.

Section 403A of the act (21 U.S.C. 343–1) is an express preemption provision. That section provides that ''no State or political subdivision of a State may directly or indirectly establish under any authority or continue in effect as to any food in interstate commerce'' certain food labeling requirements, unless an exemption is provided by the Secretary of Health and Human Services (and, by delegation, FDA). Relevant to this rule, one such requirement that States and political subdivisions may not adopt is ''any requirement for the labeling of food of the type required by section * * * 403(i)(2) that is not identical to the requirement of such section,'' (section 403A(a)(2) of the act). Another such requirement that States and political subdivisions may not adopt is ''any requirement for the labeling of food of the type required by section * * * 403(i)(1) that is not identical to the requirement of such section,'' (section 403A(a)(3) of the act). Prior to the effective date of the direct final rule that is being published simultaneously with this proposed rule, this provision operates to preempt States from imposing requirements concerning the use of botanical names in dietary supplement labeling if the requirements concerning the use of those names are not identical to those contained in § 101.4(h) (incorporating by reference *Herbs of Commerce* (1992) and the *International Code of Botanical Nomenclature (Tokyo Code) 1994*). Specifically, the preemptive effect applies to requirements concerning the use of botanical names in the common or usual name on the label of a dietary supplement (section 403(i)(1) of the act) and to requirements for listing individual botanical ingredients on the label of a dietary supplement (section 403(i)(2) of the act). Once the direct final rule that is being published simultaneously with this proposed rule becomes effective, States will be preempted from imposing any such requirements concerning the use of botanical names on dietary supplement labels that are not identical to those required by the new rule, which amends the existing § 101.4(h) to incorporate by reference *Herbs of Commerce* (2000) and the *International Code of Botanical Nomenclature (Tokyo Code) 2000*, and to incorporate new Federal legislative restrictions on the use of the term ''ginseng'' in dietary supplement labeling.

Section 403A(a)(2) to (a)(3) of the act displaces both State legislative requirements and State common-law duties (*Medtronic v. Lohr*, 518 U.S. 470, 503 (1996) (Breyer, J., concurring in part and concurring in the judgment); *id.* at 510 (O'Connor, J., joined by Rehnquist, C. J., Scalia, J., and Thomas, J., concurring in part and dissenting in part); *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 521 (1992) (plurality

opinion); *id.* at 548–49 (Scalia, J., joined by Thomas, J., concurring in part in the judgment and dissenting in part)). Although this proposed rule would have preemptive effect in that it would preclude States from adopting statutes, issuing regulations, or adopting or enforcing any requirements, including State tort-law imposed requirements, that are not identical to the requirements of this rule, this preemptive effect is consistent with what Congress set forth in section 403A of the act.

Section 4(e) of the Executive order states that ''when an agency proposes to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings.'' Similarly, section 6(c) of the Executive order states that:

> * * * to the extent practicable and permitted by law, no agency shall promulgate any regulation that has federalism implications and that preempts state law, unless the agency, prior to the formal promulgation of the regulation * * * consulted with State and local officials early in the process of developing the proposed regulation.

This requirement, that FDA provide the States with an opportunity for appropriate participation in this rulemaking, has been met. This rule proposes to update and make minor changes to a rule that was first proposed through full notice-and-comment rulemaking procedures in 1995 and finalized in 1997. During the comment period prior to the issuance of the 1997 final rule, and after the publication of the final rule, the agency received no comments, correspondence, or other communications from any State or local government concerning preemption of an existing legislative or common-law requirement. In its consultation with states prior to the publication of this proposed rule, FDA was not informed about any State requirements that would be in conflict with the Federal requirements in this rule, and no States expressed concerns over the rule's preemptive effect. Moreover, FDA is providing an opportunity for State and local officials to comment through this rulemaking, and intends to withdraw the direct final rule if significant adverse comments are received.

In conclusion, the agency believes that it has complied with all of the applicable requirements under the Executive order, and has determined that the preemptive effects of this rule are consistent with Executive Order 13132.

X. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. This comment period runs concurrently with that for the direct final rule. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. FDA will consider any comments received on either this companion proposed rule or the direct final rule to be comments received on both rules.

XI. Effective Date

FDA periodically establishes, by final rule in the **Federal Register**, uniform effective dates for compliance with food labeling regulations (see, e.g., the **Federal Register** of December 31, 2002 (67 FR 79851), designating the effective date of January 1, 2006, for food labeling regulations issued between January 1, 2003, and December 31, 2004). We are proposing that any final rule FDA may issue based upon this proposal, including the related direct final rule, become effective on January 1, 2006, the uniform effective date for compliance with food labeling regulations published between January 1, 2003, and December 31, 2004. FDA will publish a document in the **Federal Register** to confirm the effective date of the direct final rule, if FDA receives no significant adverse comments on it or this companion proposed rule.

XII. References

Copies of the following references have been placed on display and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday at the Division of Dockets Management (see **ADDRESSES**). FDA has verified the Web site addresses, but is not responsible for subsequent changes to the Web sites after this document publishes in the **Federal Register**.

1. Foster, Steven, editor, *Herbs of Commerce*, American Herbal Products Association, Austin, TX, 1992.
2. Greuter, W., editor (chairman), *International Code of Botanical Nomenclature (Tokyo Code) 1994*, adopted by the 15th International Botanical Congress, Koeltz Scientific Books, D–61453 Königstein, Germany, 1994.
3. McGuffin, Michael, managing editor, *Herbs of Commerce, 2nd Edition*, American Herbal Products Association, Silver Spring, MD, 2000.
4. Greuter, W., editor (chairman), *International Code of Botanical Nomenclature (Saint Louis Code) 2000*, adopted by the 16th International Botanical Congress, Koeltz Scientific Books, D–61453 Königstein, Germany, 2000.
5. *FDA Labeling Cost Model: Final Report*, Research Triangle Institute (RTI) International, April 2002, Revised.
6. *Economic Characterization of the Dietary Supplement Industry*, Research Triangle Institute (RTI), March 1999, p. 5–1.
7. Letter from Michael McGuffin, President, American Herbal Products Association, to Rhonda R. Kane, Consumer Safety Officer, FDA, May 13, 2002, pp. 1–6 with 3 attachments.
8. ''Consumer Use of Dietary Supplements,'' *Prevention Magazine Survey*, Table A, *Prevention Magazine*, 2000, p. 13.
9. *Statistical Abstract of the United States: 2000*, Table Number 13—Resident Population by Sex and Age: 1999, U.S. Census Bureau, Washington, DC, p. 14. Obtained data at the Internet site *http://www.census.gov/prod/2001pubs/statab/sec01.pdf* on June 19, 2002.
10. *National Employment, Hours, and Earnings, Bureau of Labor Statistics*, U.S. Department of Labor, Washington, DC. Obtained data from the Internet site *http://data.bls.gov/cgi-bin/srgate* on August 14, 2002. To view the data used, enter the number EES00510006 in the series id window, select the year 2001–2002 in the years to report window, and select the button ''retrieve data.''
11. ''The Power of Persuasion at the Moment of Truth,'' *Drug Store News*, 19(20):3–8, 22, and 24, December 8, 1997.
12. Robinson, J. P. and G. Godbey: *Time for Life: The Surprising Ways Americans Use Their Time*, Second Edition, The Pennsylvania State University Press, University Park, PA, 1997, Appendix A, 1985 column, categories 30 to 39, pp. 355 and 356.
13. Guthrie, J. F., K. M. Koehler, and R. A. Scharff: *Trends in the Consumption of Dietary Supplements 1994–2000*, Table 11–Growth in Market Size and Per Capita Consumption of Dietary Supplements, 1994–2000, Panel A, Unpublished document, Center for Food Safety and Applied Nutrition, FDA, Washington, DC, July 12, 2000, p. 29.
14. *Economic Report of the President*, Table B–16—Personal Consumption Expenditures, 1959–2001, U.S. Government Printing Office, Washington, DC, February 2002. Obtained data at the Internet site *http://w3.access.gpo.gov/usbudget/fy2003/sheets/b16.xls* on August 14, 2002.
15. ''Customer Behavior: How Consumers Shop,'' *Progressive Grocer*, December 1992, pp. 62–64.
16. ''A Shopping for Health Report, 1998: A Look at the Self-Care Movement,'' *Food Marketing Institute*, Research Department, Washington, DC, and *Prevention Magazine*, Research Department, Emmaus PA, 1998, p. 2.
17. *Consumer Expenditures in 1999*, Report 949, Table A—Average Annual Expenditures of All Consumer Units and Percent Changes,

Consumer Expenditure Survey, 1997–99, Bureau of Labor Statistics, U.S. Department of Labor, Washington, DC, May 2001, p. 3. Obtained data from the Internet site *http://stats.bls.gov/cex/csxann99.pdf* on July 25, 2002.

List of Subjects in 21 CFR Part 101

Food labeling, Incorporation by reference, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371; 42 U.S.C. 243, 264, 271.

2. Section 101.4 is amended by revising paragraph (h) to read as follows:

§ 101.4 Food; designation of ingredients.

* * * * *

(h) The common or usual name of a botanical ingredient (including fungi and algae) listed on the label of a dietary supplement must be consistent with the ''standardized common name'' listed in *Herbs of Commerce, 2nd Edition* (2000) for the plant from which the ingredient is derived. The use of the term ''ginseng'' as a common or usual name (or part thereof) for any dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus ''*Panax*.'' *Herbs of Commerce, 2nd Edition* (2000) is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this book may be obtained from the American Herbal Products Association, 8484 Georgia Ave., suite 370, Silver Spring, MD 20910, 301–588–1171, FAX: 301–588–1174, e-mail: *ahpa@ahpa.org*. Copies also may be examined at the Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(1) The listing of the common or usual name on the label must be followed by statements of:

(i) The part of the plant (e.g., root, leaves) from which the dietary ingredient is derived (e.g., ''Garlic bulb'' or ''Garlic (bulb)''), except that this designation is not required for algae. The name of the part of the plant must be expressed in English (e.g., ''flower'' rather than ''flos''); and

(ii) The Latin binomial name (i.e., genus and species) of the plant from which the botanical ingredient is derived, stated in parentheses, when no ''standardized common name'' for the plant is listed in *Herbs of Commerce, 2nd Edition* (2000). In such cases, this Latin binomial name may be listed before the part of the plant and must be stated in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*. When needed to positively identify the botanical ingredient, the Latin binomial name also must include the author citation (i.e., name(s) of the person(s) who described and published the Latin binomial name in accordance with the internationally accepted rules on botanical nomenclature found *International Code of Botanical Nomenclature (Saint Louis Code) 2000*). The *International Code of Botanical Nomenclature (Saint Louis Code) 2000*, a publication of the International Association for Plant Taxonomy, is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this book may be obtained from Koeltz Scientific Books, D–61453 Königstein, Germany; University Bookstore, Southern Illinois University, Carbondale, IL 62901–4422, 618–536–3321, FAX: 618–453–5207, e-mail: *siu@bkstr.com*; and from Lubrecht & Cramer, 18 East Main St., Port Jervis, NY 12771, 800–920–9334, FAX: 800–920–9334, e-mail: *books@lubrechtcramer.com*. Copies also may be examined at the Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(2) On labels of single-ingredient dietary supplements that do not include an ingredient list, the identification of the Latin binomial name, when needed, and the part of the plant may be prominently placed on the principal display panel or information panel, or included in the nutrition label.

Dated: August 14, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–21981 Filed 8–27–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–129709–03]

RIN–1545–BC34

Prohibited Allocations of Securities in an S Corporation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Change of date for public hearing on proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document provides notice of a change of date for the public hearing on proposed regulations by cross-reference to temporary regulations under sections 409(p), and 409(p)(5).

DATES: The public hearing is being held on Monday, November 17, 2003 at 10 a.m. Outline of oral comments must be received by October 27, 2003.

ADDRESSES: The public hearing is being held in room 6718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Send submissions to: CC:PA:LPD:PR (REG–129709–03), Room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:PA:LPD:PR (REG–129709–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit an outline of oral comments electronically directly to the IRS Internet site at *http://www.irs.gov/regs*.

FOR FURTHER INFORMATION: Concerning the regulations, John Ricotta (202) 622–6060; concerning submissions, Sonya M. Cruse (202) 622–4693 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

A notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing appearing in the **Federal Register** on Monday, July 21, 2003 (68 FR 43058), announced that a public hearing on proposed rulemaking by cross-reference to temporary regulations that provided guidance on identifying disqualified persons and determining whether a plan year is a nonallocation year under section 409(p) and on the definition of synthetic equity under section 409 (p)(5) would be held on Thursday, November 20, 2003, in room 6718, Internal

Revenue Building 1111 Constitution Avenue, NW., Washington, DC. Subsequently, the date of the public hearing has been changed to Monday, November 17, 2003. Written or electronic comments must be received by October 17, 2003. Outlines of oral comments must be received by October 27, 2003.

LaNita Van Dyke,

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

[FR Doc. 03–21965 Filed 8–27–03; 8:45 am]

BILLING CODE 4830–01–P

POSTAL SERVICE

39 CFR Part 111

Changes to the Move Update and Address Matching Requirements

AGENCY: Postal Service.

ACTION: Further notice of proposed rulemaking.

SUMMARY: This is a special interim Advance Notice incorporating mailers' comments from the May 31, 2002 **Federal Register** (67 FR 38041–38043), Advance Notice of Proposed Rulemaking and Request for Comment. Prior to publishing a final rule, the Postal Service is requesting additional comments from the mailing industry on the proposed changes to current Domestic Mail Manual (DMM) standards that concern Move Update and/or Address Matching requirements. These proposed standards address specific mail preparation requirements that can effectively assist in reducing the negative impact on delivery service and costs associated with Undeliverable-As-Addressed (UAA) Mail. Due to the significant ongoing UAA mail burden noted in omnibus rate case Docket No. R2001–1, changes are deemed necessary to help mitigate the UAA mail impact on the mailing industry and the Postal Service.

DATES: Comments must be received on or before September 29, 2003. The Postal Service intends to pursue implementation of these proposals within the framework of a future formal rule or rate making process. Please note that a specific rule or rate making will not be forthcoming as a result of this notice, rather any change will be integrated into a future rule or rate making that is part of the Product Redesign initiative or omnibus rate case. In no event will the proposals become effective sooner than 18 months from the date of a future final rule publication.

ADDRESSES: Written comments should be mailed or delivered to the Office of Product Management—Addressing, National Customer Support Center, United States Postal Service, 6060 Primacy Pkwy, Ste 201, Memphis, TN 38188–0001. Comments may also be transmitted via facsimile to 901–681–4440 or via e-mail to *chunt1@email.usps.gov.* Copies of all written comments will be available for inspection and photocopying at USPS Headquarters Library, 475 L'Enfant Plaza, SW., 11th Floor N, Washington, DC 20260–1450 between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Wayne Orbke, 901–681–4658; Charles B. Hunt, 901–681–4651; or Neil Berger, 703–292–3645.

SUPPLEMENTARY INFORMATION: On May 31, 2002, the Postal Service requested comments concerning changes to the Move Update and Address Matching standards (Advance Notice). 67 FR 38041–38043. The Postal Service did not suggest specific Domestic Mail Manual provisions at that time, but sought public comments on five general proposals. As discussed in that notice, changes to these standards were recommended in the 2001 Mailing Industry Task Force, a workgroup joining mailing industry and Postal Service leaders, as an important means to decrease the volume of UAA mail and thereby hold down postal processing and delivery costs.

Thirty-six comments were submitted in response to the Advance Notice. After review of the comments, the Postal Service is proposing specific DMM changes to the Move Update and Address Matching standards and seeks public comment concerning these revisions.

Consistent with the recommendation of the Mailing Industry Task Force, the Postal Service believes that appropriate revisions to the standards are vital to the continued vitality of the postal system and the interests of mailers. The Postal Service is committed to taking prudent steps in coordination with the mailing industry to create and maintain a cost-efficient mailstream. Over the years, the Service has invested heavily to create an automated mailstream to help drive costs out of the delivery system. However, although an efficient automated mailstream depends on accurate barcodes for success, barcodes are only as accurate as the quality of the addressing information that is their foundation. As discussed in the Advance Notice, revisions to the Move Update and Address Matching standards are needed to improve the level of address quality for mailings entered at discounted rates. The Postal Service remains convinced that high quality addressing, best possible depth of ZIP+4 codes, and (where applicable) accurate delivery point barcodes that result in the delivery of the mailpiece to the intended recipient, in an efficient manner, should be primary objectives for mailers.

The Advance Notice proposed five changes to existing address quality standards, including: (1) Expand the applicability of a Move Update requirement from Presorted and automation rate First-Class Mail to include Periodicals, Standard Mail, and Package Services, (2) increase the minimum frequency of Move Update processing from 180 days to 90 days, (3) remove the use of ancillary service endorsements with individual hardcopy notifications as a stand-alone option to satisfy the Move Update requirement, (4) increase the frequency of Address Matching processing for automation rate mail from 180 days to 90 days, and (5) require the use of monthly (instead of bimonthly) directory updates for address matching software.

In addition to revisions to DMM standards, the Advance Notice also addressed the timing of the changes. When the Move Update requirement for First-Class Mail was instituted in 1997, a 9-month readiness period was provided. The Postal Service recognizes the magnitude of the adjustments that will have to be made both by the industry and the Service to implement the revisions proposed in this notice and will ensure that ample time is provided. It is not the intention of the Postal Service to create unreasonable barriers to discount rate qualification with these changes, but rather to improve the overall cost effectiveness of the mail delivery system and rate stability for all stakeholders.

As stated in the Advance Notice, the evaluation and implementation of these proposals will continue to be stewarded by the Postal Service Product Management Group, within the framework of the Product Redesign effort.

Part A of this notice summarizes the proposed changes and provides an analysis of comments received to the Advance Notice. Part B summarizes the changes to the DMM, followed by the text of the proposed DMM standards.

Part A

Several comments were outside the scope of the changes that were proposed. These comments, such as

pursuing legislative changes, redefining the characteristics of a mailing list, etc., will not be discussed in this notice. Five proposals were described in the Advance Notice. Each proposal will be discussed separately:

(1) Move Update Requirement for All Classes of Mail

The Postal Service proposes that the Move Update standard, which previously applied only to First-Class Mail, be extended to other classes (*i.e.* Periodicals, Standard Mail, and the Bound Printed Matter subclass of Package Services) (Please note, Package Services was originally proposed but was amended to Bound Printed Matter in response to the comments received). Given the growth and significant impact of UAA mail across all classes of mail, the Postal Service believes it is reasonable to adopt the same standard for those seeking to use discounted rates in other classes of mail. However, the Postal Service also desires that this be done in a manner that does not unreasonably impact the mission and flexibility of each class of mail. To this end, the Postal Service will, where feasible, incorporate features suggested in the comments and add tools that can assist the expansion of Move Update to all classes. As one example, suggested in the comments, the Postal Service has already authorized the printing of the Address Change Service (ACS) participant code on the mailpiece in a location other than within the mailer's keyline of the address block. This option became effective October 3, 2002 (see Postal Bulletin 22086, October 3, 2002) and was incorporated into the online version of DMM M013 (*http://pe.usps.gov*).

Acceptable Methods

Six commenters expressed support for the proposed expansion of the Move Update requirement beyond Presorted and automation rate First-Class Mail to other classes of mail.

Several commenters stated that unless the status quo were maintained, specifically use of ancillary service endorsements as a qualifier, they would not be able to meet the proposed Move Update requirement. The Postal Service respectfully disagrees on this point and believes that the methods that will be available upon implementation are flexible and efficient and that they will meet the needs of all mailers seeking discounted rates when Move Update is a requirement. The current list of authorized methods includes the following:

- National Change of Address (NCOA) processing.
- NCOA^{Link} processing (scheduled availability October 1, 2003).
- FASTforward® MLOCR processing.
- FASTforward® Mailing List Correction (MLC) processing.
- Address Change Service (ACS).
- Postal Service Certification of Mailer Move Update Process, administered by the National Customer Support Center (NCSC).
- NCSC-approved alternate method for mailers with certain legitimate restrictions to incorporating Postal Service supplied change-of-address information into their mailing address lists.

In addition to the seven authorized Move Update methods listed above, as suggested by four of the commenters, addresses utilizing any of the three alternative addressing formats prescribed in DMM A020 (*e.g.*, ''John Doe or Current Occupant'') will not be subject to the Move Update standard. The Postal Service agrees that this exemption is warranted because mail bearing an alternative address format does not cause the Postal Service to incur additional redirection processing or disposal costs.

Another step already taken by the Postal Service to assist mailers who may not be able to process electronic ACS data files is the augmentation of ACS with a hybrid hardcopy address correction notification. This ACS option brings both quality and efficiency to the process by providing legible hardcopy printout notifications to mailers who desire them. This option is discussed in detail in the third proposal narrative regarding ancillary service endorsements.

Phase-in for Other Mail Classes

One commenter suggested a phased approach to implementation, with First-Class Mail being the first to incorporate the new requirements in 18 months from the publication date of the final rule, followed by the other mail classes 6 months to 1 year later. The Postal Service believes that there are several sound reasons why the phased approach suggested is not warranted in this case: (1) Since the publication of **Federal Register** Advance Notice (67 FR 38041–38043), the Postal Service has decided to integrate the changes proposed in this notice into a future formal Product Redesign initiative or omnibus rate case which will provide sufficient time for mailers to incorporate the new requirements, and significantly more time than the nine months allotted for the Move Update requirement originally instituted for First-Class Mail service in 1997, (2) the technical environment and capabilities of the mailing industry are more advanced and progressive than when Classification Reform was being implemented in 1996/97, (3) many mailers who utilize other mail classes also send First-Class Mail items and are familiar with the Move Update requirement, (4) the Postal Service has made significant efforts since 1996 to acquaint the mailing industry with the necessity of effective Move Update methodology, and (5) a uniform implementation will provide needed consistency for all concerned.

A majority of addresses used by mailers today for Periodicals, Standard Mail, and Package Services mail are also used in Presorted and automation rate First-Class Mail and therefore already receive ''Move Update treatment''. This is consistent with the policy established in 1997 for First-Class Mail whereby an updated address originally used on another class of mail meets the Move Update requirement for First-Class Mail.

Additional Discounts

Several commenters stated that incentives would be needed to offset their cost of Move Update processing where it has previously not been a requirement, as well as for the increased frequency requirements of Move Update for First-Class Mail and Address Matching for all classes.

The Postal Service believes that ensuring that mail, regardless of the class of mail, is prepared to the correct recipient and address, and thereby removing UAA mail from the mailstream ultimately leads to cost savings for both the mailer and the Postal Service. In addition to helping control Postal Service costs and their associated impact on rates, the increase in address quality will benefit mailers by reducing wasted mail production costs and loss of business opportunities that result from UAA mail.

Periodicals

One commenter stated that a Move Update requirement for Periodicals was ''ludicrous.''

The Postal Service finds this comment somewhat puzzling in that Periodicals mail has long included an address correction requirement. This requirement is found in the printed request for change-of-address information included in the identification statement that each publication must show. This request for change-of-address information may also appear on the label carrier or the container enclosing publications prepared in envelopes, closed wrappers or polybags. This proposal merely formalizes the requirement and methods.

Ease of Use

The same commenter also stated that the Move Update requirement should be more ''user-friendly'' and recognize mailers who have their own processes in place to accurately reflect the relocation of their customers for mailing purposes.

The Postal Service agrees with this position; it was the driving force behind the creation of the Mailer Move Update Process Certification (previously known as the 99% rule alternate method) for Move Update compliance. Under this method, mailers can have their own Move Update process tested by the Postal Service. If the test demonstrates that the mailer's addresses are 99% accurate when compared with the Postal Service change-of-address file, the mailer will be certified as having addresses that meet the Move Update requirement for a period of 1 to 2 years (depending on the length of time the mailer has used this option) from the date of the test.

Standard Mail

Eight commenters expressed concerns regarding possible negative impact to Standard Mail.

Although the Postal Service understands this issue, it believes that the requirement is both appropriate and fair for Standard Mail automation rate, Presorted rate, and Enhanced Carrier Route rate eligibility. Many mailers of Standard Mail successfully utilize the NCOA and FASTforward® MLC systems to improve the quality of their lists. Therefore, this requirement should not have a major impact on their business models. The Postal Service also believes that the choices available to meet the Move Update requirement, along with the wide use of alternative addressing formats on Standard Mail (*e.g.* ''John Doe or Current Resident''), provide sufficient flexibility for meeting the requirement and will, therefore, not pose a greater challenge for mailers of Standard Mail than for mailers of other classes.

One commenter questioned the proposed application of the Move Update provisions to Standard Mail because unendorsed Standard Mail is disposed of as waste, if undeliverable.

Although it is true that Postal Service procedures call for disposal of such mail (as well as unendorsed BPM), there is a cost associated with this action. The Postal Service incurs an average cost of 4.5 cents per piece for disposal. Additionally, it is doubtful that the sender's intent is for their strategic message not to be delivered and miss potential business opportunities. To continue this scenario is not in the best interests of a cost-efficient mailstream, and the Postal Service maintains that a discount should not be provided for mail bearing addresses where no steps have been taken to mitigate this occurrence.

Bound Printed Matter

One commenter voiced concern regarding possible negative impact to Bound Printed Matter (BPM) mailings.

After due consideration, the Postal Service believes that the Move Update requirement is both appropriate and fair for BPM Presorted and Carrier Route qualification, including machinable parcels claiming a parcel barcoded discount or flat-size pieces claiming a POSTNET barcoded discount. The Postal Service does not believe that the Move Update requirement will pose a greater challenge to BPM mailers than to those in using other classes of mail. A majority of BPM consists of the same content as Standard Mail (*e.g.*, advertising, catalogs, and directories) and would, except for weight, qualify as Standard Mail. In fact, many mailers ''bundle'' individual Standard Mail pieces for the same address and create a single addressed BPM mailpiece.

After due consideration of the comments expressed, the Postal Service proposes to expand the Move Update standard to include Periodicals, Standard Mail, and the Bound Printed Matter subclass of Package Services mail.

(2) Frequency of Use of Move Update Processing

The Postal Service proposes to increase the minimum frequency of Move Update processing from 180 days to 95 days (90 days was originally proposed but was amended to 95 days in response to the comments received).

Five commenters voiced general support for the proposal, while several other commenters had specific concerns regarding this Move Update provision.

One commenter expressed concern that with the requirement to update addresses more frequently, the existing NCOA licensees would not be able to keep up with the demand for Move Update processing.

The Postal Service believes the existing group of licensees has the capacity to provide the service within the terms of their license (process and return address files within 7 business days of receipt). The Postal Service will continue to monitor this situation and if it determines that a justifiable need exists, it will increase the number of licensees.

One commenter stated that mailers using an NCSC-approved alternate Move Update method would not be able to meet the proposed standard, because they have certain legitimate restrictions on incorporating Postal Service-supplied change-of-address information into their mailing addresses.

The Postal Service believes this change will not have any impact on these alternate processes. Under existing standards, the mailer must contact an addressee within 30 days after receiving the change-of-address information and incorporate the change of address within 30 days of receipt. These timeframes already fall within the proposed requirement.

One commenter voiced concern that the reduced window for processing will have a negative effect due to the planning cycles currently in use by many mailers.

The Postal Service understands that certain operational changes are necessary for the mailing industry to implement this proposal. The UAA mail problem is of such magnitude that it is in the best interests of all stakeholders to modify current practices in order to mitigate it. The Postal Service also recognizes that some mailers who are proactively trying to reduce UAA mail within their own operations have already set quarterly production cycles for their Move Update and Address Matching processing. To allow mailers to continue these processing cycles and not have to periodically make additional processing runs due to variations in calendar dates, the Postal Service proposes that the processing requirement, which is based on the number of day prior to mailing, will be modified from the originally proposed 90 days to 95 days.

(3) Removal of Manual Hardcopy Notifications as a Move Update Option

Ancillary Service Endorsements

The Postal Service proposes to remove the stand-alone use of ancillary service endorsements as an option to satisfy the Move Update standard.

Many of the commenters perceived that the purpose of this proposal was to totally eliminate all use of ancillary service endorsements.

To clarify, this is not the case. All ancillary service endorsements will still be available as mailpiece handling instructions for commercial mail. This proposal is designed to effectively separate basic mailpiece-handling instructions, which is the core function of endorsements, from efficient address correction notification methods where Move Update activity is required. Under

this proposal, stand-alone ancillary service endorsement use will not be recognized as a method to satisfy the Move Update standard. Ancillary Service Endorsements may still be used on mail with addresses that are updated via one of the approved Move Update methods (*e.g.,* Address Change Service, NCOA, FASTforward®, *etc.*). More than six years of practical experience with the Move Update requirement for First-Class Mail has shown that individual manual hardcopy notifications generated from the stand-alone use of ancillary service endorsements are the least effective and most costly Move Update method for all concerned.

''Return Service Requested''

Additionally, one commenter pointed out that mailers who desire mailpieces to be returned and not forwarded would be penalized by this proposal, as there is currently no electronic ACS option available for returns.

The Postal Service agrees that a post-mailing electronic option should be available in this instance and, if this proposal is adopted, will take the necessary action prior to implementation to make the ''Return Service Requested'' endorsement available within the ACS system.

Hardcopy Notices

Several commenters indicated that, for various reasons, hardcopy address change notices generated from stand-alone ancillary service endorsements are the only method they can use to meet a Move Update requirement. They expressed a concern that the ACS system was not a viable alternative for them.

As previously explained, the Postal Service believes that the options available to comply with Move Update standards are both flexible and efficient enough to meet the needs of all parties seeking discounted rates.

Specifically to this point, at the time Move Update first became a requirement for First-Class Mail automation and Presorted rates, the ability of the Postal Service to provide a robust electronic/hardcopy hybrid ACS service did not exist as it does today. Since the inception of the Move Update standard, the Postal Service has worked to create enough flexibility within the ACS system to meet mailers' needs, while at the same time lowering the cost. There is, for all practical purposes, a limitless supply of ACS participant codes available that can be used in those situations where multiple departments and/or list situations are involved. Additionally, as noted earlier in the Summary section, the option for mailers to print the ACS participant code on the mailpiece itself was made effective on October 3, 2002.

The end-result of these efforts is the ACS printout notification option, which provides printable hardcopy notifications, in an electronic file, to those who desire them. This option provides quality in the form of a computer-generated report, timely fulfillment back to the sender so that the address corrections can be incorporated quickly to prevent future UAA mail, and a cost-effective process for both the mailer and the Postal Service.

The Postal Service is convinced that this ACS hardcopy notification option is a viable alternative to stand-alone ancillary service endorsements since it provides ''best practice'' efficiency to the business of hardcopy notifications. In addition, effective January 1, 2003, ACS change-of-address information is now available, at no additional charge, on CD–ROM media. This provides small- and medium-sized mailers with an easy, cost-effective method for viewing, searching, and printing change-of-address records in order to update their address files manually.

As put forth in the Advance Notice of May 31, 2002, individual hardcopy address correction notifications triggered from stand-alone use of ancillary service endorsements do not significantly reduce costs for either the mailer or the Postal Service. However, ancillary service endorsements used in conjunction with ACS do provide benefits not obtained by stand-alone use of ancillary service endorsements. Again, these facts cause the Postal Service to conclude that the existing (stand-alone) use of ancillary service endorsements and individual hardcopy notifications or return of UAA mailpieces will no longer be a permissible qualification method in and of itself to meet the Move Update requirement.

(4) Frequency of Use of Address Matching Software

The Postal Service proposes to increase the minimum frequency of Address Matching processing for automation rate mail from 180 days to 95 days (90 days was proposed in the Advance Notice but is now amended to 95 days in response to the comments received).

Five commenters voiced general support for the proposal to increase the frequency of the required use of address matching software.

Schedule

Four commenters recommended that the Postal Service develop a clearly defined schedule when software vendors and end-users must update and implement the Address Matching software changes.

The Postal Service already has a clearly defined process in place for software developers to submit their Address Matching software for Coding Accuracy Support System (CASS) certification. As a condition for CASS certification, all changes in Address Matching software requirements are announced at the annual CASS ''Partnership in Tomorrow'' meeting each August. Generally, the required changes are effective the following July 31 (11 months later). Furthermore, current DMM A950 sets forth the schedule of frequency of use for Address Matching software and the Postal Service database.

Vendor Deadlines

Several commenters urged the Postal Service to set timeframes and deadlines that vendors must meet for providing their updated products to end-users.

Although the Postal Service understands the end-users' point of view, it is reluctant to regulate the business practices between vendors and their customers. The Postal Service is committed to taking the necessary steps to ensure that its product distribution timetables to the various vendors are met. If the vendor does not provide the software updates in a timely manner, the customer must determine whether to pursue a legal remedy or other action. As is the case with other industries, it is reasonable to expect that substandard vendors will lose their place in the market.

Reduced Processing Period

One commenter voiced concern that the reduced window for processing will have a negative effect due to the planning cycles currently in use by many mailers.

The Postal Service understands that certain operational changes are necessary for the mailing industry to implement this proposal. The UAA mail problem is of such magnitude that it is in the best interests of mailers and the Postal Service to modify current practices in order to mitigate it. The Postal Service also recognizes that some mailers who are proactively trying to reduce UAA mail within their own operations have set quarterly production cycles for their Move Update and Address Matching processing already. To allow mailers to continue these processing cycles and not have to periodically make additional processing runs due to variations in calendar dates, the processing requirement will be

modified from the proposed 90 days to 95 days.

Another option currently available to mailers to assist with narrow processing windows is the use of Z4Change list matching as defined in DMM A950.3.2. Furthermore, in the interest of consistent processing requirements, it is proposed that the 90-day Address Matching standard for Periodicals and Standard Mail sent at carrier route rates be modified to 95 days. It should be noted that although concerns about the frequency of matching were also expressed when the 90-day carrier route rate requirement was first implemented, mailers were able to adjust their mailing processes to meet the list processing window.

Due to the high rate of change in addressing data, the Postal Service believes that the benefits are worth the behavioral changes that the mailing industry and the Postal Service would have to make to reduce UAA mail volumes.

(5) Address Matching Directory Update Frequency

The Postal Service proposes to require the use of monthly (instead of bimonthly) directory updates for address matching software. This proposal goes ''hand in hand'' with the revisions in the fourth proposal. That is, the adoption of one strategy without the other would sacrifice the desired improvement in efficiency and quality of the Address Matching process.

One commenter felt that there was some confusion regarding the difference between the two.

To clarify, the Postal Service respectfully points out that the fourth proposal from the Advance Notice modifies the cycle time in which addresses must be processed through Postal Service CASS-certified Address Matching software in order to qualify for discounted rates. This proposal modifies the cycle that the address directories used in conjunction with CASS-certified software must be updated prior to processing addresses.

In order to ensure understanding of these standards, the Postal Service will provide further guidance concerning these processes in publications including the CASS Technical Guide, the Postal Bulletin, and the Mailer's Companion.

Part B

It should be remembered that the following DMM revisions are proposals only and are presented to assist mailers with their review and comments. The proposed DMM changes below are to the current DMM which includes ''organizational'' changes made via Postal Bulletin 22104, June 12, 2003. To view the current DMM go to *http://pe.usps.gov.*

Although exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the Domestic Mail Manual as follow:

Domestic Mail Manual (DMM)

A ADDRESSING

A000 Basic Addressing

* * * * *

A030 Address Quality

1.0 MOVE UPDATE

1.1 Basic Standards

The Move Update standard is a means of reducing the number of mailpieces in a mailing that require forwarding by the periodic matching of a mailer's address records with customer-filed change-of-address orders received and maintained by the USPS. For the purposes of this standard, address means a specific address associated with a specific occupant name. Addresses used on pieces claiming certain rates that are subject to the Move Update standard under 1.2 must meet these requirements:

[Change ''180'' days to ''95'' days in 1.1a to read as follows:]

a. Each address and associated occupant name used on the mailpieces in a mailing must be updated within 95 days before the mailing date, with one of the USPS-approved methods in 1.4.

* * * * *

[Change ''180'' days to ''95'' days in 1.1c to read as follows:]

c. If an address used on a mailpiece in a mailing at one class of mail and rate is updated with an approved method (*e.g.*, Address Change Service), the same address may be used during the following 95 days and meets the Move Update standard required in 1.2.

1.2 Mail Classes and Rates

[Revise 1.2 to read as follows:]

Except as provided in 1.3, addresses used on pieces claiming the rates listed for the following classes of mail, regardless of processing category and any required surcharges, must meet the Move Update standard:

a. First-Class Mail, nonautomation Presorted rate and automation rates.

b. Periodicals, all rates.

c. Standard Mail, all rates.

d. Bound Printed Matter, Presorted rate and carrier route rate.

1.3 Exception

[Change ''First-Class Mail move update standard'' to ''Move Update standard'' in 1.3 to read as follows:]

The Move Update standard does not apply to any mail bearing an alternative addressing format under A020.

1.4 USPS-Approved Methods

[Revise 1.4 by removing 1.4f to read as follows:]

The following methods are authorized for meeting the Move Update standard:

a. Address Change Service (ACS).

b. National Change of Address (NCOA).

c. FASTforward Mailing List Correction (MLC).

d. FASTforward MLOCR processes (letter-size and flat-size mail only) if used each time before mail entry. If a mailpiece that initially uses FASTforward MLOCR processing is rejected and then entered into a Direct View Encoding Desk (DVED) operation (or similar system), the piece does not meet the Move Update standard. The name and address information on the piece must then be processed through a FASTforward RVE system to meet the Move Update standard. FASTforward RVE processes also meet the Move Update standard if used each time before mail entry. As provided in C010.6.0, a letter-size envelope containing a window that intrudes into the barcode clear zone (see C840) is not eligible for MLOCR or RVE FASTforward processing.

e. Mailer Move Update Process Certification and USPS-approved alternative methods for mailers with legitimate restrictions on incorporating USPS-supplied change-of-address information into their mailing lists. The National Customer Support Center (see G043 for address) administers and approves both Mailer Move Update Process Certification and alternative methods.

* * * * *

3.0 CARRIER ROUTE ACCURACY

3.1 Basic Standards

The carrier route accuracy standard is a means of ensuring that the carrier route code correctly matches the delivery address information. For the purposes of this standard, address means a specific address associated with a specific carrier route code. Addresses used on pieces claiming certain rates that are subject to the carrier route accuracy standard under 3.2 must meet these requirements:

[Change ''within 90 days'' to ''within 95 days'' in 3.1a to read as follows:]

a. Each address and associated carrier route code used on the mailpieces in a mailing must be updated within 95 days before the mailing date with one of the USPS-approved methods in 3.4. For the First-Class Mail automation carrier route rate and the Enhanced Carrier Route Standard Mail automation rate, USPS City State Product information must also be updated within 95 days before the mailing date.

* * * * *

[Change ''within 90 days'' to ''within 95 days'' in 3.1c to read as follows:]

c. If the carrier route code (and accuracy) of an address used on a mailpiece in a carrier route mailing at one class of mail and rate is updated with an approved method, the same address may be used during the following 95 days to meet the carrier route accuracy standard required for mailing at any other class of mail and rate.

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A900 Customer Support

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A950 Coding Accuracy Support System (CASS)

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3.0 DATE OF ADDRESS MATCHING AND CODING

3.1 Update Standards

[Revise 3.1 to read as follows:]

Unless Z4CHANGE is used, all automation and carrier route mailings bearing addresses coded by any AIS product must be coded with current CASS-certified software and the current USPS database and meet these standards:

a. Coding must be done within 95 days before the mailing date for all carrier route mailings and all automation rate mailings.

b. All AIS products may be used immediately on release. New product releases must be installed in address matching systems no later than 45 days after the release date. The overlap in dates for product use allows mailers adequate time to install the new data files and test their systems. Mailers are expected to update their systems with the latest data files as soon as practicable and not wait until the ''last permissible use'' date. Exhibit 3.1 defines the ''current USPS database'' product cycle.

c. The mailer's signature on the postage statement certifies that this standard has been met for each address in the corresponding mailing presented to the USPS.

EXHIBIT 3.1.—USPS DATABASE PRODUCT CYCLE

File release	Required use	Last permissible use
Use of file released on:	Must begin no later than:	And must end no later than:
January 15	March 1	March 31
February 15	April 1	April 30
March 15	May 1	May 31
April 15	June 1	June 30
May 15	July 1	July 31
June 15	August 1	August 31
July 15	September 1	September 30
August 15	October 1	October 31
September 15	November 1	November 30
October 15	December 1	December 31
November 15	January 1	January 31
December 15	February 1	February 28/29

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E ELIGIBILITY

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E200 Periodicals

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E220 Presorted Rates

1.0 BASIC INFORMATION

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1.3 Address Quality

All pieces in a Periodicals Presorted rate mailing must bear a delivery address that includes the correct ZIP Code or ZIP+4 code and that meets these address quality standards:

[Add new 1.3a and redesignate current 1.3a and 1.3b as 1.3b and 1.3c, respectively, to read as follows:]

a. The Move Update standard in A030.1.0.

b. The ZIP Code accuracy standard in A030.2.0.

c. If an alternative addressing format is used, the standards in A020.

* * * * *

E230 Carrier Route Rates

1.0 BASIC INFORMATION

* * * * *

1.3 Address Quality

All pieces in a Periodicals carrier route rate mailing must bear a delivery address that includes the correct ZIP Code or ZIP+4 code and that meets these address quality standards:

[Add new 1.3a and redesignate current 1.3a through 1.3c as 1.3b through 1.3d, respectively, to read as follows:]

a. The Move Update standard in A030.1.0.

b. If an alternative addressing format is used, the additional standards in A020.

c. If flat-size pieces are prepared with detached address labels, the additional standards in A060.

* * * * *

E240 Automation Rates

1.0 BASIC STANDARDS

1.1 All Pieces

All pieces in a Periodicals automation rate mailing must:

* * * * *

c. Bear a delivery address that includes the correct ZIP Code, ZIP+4

code, or numeric equivalent to the delivery point barcode (DPBC) and that meets these address quality standards:

[Add new 1.1c(1) and redesignate current 1.1c(1) and 1.1c(2) as 1.1c(2) and 1.1c(3), respectively, to read as follows:]

(1) The Move Update standard in A030.1.0.

(2) The address matching and coding standards in A800 and A950.

(3) If an alternative addressing format is used, the additional standards in A020.

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E600 Standard Mail

* * * * *

E620 Presorted Rates

1.0 BASIC STANDARDS

1.1 All Pieces

All pieces in a Regular Standard Mail or Nonprofit Standard Mail Presorted rate mailing must:

* * * * *

c. Bear a delivery address that includes the correct ZIP Code or ZIP+4 code and that meets these address quality standards:

[Add new 1.1c(1) and redesignate current 1.1c(1) through 1.1c(3) as 1.1c(2) through 1.1c(4) to read as follows:]

(1) The Move Update standard in A030.1.0.

(2) The ZIP Code accuracy standard in A030.2.0.

(3) If an alternative addressing format is used, the additional standards in A020.

(4) If merchandise samples are prepared with detached address labels, the additional standards in A060.

* * * * *

E630 Enhanced Carrier Route Rates

1.0 BASIC STANDARDS

1.1 All Pieces

All pieces in an Enhanced Carrier Route or Nonprofit Enhanced Carrier Route Standard Mail mailing must:

* * * * *

d. Bear a delivery address that includes the correct ZIP Code, ZIP+4 code, or numeric equivalent to the delivery point barcode (DPBC) and that meets these address quality standards:

[Add new 1.1d(1) and redesignate current 1.1d(1) through 1.1d(4) as 1.1d(2) through 1.1d(5), respectively, to read as follows:]

(1) The Move Update standard in A030.1.0.

(2) The carrier route accuracy standard in A030.3.0.

(3) If high density and saturation rate letter-size mail is prepared, the address matching and coding standards in A800 and A950.

(4) If an alternative addressing format is used, the additional standards in A020.

(5) If flat-size pieces are prepared with detached address labels, the additional standards in A060.

* * * * *

E640 Automation Rates

1.0 REGULAR AND NONPROFIT RATES

1.1 All Pieces

All pieces in a Regular Standard Mail or Nonprofit Standard Mail automation rate mailing must:

* * * * *

d. Bear a delivery address that includes the correct ZIP Code, ZIP+4 code, or numeric equivalent to the delivery point barcode (DPBC) and that meets these address quality standards:

[Add new 1.1d(1) and redesignate current 1.1d(1) and 1.1d(2) as 1.1d(2) and 1.1d(3), respectively, to read as follows:]

(1) The Move Update standard in A030.1.0.

(2) The address matching and coding standards in A800 and A950.

(3) If an alternative addressing format is used, the additional standards in A020.

* * * * *

2.0 ENHANCED CARRIER ROUTE RATES

2.1 All Pieces

All pieces in an Enhanced Carrier Route or Nonprofit Enhanced Carrier Route Standard Mail automation rate mailing (available only for letter-size mail) must:

* * * * *

d. Bear a delivery address that includes the correct ZIP Code, ZIP+4 code, or numeric equivalent to the delivery point barcode (DPBC) and that meets these address quality standards:

[Add new 2.1d(1) and redesignate current 1.1d(1) through 1.1d(3) as 1.1d(2) through and 1.1d(4), respectively, to read as follows:]

(1) The Move Update standard in A030.1.0.

(2) The carrier route accuracy standard in A030.3.0.

(3) The address matching and coding standards in A800 and A950.

(4) If an alternative addressing format is used, the additional standards in A020.

* * * * *

E700 Package Services

E710 Basic Standards

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E712 Bound Printed Matter

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3.0 ADDITIONAL STANDARDS

3.1 Presorted Rates

In addition to the basic standards in 1.0, all pieces in a Bound Printed Matter Presorted rate mailing must:

a. Bear a delivery address that includes the correct ZIP Code or ZIP+4 code and that meets these address quality standards:

[Add new 3.1a(1) and redesignate current 3.1a(1) through 3.1a(4) as 3.1a(2) through and 3.1a(5), respectively, to read as follows:]

(1) The Move Update standard in A030.1.0.

(2) The ZIP Code accuracy standard in A030.2.0.

(3) If the barcoded discount for flat-size pieces is claimed (see 2.0), the additional address matching and coding standards in A800 and A950.

(4) If an alternative addressing format is used, the additional standards in A020.

(5) If pieces are prepared with detached address labels, the additional standards in A060.

* * * * *

3.2 Carrier Route Rates

In addition to the basic standards in 1.0, all pieces in a Bound Printed Matter carrier route rate mailing must:

a. Bear a delivery address that includes the correct ZIP Code or ZIP+4 code and that meets these address quality standards:

[Add new 3.2a(1) and redesignate current 3.2a(1) through 3.2a(3) as 3.2a(2) through and 3.2a(4), respectively, to read as follows:]

(1) The Move Update standard in A030.1.0.

(2) The carrier route accuracy standard in A030.3.0.

(3) If an alternative addressing format is used, the additional standards in A020.

(4) If pieces are prepared with detached address labels, the additional standards in A060.

* * * * *

F Forwarding and Related Services

F000 Basic Services

F010 Basic Information

* * * * *

5.0 CLASS TREATMENT FOR ANCILLARY SERVICES

5.1 First-Class Mail and Priority Mail

* * * * *

EXHIBIT 5.1.—TREATMENT OF UNDELIVERABLE FIRST-CLASS MAIL AND PRIORITY MAIL

[Revise Exhibit 5.1 to read as follows:]

Mailer endorsement	USPS treatment of UAA pieces
* * *	* * *
''Return Service Requested'' [1]	If used without ACS: Piece returned with new address or reason for nondelivery attached (in either case, no charge). If used with ACS: Piece returned (no charge); separate notice of new address provided or (only if ACS keyline option also used) separate reason for nondelivery provided (in either case, address correction fee charged).
* * *	* * *

1. Valid for all pieces, including Address Change Service (ACS) participating pieces subject to F030.

5.3 Standard Mail

* * * * *

EXHIBIT 5.3a.—TREATMENT OF UNDELIVERABLE STANDARD MAIL

[Revise Exhibit 5.3a to read as follows:]

Mailer endorsement	USPS treatment of UAA pieces
* * *	* * *
''Return Service Requested'' [1]	If used without ACS: Piece returned with new address or reason for nondelivery attached (in either case, only return postage charged at First-Class Mail single-piece rate or Priority Mail single-piece rate, as appropriate for weight of piece). If used with ACS: Piece returned (return postage charged at First-Class Mail single-piece rate or Priority Mail single-piece rate, as appropriate for weight of piece); separate notice of new address provided or (only if ACS keyline option also used) separate reason for nondelivery provided (address correction fee charged)
* * *	* * *

1. Valid for all pieces, including Address Change Service (ACS) participating pieces.

* * * * *

5.4 Package Services

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EXHIBIT 5.4.—TREATMENT OF UNDELIVERABLE PACKAGE SERVICES MAIL

[Revise Exhibit 5.4 to read as follows:]

Mailer endorsement	USPS treatment of UAA pieces
* * *	* * *
''Return Service Requested'' [1]	If used without ACS: Piece returned with new address or reason for nondelivery attached (in either case, only return postage charged at appropriate Package Services single-piece rate). If used with ACS: Piece returned at appropriate Package Services single-piece rate; separate notice of new address provided or (only if ACS keyline option also used) separate reason for nondelivery provided (address correction fee charged).
* * *	* * *

1. Valid for all pieces, including Address Change Service (ACS) participating pieces.

* * * * *

An appropriate amendment to 39 CFR Part 111 will be published if the proposal is adopted.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 03–22048 Filed 8–27–03; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 021108270–3204–02; I.D. 102802C]

RIN 0648–AQ53

Endangered and Threatened Species; Finding for a Petition to Revise Critical Habitat for Northern Right Whales

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

ACTION: Response to petition; final determination.

SUMMARY: On July 11, 2002, NMFS received a petition dated July 7, 2002, requesting that NMFS revise the present critical habitat designation for the western North Atlantic right whale, Eubalaena glacialis, (right whales) under the Endangered Species Act (ESA) by combining and expanding the current Cape Cod Bay and Great South Channel critical habitats in the Northeast and by expanding the current critical habitat in the Southeast. NMFS has determined that the requested revision, as specified by the petitioner, is not warranted at this time. However, NMFS will continue to analyze the physical and biological habitat features essential to the conservation of right whales.

ADDRESSES: Comments and requests for copies of this determination should be addressed to Assistant Regional Administrator for Protected Resources, Protected Resources Division, NMFS, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Brian Hopper, Northeast Region, telephone (978) 281–9328 x6509, fax (978) 281–9394; Barb Zoodsma, Southeast Region, telephone 904–321–2806, fax (904) 321–1579; or Kristy Long, telephone (301) 713–1401, fax (301) 713–0376.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several background documents on right whales and the critical habitat designation process can be downloaded from the NOAA Fisheries Web Site at *http://www.nmfs.noaa.gov/*.

Background

Right whales in the North Atlantic are one of three populations of endangered right whales worldwide. The other populations occur in the North Pacific and the Southern Hemisphere. The southern right whale is recognized as a separate species and, until recently, the North Atlantic and North Pacific stocks were defined as a single species. However, recent genetic studies provided evidence that supported separating species status for these two populations, one in the North Atlantic and another in the North Pacific. On April 10, 2003, NMFS published a final rule (68 FR 17560) concerning the nomenclature and taxonomy of right whales, which formally acknowledges these scientific findings by changing the species name of the northern right whale as follows: the North Atlantic right whale, *Eubalaena glacialis*, and the North Pacific right whale, *Eubalaena japonica*. These technical changes did not affect the listing status of these species under the ESA (all three remain ''endangered'').

Status of North Atlantic Right Whale

The North Atlantic right whale is one of the world's most critically endangered species of large whale (Clapham *et al.* 1999). Despite nearly three-quarters of a century of international legal protection, the right whale has not shown any recovery towards its pre-exploitation numbers. Recent studies on the current population trend in right whales suggest that, if the population decline is not reversed, the species is likely to become extinct in less than 200 years (Caswell et al. 1999). More than 800 years of uncontrolled and intense hunting is the primary reason that the right whale population has declined to such a precarious level. Today, ship strikes and entanglements in fishing gear are the primary, human-related causes of serious injury and mortality to right whales that impede the species' recovery.

Exploitation: North Atlantic right whales were the first target of commercial whaling and, consequently, the first large whale species to be hunted to near extinction by such efforts. Several characteristics specifically attributable to the right whale made it a highly desirable resource, such as its large yield of commercially valuable products (e.g., oil and baleen), its slow swimming speed, its distinction of floating when dead, and its generally coastal distribution. These factors also contributed to the whale's common name, which is said to have originated from the English whalers who designated this species of whale as the ''right'' (i.e., correct) whale to hunt.

The commercial harvest of right whales began with Basque whalers taking substantial numbers of them as early as the 1500s in the Strait of Belle Isle region (Aguilar, 1986). As the stocks in the eastern North Atlantic became depleted, hunting effort shifted to the western North Atlantic, off the Labrador and New England coasts. This intense period of early whaling may have resulted in a significant reduction in the stock of right whales by the time colonists in the Plymouth area began hunting for right whales in the 1600s (Reeves and Mitchell, 1987). A modest but persistent whaling effort along the coast of the eastern United States lasted three centuries, and the records include one report of 29 whales killed in Cape Cod Bay in a single day during January 1700. The right whales' vulnerability to over-exploitation was noticed as early as the 19th century. For example, in 1851, Herman Melville wrote that, although still numerous at that time, the right whale could vanish from the earth under the hunting pressure then being applied to the species. However, Melville's prophetic observation went largely ignored for over 80 years, and the traditional high-seas Yankee whale fishery made way for a modern, industrial, and efficient whaling fleet. Finally, in 1935, the species had declined to such low levels that the League of Nations was able to get most whaling nations to agree to stop hunting right whales.

Abundance and Trends: An estimate of the pre-exploitation population size of right whales is not available. However, based on historical catch levels, right whale abundance probably exceeded 10,000 animals. The historic range of North Atlantic right whales extended from as far south as Florida and northwestern Africa to as far north as Labrador, southern Greenland, Iceland, and Norway (Kenney, 2002). Commercial whaling severely depleted the population to the point where right whales are no longer abundant in portions of their historical range (e.g., the Strait of Belle Isle, Newfoundland, the coastal waters of Long Island, New York, and Delaware Bay). Therefore, the present range of North Atlantic right whales, from Florida to Nova Scotia, is

considerably reduced from its historic extent.

The best estimate of present abundance is about 300 animals. In 1998, the right whale population size was estimated to be 291 individuals (Kraus *et al.*, 2001) based on a census of individual whales identified using photo-identification techniques. It is assumed that the census of identified and presumed living whales represents a minimum population size estimate. However, the true population size in 1998 may have been higher if: (1) there were animals not photographed and identified; and/or (2) some animals presumed to be dead, actually, were not.

The population growth rate reported for the period 1986–1992 by Knowlton *et al.* (1994) was 2.5 percent (CV=0.12), which suggested that the species was showing signs of a slow recovery. However, more recent work by Caswell *et al.* (1999) has suggested that crude survival probability declined from about 0.99 in the early 1980s to about 0.94 in the late 1990s. The decline in survival probability is statistically significant. Additional work conducted in 1999 concluded that survival had indeed declined during the 1990s (Best et al., 2001). Although heterogeneity of capture could negatively bias survival estimates, subsequent review of this study concluded that this factor could not account for all of the observed decline, which appeared to be particularly marked in adult females.

Seasonal Movement and Habitat: Right whales migrate annually between high-latitude feeding grounds and low-latitude calving and breeding grounds. In general, most of the whales spend the spring and early summer off the coast of New England, then, in the latter part of the summer and fall, move to the waters off southern Canada. Some whales may remain in these northern waters throughout the winter, but the majority leave. Therefore, the exact location of a large segment of the population is unknown during the winter. A small fraction of the population, consisting almost entirely of pregnant females and juveniles, migrates south in the winter to the only known calving ground for the species - the coastal waters of Georgia and northeast Florida.

Breeding and Calving: The precise location of a breeding ground for right whales has not been identified. However, as North Atlantic right whales have been observed engaging in breeding-like behavior throughout much of their range, the concept of a specific breeding ground may not be relevant for this species.

The only known current calving ground in the western North Atlantic is in the coastal waters of the southeastern United States, especially the shallow waters from Savannah, Georgia, south to Cape Canaveral, Florida. It has been speculated that other coastal areas, such as Delaware Bay and Cape Cod Bay, may have been calving grounds before the population was decimated by whaling (Kenney, 2002).

Prey: Right whales feed exclusively on zooplankton, especially on large calanoid copepods (mostly of the genera *Calanus* and *Pseudocalanus*). At times, they also feed on juvenile euphausiids (also known as krill), smaller copepods, pteropods (tiny planktonic snails), or the planktonic larval stages of barnacles and other crustaceans (Kenney, 2002).

The waters along the New England coast are a primary feeding habitat for the right whale. Research suggests that right whales must locate and exploit extremely dense patches of zooplankton to feed efficiently (Mayo and Marx, 1990). These dense zooplankton patches are known to occur in the spring, summer, and fall right whale habitats from Cape Cod Bay to the Bay of Fundy.

Status of North Atlantic Right Whales Under the Endangered Species Act

The right whale was listed as endangered under the Endangered Species Conservation Act, the precursor to the ESA, on June 2, 1970 (35 FR 8495; codified at 50 CFR 17.11). The species was subsequently listed as endangered under the ESA in 1973, and as depleted under the Marine Mammal Protection Act in the same year. NMFS has the lead responsibility for developing, implementing, and monitoring a recovery program for this species.

NMFS published a Final Recovery Plan for the Northern Right Whale (Recovery Plan) in 1991, and a draft, revised Recovery Plan in 2001. Habitat related objectives were identified in the 1991 Recovery Plan, as well as in the 2001 draft revision. One of these objectives was to characterize known habitats of special importance to the species, identify other habitats essential to the conservation of the species, and protect these areas as necessary. Additional objectives of the Recovery Plan concerning habitat include the collection of new data and analysis of available data to assess the need for expanding or modifying the existing critical habitat boundaries.

NMFS was petitioned by the Right Whale Recovery Team to designate critical habitat for right whales on May 18, 1990. A notice was published in the **Federal Register** on July 12, 1990 (55 FR 28670), requesting information and comments on the petition. The proposed critical habitat designation was published on May 19, 1993 (58 FR 29186), and the final rule was published on June 3, 1994 (59 FR 28793; codified at 50 CFR 226.203). Areas included in the initial critical habitat designation were identified primarily on the basis of use by right whales. The designation recognized and discussed important characteristics of these habitats that relate to aspects of right whale biology, such as foraging, calving, and nursing. Specifically, this designation includes portions of Cape Cod Bay and Stellwagen Bank, the Great South Channel (each off the coast of Massachusetts), and waters adjacent to the coasts of Georgia and the east coast of Florida.

Petition To Revise Existing Right Whale Critical Habitat

On July 11, 2002, NMFS received a petition dated July 9, 2002, from The Ocean Conservancy requesting that NMFS revise the current critical habitat designation for North Atlantic right whales by expanding its boundaries in both the Northeast and Southeast U.S. The petitioner requests that NMFS expand the existing Southeast critical habitat designation to the following coordinates: 31° 30′ N to 29° 40′ N from the shoreline out to thirty nautical miles; 29° 40′ N to 28° 00′N from the shoreline out to ten nautical miles. The petitioned area would add approximately 2,700 nm2 (5,003.6 km2) to the current critical habitat coverage. The petitioner also requests that NMFS expand and combine both the existing Northeast critical habitat designations (Cape Cod Bay and Great South Channel) into one critical habitat area bounded by the following coordinates: 41° 41.2′N/69° 58.2′W; 41° 00.0′N/69° 05.0′W; 41° 00.0′N/68° 13.0′W; 42° 12.0′N/68° 13.0′W; 42° 12.0′N/70° 30.0′W; 41° 46.8′N/70° 30.0′W; and on the southwest corner by the shoreline of Cape Cod, MA.

The petitioner states that 10 years of new data regarding right whale distribution and causes of mortality along the east coast of the United States show that the current critical habitat designation is not sufficient to protect right whales from further anthropogenic mortality. According to the petitioner, the additional critical habitat contains several features essential to the conservation of the right whale in the western North Atlantic that may require specific protection or management considerations to ensure the survival and recovery of the species. The petitioner stated that the areas petitioned for expanded critical habitat experience high levels of human disturbance in the form of shipping

activities, fisheries, military activities, dredging operations, increased pollution, and general habitat disturbance. The essential features associated with the petitioned critical habitat according to the petitioner include the following: space for individual and population growth and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction and rearing of offspring; and habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of species.

The petitioner acknowledged that some areas in the northeastern U.S. have already received special management attention in the form of fishing regulations, but maintains that essential right whale habitat along the eastern seaboard lacks protection from ship strikes. In addition, the petitioner noted that when several habitats, each satisfying the requirements for designation as critical habitat, are located in proximity to one another, an inclusive area may be designated as critical habitat.

The petitioner stated that the continued high mortality of North Atlantic right whales from ship strikes indicates the immediate need for management actions to reduce ship strikes, maintaining that accurately designated critical habitat boundaries will facilitate the management process. In addition, the petitioner stated that since the time critical habitat was originally designated in the southeastern U.S., extensive and expansive survey efforts have shown that right whales occur further offshore than originally known. The petitioner contended that the importance of this area as the only known calving ground for right whales warrants the revision of critical habitat to protect the animals within this region.

Section 4(b)(3)(D) of the ESA requires that NMFS, to the maximum extent practicable, within 90 days after receiving a petition to revise existing critical habitat, make a finding as to whether the petition presents substantial scientific information indicating that the petitioned action may be warranted and publish the finding in the **Federal Register**. If the finding is that substantial scientific information is presented, NMFS is required, within 12 months of the date the petition was received, to make a determination on how it intends to proceed with the requested revision and promptly publish notice of such intention in the **Federal Register**.

On November 19, 2002 (67 FR 69708), NMFS published a notice finding that the subject petition contained substantial scientific information indicating that the requested revision of right whale critical habitat may be warranted and inviting interested persons to submit comments and information concerning revision. NMFS' finding was based on the agency's concurrence with petitioner's statement that extensive and expanded survey efforts in the southeast indicate that right whales occur farther offshore than previously known, and that the draft final recovery plan suggested that data should be analyzed to assess expanding or modifying the critical habitat boundaries.

Response to the Comments Received on the Petition

NMFS received over 2,000 letters and postcards during the comment period. The comments are addressed in the following paragraphs.

Comments in Support of Revising Critical Habitat

Comment 1: Hundreds of people sent form letters and post cards expressing support for the proposed expansion of right whale critical habitat, based on the belief that it will more accurately reflect the distribution and range of the species and provide a mechanism to achieve greater protection. Another commenter suggested that NMFS designate the entire known range of North Atlantic right whales as critical habitat.

Response: Recent NMFS surveys have documented the consistent use of areas outside of the currently designated critical habitats by right whales (Zoodsma et al., 1999; Merrick et al., 2001). However, more analyses of the sightings data and their environmental correlates are necessary to define and designate these areas as critical habitat. Furthermore, the ESA requires that the process for designating critical habitat must focus on the identification of specific habitat features (i.e., primary constituent elements) essential to right whale conservation that may require special management considerations or protection, rather than only on known distribution. If the physical and biological features essential to the conservation of right whales are identified and determined to be distributed outside of current critical habitat boundaries, NMFS will evaluate the addition of areas containing these features to the designated critical habitat, in accordance with the requirements set forth in sections 3(5)(A) and 4(b)(2) of the ESA.

Comment 2: Two commenters recommended that NMFS review the available data and, based on that review, expand the current critical habitat as warranted. In addition, these commenters recommended that NMFS contract or prepare a report similar to the one prepared for the Marine Mammal Commission in 1991, which assesses right whale sighting data and human activities in and around the three existing right whale critical habitat areas. Such a report could be used to identify and evaluate the most appropriate critical habitat boundaries.

Response: NMFS agrees that the available data should be reviewed and, based on that review, NMFS could proceed to revise critical habitat. NMFS intends to proceed with the analyses necessary to evaluate the necessity of revising critical habitat based on the need to protect the habitat features essential to the conservation of right whales. Finally, NMFS will consider the recommendation to solicit a contractor to prepare a report that assesses right whale sighting data and human activities in and around the three existing right whale critical habitat areas.

Comment 3: In addition to supporting the proposed expansion of critical habitat, several commenters suggested that NMFS include other areas shown to be regularly frequented by right whales that are outside of the petitioned area. For example, these commenters specifically suggested including Jeffreys Ledge, Platts Bank, Fippennies Ledge, and Cashes Ledge because of their seasonal use as feeding habitat. Furthermore, these commenters suggested that the Seasonal Area Management (SAM) areas northeast of the Great South Channel should receive equal consideration as critical habitat.

Response: See response to Comment 1.

Comment 4: With respect to the petitioned revision in the Southeast, one commenter expressed support for the need to expand critical habitat beyond the current boundaries because recent surveys have shown regular and significant numbers of right whales in these waters.

Response: See response to Comment 1.

Comments Opposed To Revising Critical Habitat

Comment 5: Several commenters expressed support for federal efforts to protect and recover right whales, including the concept of expanding critical habitat based on the availability of new data, but did not support the petitioned revision because the

information provided by the petitioner is insufficient. Therefore, these commenters suggest that NMFS conduct further analysis and research on right whale distribution, including the identification of ''high-risk'' areas. Specifically, these commenters recommend an analysis of all right whale sightings since 1994 using a Sightings-Per-Unit-Effort analysis, which will provide scientists and managers with a more precise representation of spatial and temporal patterns of right whale habitat use.

Response: NMFS agrees that further analysis of the available data is warranted to better understand what areas are most frequented by right whales so that we may better manage the threat of takes. In addition, more analyses of the sightings data and their environmental correlates are necessary to define and designate additional areas as critical habitat. NMFS notes, however, that any revision of critical habitat will reflect habitat features essential to conserving the North Atlantic right whale population.

Comment 6: One commenter expressed concern that a revised and expanded critical habitat would unnecessarily restrict military training/operations in additional open ocean areas.

Response: As Federal agencies, under section 7 of the ESA, the branches of the U.S. military are required to consult with NMFS (or U.S. Fish and Wildlife Service) to ensure that their actions are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. NMFS does not agree that it is a forgone conclusion that the revision of critical habitat will restrict military operations along the East Coast. A designation or revision of critical habitat assists Federal agencies in planning future actions, since the designation or revision identifies, in advance, those habitat features that will be given special consideration through section 7 consultations. Therefore, potential conflicts between projects and endangered species can be identified early in the planning process.

Comment 7: One commenter expressed opposition to the petitioned revision to critical habitat because he/she believes it is unnecessary and would only lead to more petitions to designate critical habitat until the entire Atlantic Ocean is critical habitat.

Response: The public's right to petition NMFS to designate or revise critical habitat is expressly provided for in the ESA, and the agency can neither prohibit the exercise of this right nor ignore the petitions it receives with respect to such actions. In addition, the regulations at 50 CFR 424.12(g) provide NMFS with the authority to revise existing critical habitat when new data become available. As explained later on in this Notice, NMFS believes that the requested revision of critical habitat, as specified by the petitioner, is not warranted at this time. However, NMFS intends to proceed with the specified activities to determine whether a revision of critical habitat is warranted.

Comment 8: One commenter expressed the belief that a revised critical habitat designation would not be an effective mechanism for reducing the levels of right whale mortalities. In light of the commenter's belief that there is no link between the extent of critical habitat boundaries and levels of anthropogenic mortality, this commenter suggests that NMFS take immediate action to require universal gear modifications as the most effective means for enhancing the protection of right whales.

Response: The revision of critical habitat would likely not directly address the ''take'' issue to which this comment refers. The designation of critical habitat, in itself, does not necessarily lead to additional management measures. Under the ESA, the only direct impact of a critical habitat designation is through the provisions of section 7. Section 7 applies only to actions with Federal involvement (e.g., authorized, funded, conducted), and, through the consultation process, requires modifications to those projects that would result in the destruction or adverse modification of the primary constituent elements in designated critical habitat areas. Accordingly, NMFS would address the need for management measures for commercial fishing in critical habitat through the ESAs section 7 consultations on the fisheries regulated by NMFS and the Atlantic Large Whale Take Reduction Plan (ALWTRP). Indirectly, critical habitat designations also help focus Federal, state, and private conservation and management efforts in those areas. Recovery efforts may address special considerations needed in critical habitat, including conservation regulations to restrict private as well as Federal activities. Finally, it is important to note that the recommendation for special gear modifications designed to reduce serious injury to or mortality of right whales is more appropriate within the context of NMFS' Atlantic Large Whale Take Reduction Team (ALWTRT) than in the context of a petition to revise critical habitat.

Comment 9: Three commenters expressed opposition to the proposed expansion of critical habitat because it would lead to further regulation of state fisheries while continuing to bypass the shipping industry. In addition, these commenters urged NMFS to implement rules that would specifically protect right whales from ship strikes.

Response: First, the designation or revision of critical habitat does not, in itself, restrict non-Federal activities within the area or mandate any specific management or recovery action; as discussed above, a designation of critical habitat triggers an inter-agency consultation requirement designed to ensure that Federal activities avoid destruction or adverse modification of critical habitat. In addition, a critical habitat designation or revision contributes to the conservation of a species by identifying the physical and biological features within those areas that are essential to conservation of the species, thereby alerting both public and private entities to the importance of the area to the species. Second, the regulations found at 50 CFR 224.103(c) are intended to protect right whales from ship strikes by prohibiting vessels from approaching within 500 yards (460 m) of a right whale. Finally, NMFS is currently working toward developing and implementing a ship strike reduction strategy.

Comment 10: One commenter expressed opposition to the petitioned expansion of critical habitat because he/she felt that the petitioners have not presented sufficient evidence that expanding critical habitat and implementing regulations to reduce vessel speeds within critical habitat will provide protection for right whales.

Response: See response to comment 9.

Comments on the Process for Revising Critical Habitat

Comment 11: One commenter suggested that NMFS advise the relevant regulated communities (i.e., commercial fisheries and shipping) on the possible effects that the petition and any subsequent critical habitat designation may have on future management measures.

Response: NMFS agrees that the relevant regulated communities should be informed about the petition to revise critical habitat, NMFS's responses to the petition, and how the agency intends to proceed with the requested revision. NMFS provided copies of the petition and 90–day notice and finding to team members and interested parties at the recent meeting of the ALWTRT. A presentation was also given at the meeting on critical habitat in general and made specific reference to the

petitioned revision. In addition, prior to the meeting, the ALWTRT was made aware of the petitioned action through an email distribution and by posting the relevant documents on the Web Site for the ALWTRP as well as on the NOAA Fisheries home page (*see* Electronic Access). NMFS provided similar notice to the shipping community through the Ship Strike Reduction e-mail distribution list and a presentation to the Southeast U.S. Right Whale Recovery Plan Implementation Team.

Comment 12: One commenter expressed concern that neither the petition nor the **Federal Register** notice provided a substantive discussion of economic impacts. Furthermore, this commenter suggested that NMFS carefully analyze the data relied upon to designate critical habitat and apply designation criteria uniformly to avoid undue economic costs or economic dislocation to the shipping industry as the agency proceeds with ship strike mitigation measures. Finally, this commenter suggested that NMFS articulate to the public that management measures may not have the same or coincident boundaries as those of a revised critical habitat.

Response: Both the ESA and the regulations for designating critical habitat found at 50 CFR 424.12 require NMFS to consider economic impacts, and any other relevant impact, of specifying any particular area as critical habitat. At this time, an analysis of economic impacts is not required, because NMFS has not yet proposed any areas for designation as part of an effort to revise right whale critical habitat. In other words, the agency has not defined the area in which an analysis of economic impacts may be applied. However, NMFS has determined that an economic analysis will be included among the steps the agency has identified for any future revision of critical habitat. NMFS agrees with the final point made by the commenter, and the public will be notified if the agency decides to implement management measures whether or not it revises critical habitat.

Determination on the Petition

Critical habitat is defined in section 3(5)(A) of the ESA as the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection. In addition, under section 3(5)(A) of the ESA, critical habitat may include specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

NMFS has decided not to designate critical habitat in accordance with the petitioned revision because the information presented in the petition does not adequately support the petitioned new boundaries for critical habitat. The revisions proposed by the petitioner are largely based on where whales have been found and general information on what the whales may be doing in those areas rather than on the specific nature and location of the physical or biological features of the habitat that are essential to the conservation of the species.

For example, in discussing the value of ''space'' for individual and population growth and for normal behavior, the petitioner states that the requested revision will ''cover areas that consistently maintain large numbers of western North Atlantic right whales and the conditions they require for individual and population growth as well as normal behavior'' (Petition p. 21). However, the petitioner fails to identify or discuss with the necessary degree of detail what those conditions are that would be necessary for individual and population growth, and normal behavior, or how these features are essential to the conservation of right whales. Therefore, without establishing a nexus between the specific habitat feature and the requested revision, beyond the premise that the area is used by large numbers of right whales, the petition does not support the suggested changes to critical habitat boundaries.

With regard to its discussion of ''food, water, air, light, minerals, or other nutritional or physiological requirements,'' the petition indicates that right whales require high densities of prey for effective feeding. However, the petition does not present information identifying what those densities are, what features of the habitat lead to the concentration of prey, or evidence that the expanded boundaries incorporate additional areas in which sufficiently high densities of prey are likely to exist.

With regard to its discussion of ''cover or shelter,'' the petition indicates that the proposed additions to the northern and southern areas ''exhibit temperature, salinity, and bathymetric requirements needed to provide shelter for western North Atlantic right whales.'' However, the petition does not indicate specifically what those temperature, salinity, and bathymetric features are or provide evidence that the expanded boundaries incorporate additional areas in which those features are likely to exist.

With regard to its discussion of ''sites for breeding, reproduction, and rearing of offspring,'' the petition indicates that new information suggests that female right whales and calves utilize the waters farther offshore of the Southeastern U.S. than initially documented. While NMFS agrees that new information does indicate females and calves use waters farther offshore than initially believed, the existence of right whales farther offshore is not, in and of itself, a physical and biological feature essential to the conservation of the species. The petition does not indicate what the physical and biological features are of these waters that make them appeal to female right whales and their calves. As a result, the petition does not provide sufficient support for the proposed expansion of the critical habitat area in the southeast U.S.

With regard to its discussion of ''habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of species,'' the petition indicates that the areas petitioned for inclusion as critical habitat ''focus on the most vital portions of the historic range where current data indicate that large numbers of right whales aggregate for extended periods of time.'' However, the petition does not support the expanded boundaries by indicating what specific physical and biological features make those areas vital.

Accordingly, based on the language found in section 3(5)(A)(i)(I) of the ESA that defines critical habitat, in part, as specific areas ''on which are found those physical or biological features essential to the conservation of the species,'' and for the reasons previously discussed, NMFS believes that the petition does not provide sufficient information to support the requested revision. However, a review of scientific information suggests that physical and biological features essential to the conservation of right whales may include, but are not necessarily limited to, the occurrence of copepods and the features that concentrate them in the water off of the Northeast U.S., as well as sea surface temperature and possibly bathymetry in the waters off of the Southeast U.S. Further investigation and analysis needs to be performed regarding the specific nature of those features and/or others, whether they are essential to the conservation of right whales, and, if so, where they are located and whether they may require

special management considerations or protection.

How Does NMFS Intend To Proceed?

Section 4(b)(3)(D)(ii) of the ESA requires that NMFS, within 12 months of the date a petition is received, make a determination on how it intends to proceed with the requested revision and promptly publish notification of such intention in the **Federal Register**. NMFS made its determination in the previous section of this notice that the requested revision, as specified by the petitioner, is not warranted at this time. However, NMFS intends to continue with planned research activities during 2003 and evaluate new information to determine whether physical and biological features essential to the conservation of the species exist that may warrant a revision of critical habitat. To further investigate those physical or biological features essential to the conservation of the North Atlantic right whale, and to propose any revisions to designated critical habitat that might be supported by new information and analysis, NMFS would have to complete at least the following steps:

(1) In the waters off of the Southeast U.S., continue analysis of right whale distribution data in relation to bathymetry and sea surface temperature derived from Advanced Very High Resolution Radiometer (AVHRR) imagery;

(2) In the waters off of the Northeast U.S., continue its own efforts, as well as collaborate with others working in the Gulf of Maine Ecosystem, to characterize the spatial and temporal distribution of zooplankton;

(3) Examine the available scientific information to assess whether other physical or biological features of the environment are essential to the conservation of the species;

(4) Identify those ''specific areas within the geographical area occupied by the species, at the time it is listed..., on which are found'' one or more of the physical or biological features determined to be essential for conservation;

(5) Evaluate the current or future special management considerations or protections relevant to the habitat features determined to be essential for conservation;

(6) Evaluate the economic and other relevant impacts of including any particular area in the designation of critical habitat, weigh these benefits and negative impacts, and determine whether exclusion of any area would lead to the extinction of the North Atlantic right whale; and

(7) Identify specific areas outside the geographical areas occupied by the North Atlantic right whale at the time it was listed, that are essential to the conservation of the species, and evaluate the impacts of designating any of these areas as critical habitat.

While NMFS intends to investigate further the nature and location of physical and biological features essential to the conservation of right whales and will evaluate new information to determine whether a proposed rule to revise critical habitat is appropriate, this notice should not be misinterpreted as a commitment to take any particular action because any such commitment would be premature at this time. If a revision of critical habitat is warranted in the future, NMFS will provide notice to the public as required by the ESA.

All references are available upon request (*see* **FOR FURTHER INFORMATION CONTACT**).

Authority: 16 U.S.C. 1531 *et seq.*

Dated: August 22, 2003.

Rebecca Lent,

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

[FR Doc. 03–22039 Filed 8–27–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 030820209–3209–01; I.D. 081203B]

RIN 0648–AR37

Fisheries off West Coast States and in the Western Pacific; Western Pacific Bottomfish Fisheries; Guam and Commonwealth of the Northern Mariana Islands; Control Date

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

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: NMFS announces that persons who enter the bottomfish fisheries in waters of the U.S. exclusive economic zone (EEZ) around Guam and the Commonwealth of the Northern Mariana Islands (CNMI) after June 13, 2003, (''control date'') are not guaranteed future participation in these fisheries. This action does not commit the Council or NMFS to limit entry, or prevent any other date from being selected for eligibility to participate in the bottomfish fishery off Guam and/or CNMI. The Council or NMFS may also use other criteria to limit fishing effort or participation in a limited entry program that is developed in the future. The purpose of this action is to notify persons interested in joining these fisheries after June 13, 2003, that they may be excluded if restrictions are adopted in the future.

DATES: Comments must be submitted in writing by September 29, 2003.

ADDRESSES: Submit written comments to Kitty M. Simonds, Council Executive Director, 1164 Bishop Street, Suite 1400, Honolulu, Hawaii, 96813; or faxed to (808) 522–8226. Comments will not be accepted if submitted via E-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds at 808–522–8220.

SUPPLEMENTARY INFORMATION: On June 13, 2003, at its 118th meeting, the Council adopted a ''control date'' of June 13, 2003, as a notice to persons contemplating entering the fisheries for bottomfish species in the EEZ around Guam and CNMI. This action would not impose any restrictions on the public, but is intended solely to notify persons who joined or may join these fisheries after June 13, 2003, that they might be excluded if restrictions are adopted in the future under the Magnuson-Stevens Fishery Conservation and Management Act.

This control date does not commit the Council or NMFS to any particular management regime or criteria for entry into the bottomfish fisheries off Guam and/or CNMI. Fishermen are not guaranteed future participation in either or both fisheries, regardless of their level of participation before or after the control date. The Council may choose a different control date or it may choose a management regime that does not involve a limited access program. Documentation of fish landings and sales may be used to determine eligibility for participation in a limited access fishery. The Council also may choose to take no further action to control entry or access to the fishery, in which case the control date may be rescinded.

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

Dated: August 25, 2003.

Rebecca Lent,

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

[FR Doc. 03–22040 Filed 8–27–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 167

Thursday, August 28, 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

Forest Service

Catron County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Catron County Resource Advisory Committee will meet in Reserve, New Mexico, on September 11, 2003, at 10 a.m. m.d.s.t. The purpose of the meeting is to discuss use of project proposal form, establish process for project submission, evaluate submitted projects and select projects for recommendation.

DATES: The meeting will be held September 11, 2003.

ADDRESSES: The meeting will be held at the Catron County Courtroom of the Catron County Court House, 101 Main Street, Reserve, New Mexico, 87830. Send written comments to Michael Gardner, Catron County Resource Advisory Committee, c/o Forest Service, USDA, 3005 E. Camino del Bosque, Silver City, New Mexico 88061–7863 or electronically to *mgardner01@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Michael Gardner, Rural Community Assistant Staff, Gila National Forest, (505) 388–8212.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members unless provided for on the agenda. However, persons who wish to bring Pub. L. 106–393 related matters to the attention of the Committee may file written statements with the Committee Staff before or after the meeting. Public input sessions will be provided and individuals may address the committee at times provided on the agenda in the morning and afternoon.

Dated: August 22, 2003.

Marcia R. Andre,

Forest Supervisor, Gila National Forest.

[FR Doc. 03–22004 Filed 8–27–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committees

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Title 5, United States Code, appendix 2, section 10(a)(b), the Bureau of the Census (Census Bureau) is giving notice of a joint meeting, followed by separate and concurrently held meetings of the Census Advisory Committees (CACs) on the African American Population, the American Indian and Alaska Native Populations, the Asian Population, the Hispanic Population, and the Native Hawaiian and Other Pacific Islander Populations. The Committees will address issues related to the 2010 reengineered decennial census, including the American Community Survey and other related decennial programs. The five Census Advisory Committees on Race and Ethnicity will meet in plenary and concurrent sessions on October 1–3. Last minute changes to the schedule are possible, which could prevent us from giving advance notification.

DATES: October 1–3, 2003. On October 1, the meeting will begin at approximately 12:30 p.m. and end at approximately 5:30 p.m. On October 2, the meeting will begin at approximately 8:30 a.m. and end at approximately 5 p.m. On October 3, the meeting will begin at approximately 8:30 a.m. and end at approximately 12:15 p.m.

ADDRESSES: The meeting will be held at the Holiday Inn Hotel and Suites, 625 First Street, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 3627, Federal Office Building 3, Washington, DC 20233, telephone (301) 763–2070, TTY (301) 457–2540.

SUPPLEMENTARY INFORMATION: The CACs on the African American Population, the American Indian and Alaska Native Populations, the Asian Population, the Hispanic Population, and the Native Hawaiian and Other Pacific Islander Populations are comprised of nine members each. The Committees provide an organized and continuing channel of communication between the representative race and ethnic populations and the U.S. Census Bureau. The Committee provides an outside-user perspective about how research and design plans for the 2010 reengineered decennial census, the American Community Survey, and other related programs realize goals and satisfy needs associated with these communities. They also assist the Census Bureau on ways that census data can best be disseminated to diverse race and ethnic populations and other users.

All meetings are open to the public. A brief period will be set aside at the meeting for public comment. However, individuals with extensive questions or statements must submit them in writing to the Committee Liaison Officer, named above, at least three days before the meeting. Seating is available to the public on a first-come, first-served basis.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Committee Liaison Officer as soon as known and preferably two weeks prior to the meeting.

Dated: August 22, 2003.

Preston Jay Waite,

Acting Director, Bureau of the Census.

[FR Doc. 03–22027 Filed 8–27–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give all interested parties an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD JULY 22, 2003–AUGUST 19, 2003

Firm name	Address	Date petition accepted	Product
Aircraft Precision Products, Inc	185 Industrial Parkway, Ithaca, MI 48847	08/11/03	Machined parts for aircraft turbine engines.
American Machining Services of Virginia, Inc.	198 Dublin Park Road, Dublin, VA 24084	08/11/03	Machined parts for the coal mining industry.
Best Manufacturers, Inc.	P.O. Box 20091, Portland, OR 97294	08/07/03	Kitchen whips (whisks).
C. F. Roark Welding and Engineering Co., Inc.	136 N. Green Street, Brownsburg, IN 46112.	08/12/03	Machined parts for aircraft gas turbine engines.
Cozzoli Machine Company	50 Schoolhouse Road, Somerset, NJ 08873.	08/12/03	Packaging machinery and systems for cleaning, sterilizing, filling and closing applications.
David S. Harsila dba F/V Excel	20103 23rd Avenue NW, Seattle, WA 98160.	08/11/03	Salmon.
Die Cut Technologies, Inc	10943 Leroy Drive, Northglenn, CO 80233.	08/19/03	Gaskets.
LeBaron Foundry, Inc	14 East Union Street, Brockton, MA 02303.	08/04/03	Cast iron frames, covers, rings and grates.
Mack Engineering Corporation	3215 E. 26th Street, Minneapolis, MN 55406.	08/07/03	Machined metal components for hydraulic systems.
North American Rubber Thread Co., Inc	106 Ferry Street, Fall River, MA 02722	07/23/03	Extruded rubber monofilament thread.
Performance Products, Inc. dba ICO Corporation.	29370 Dinkins Drive, Lacombe, LA 70445	08/05/03	Electrical equipment for motorcycles, including odometers.
Rockford Products Corporation	707 Harrison Avenue, Rockford, IL 61104	08/12/03	Vehicle steering components.
Ski Country Imports, Inc. and Ouray Sportswear Wyoming, Inc. dba Ouray Sportswear.	3773 S. Jason Street, Englewood, CO 80110.	08/07/03	Men's T-shirts.
Western Pennsylvania Steel Fabricating, Inc.	RD#3 Wilmington Road, New Castle, PA 16105.	08/07/03	Steel storage containers.
Wrangell Seafoods, Inc	641 Shakes Street, Wrangell, AK 99929	08/07/03	Halibut.
XLI Corporation	950 Exchange Street, Rochester, NY 14608.	08/11/03	Cabinets, components and assemblies for processing data.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm. Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: August 21, 2003.

Brenda A. Johnson,

Technical Assistance Specialist, Trade Adjustment and Technical Assistance.

[FR Doc. 03–22006 Filed 8–27–03; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–001]

Potassium Permanganate From the People's Republic of China: Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On February 18, 2003, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on potassium permanganate from the People's Republic of China (PRC). The review covers potassium permanganate (subject merchandise) exported to the United States by Groupstars Chemical Co., Ltd. (Groupstars Jinan) during the period from January 1, 2001 through December 31, 2001.

Based on our analysis of the comments and additional factual information received after publication of the preliminary results of review, we have made changes in the margin calculation. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled Final Results of Review.

EFFECTIVE DATE: August 28, 2003.

FOR FURTHER INFORMATION CONTACT: John Conniff, Drew Jackson or Howard Smith, Office of AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230;

telephone (202) 482–1009, (202) 482–4406 or (202) 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 18, 2003, the Department published the preliminary results of the administrative review of the antidumping duty order on potassium permanganate from the PRC. *See Potassium Permanganate from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review,* 68 FR 7768 (February 18, 2003) (*Preliminary Results*). We invited parties to comment on our preliminary results of review.

Since the publication of the preliminary results, the following events have occurred. On March 10, 2003, Groupstars submitted publicly available surrogate value information regarding manganese ore.[1] In March, April and May of 2003 Groupstars and Carus Chemical Company, the petitioner, submitted new factual information. The Department accepted this information. *See* memorandum from John Conniff, International Trade Compliance Analyst, to the File concerning Submission of technical information by Carus Chemical Company dated April 16, 2003 and memorandum from John Conniff, International Trade Compliance Analyst, to Thomas F. Futtner, Acting Office Director, concerning Submission of Untimely Filed Factual Information by the Petitioner and the Respondent, dated July 30, 2003. The petitioner and the respondent submitted case briefs on May 7, 2003 and rebuttal briefs on May 12, 2003. On July 24, 2003, the Department held a public hearing that had been requested by the petitioner.

On June 11, 2003, the Department extended the time limit for completion of the final results until no later than August 17, 2003. *See Potassium Permanganate from the People's Republic of China: Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review,* 68 FR 34907 (June 11, 2003). The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

Imports covered by this review are shipments of potassium permanganate, an inorganic chemical produced in free-flowing, technical, and pharmaceutical grades. During the review period, potassium permanganate was classifiable under item 2841.61.0000 of the Harmonized Tariff Schedule of the United States (HTSUS).[2] Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Period of Review

The POR is January 1, 2001 through December 31, 2001.

Analysis of Comments Received

All issues raised in the case briefs and the rebuttal briefs submitted by parties to this administrative review are contained in the *Issues and Decision Memorandum* from Holly A. Kuga, Acting Deputy Assistant Secretary, to Jeffrey May, Acting Assistant Secretary (*Issues and Decision Memorandum*). The *Issues and Decision Memorandum* is dated concurrently with this notice and hereby adopted by this notice. A list of the issues which the parties have raised is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this administrative review, and the corresponding recommendations, in the *Issues and Decision Memorandum* which is on file in the Central Records Unit, room B–099 of the main Department of Commerce building. In addition, a complete version of the *Issues and Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov.* The paper copy and electronic version of the *Issues and Decision Memorandum* are identical in content.

Changes Since the Preliminary Results—Use of Total Adverse Facts Available

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadline for submission of the information, or in the form and manner requested, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides information that cannot be verified, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Because Groupstars was unable to support its response with accurate and reliable records, we have determined that Groupstars' response is not verifiable and the use of total facts available is appropriate. See section 776(a)(2)(D) of the Act. For a complete discussion of our analysis, see the accompanying *Issues and Decision Memorandum* at Comment 1. Moreover, because Groupstars has never established its entitlement to a separate rate in a prior segment of this proceeding, and the Department has determined that the record in the instant review is unreliable and thus not verifiable, we have not granted Groupstars a separate rate.

In selecting from among the facts otherwise available, section 776(b) of the Act provides that if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference that is adverse to the interests of the party. The Act provides that an adverse inference may include reliance on information derived from the petition, a final determination in an antidumping investigation or review, or any other information placed on the record. *See* section 776(b)(1)–(4) of the Act. The Department's examination of the instant record shows that Groupstars has repeatedly submitted inconsistent, inaccurate and incomplete information in this review and has withheld information from the Department. This demonstrates that the respondent has failed to cooperate to the best of its ability pursuant to section 776(b) of the Act. Therefore, the use of adverse facts available is appropriate.

Because it is appropriate to assign Groupstars a dumping margin based on adverse facts available and deny the company a separate rate, for these final results, we have assigned the PRC entity, including Groupstars, a dumping margin of 128.94 percent, which is the highest margin calculated for any party in this proceeding and the current PRC-wide rate. For a complete discussion of our analysis, see the accompanying *Issues and Decision Memorandum* at Comment 1.

Final Results of Review

Exporter/Manufacturer	Margin (percent)
PRC-Wide Rate	128.94

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of potassium permanganate from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) For

[1] Groupstars refers to Groupstars Holding Inc. and the entities that it directly or indirectly owns (including Groupstars Jinan).

[2] The scope reflects the HTSUS subheading currently in effect which differs from the HTSUS subheading used in the prior segment of this proceeding.

previously reviewed or investigated companies that have separate rates, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (2) the cash deposit rate for all other PRC exporters will be 128.94 percent; and (3) the cash deposit rate for non-PRC exporters will be the rate applicable to the PRC exporter that supplied that exporter.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Assessment

The Department will determine, and the U.S. Bureau of Customs and Border Protection (BCBP) will assess, antidumping duties on all entries of subject merchandise in accordance with these final results. The Department will issue the appropriate assessment instructions directly to the BCBP within 15 days of publication of these final results of review. The Department will direct the BCBP to assess the resulting assessment rate against the entered customs values of the subject merchandise on each of the entries during the review period.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 771(I)(1) of the Act.

Dated: August 18, 2003.

Jeffrey May,

Acting Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

Comment 1: Whether the Department Should Base Groupstars Jinan's Dumping Margin on Total Adverse Facts Available
Comment 2: Whether the Department Should ''Collapse'' Groupstars and JCC
Comment 3: Surrogate Value for Manganese Dioxide
Comment 4: Surrogate Value for Potassium Hydroxide
Comment 5: Surrogate Value for Slaked Lime/Lime/Limestone
Comment 6: Surrogate Value for Electricity and Water
Comment 7: Surrogate Value for Coal
Comment 8: Surrogate Value for Salt
Comment 9: Surrogate Value for Silicon Dioxide
Comment 10: Selection of Surrogate Financial Ratios
Comment 11: Allegations of Ministerial Errors Related to the Calculation of Packing Materials
Comment 12: Allegations of Ministerial Errors Related to the Calculation of Distance to the Port
Comment 13: Whether the Department Should Have Included in its Calculations Additional Indirect Selling and Movement Expenses

[FR Doc. 03–22049 Filed 8–27–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Solicitation of Applications for Allocation of Tariff Rate Quotas on the Import of Certain Worsted Wool Fabrics

August 22, 2003.

AGENCY: Department of Commerce, International Trade Administration.

ACTION: The Department of Commerce (Department) is soliciting applications for an allocation of the 2004 tariff rate quotas on certain worsted wool fabric.

SUMMARY: The Department hereby solicits applications from persons (including firms, corporations, or other legal entities) who cut and sew men's and boys' worsted wool suits and suit-like jackets and trousers for an allocation of the 2004 tariff rate quotas on certain worsted wool fabric. Interested persons must submit an application on the form provided to the address listed below by 5 p.m. on September 29, 2003.

The Department will cause to be published in the **Federal Register** its determination to allocate the 2004 tariff rate quotas and will notify applicants of their respective allocation as soon as possible after that date. Promptly thereafter, the Department will issue licenses to eligible applicants.

DATES: To be considered, applications must be received or postmarked by 5 p.m. on September 29, 2003.

ADDRESSES: Applications must be submitted to the Industry Assessment Division, Office of Textiles, Apparel and Consumer Goods Industries, Room 3001, United States Department of Commerce, Washington, D.C. 20230 (telephone: (202) 482–4058). Application forms may be obtained from that office (via facsimile or mail) or from the following Internet address: *http://web.ita.doc.gov/tacgi/wooltrq.nsf/TRQApp.*

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

SUPPLEMENTARY INFORMATION:

Background:

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

On August 6, 2002, President Bush signed into law the Trade Act of 2002, which includes several amendments to Title V of the Act. These include the extension of the program through 2005; the reduction of the in-quota duty rate on HTS 9902.51.12 (average fiber diameter 18.5 microns or less) from 6 percent to zero, effective for goods entered, or withdrawn from warehouse for consumption, on or after January 1, 2002; and an increase in the 2004 TRQ levels to 3,500,000 square meters for HTS 9902.51.12 and to 4,500,000 square meters for HTS 9902.51.11. These levels may be modified by the President. See 15 CFR 340.

The Act requires that the TRQs be allocated to persons who cut and sew men's and boys' worsted wool suits, suit-type jackets and trousers in the United States. On January 22, 2001 the Department published regulations establishing procedures for allocating the TRQs. 66 FR 6459, 15 CFR 335. In order to be eligible for an allocation, an

applicant must submit an application on the form provided at *http://web.ita.doc.gov/tacgi/wooltrq.nsf/TRQApp* to the address listed above by 5 p.m. on September 29, 2003, in compliance with the requirements of 15 CFR 335.

Any business confidential information that is marked business confidential will be kept confidential and protected from disclosure to the full extent permitted by law.

Dated: August 22, 2003.

James C. Leonard III,

Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods Industries, Department of Commerce.

[FR Doc.03–22028 Filed 8–27–03; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Coldwater River Basin Below Arkabutla Lake, MS, Project

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The study area is located in the Coldwater River Watershed in northwest Mississippi, approximately 10 miles southwest of Memphis, TN. The northwest part of this watershed below Arkabutla Lake is the object of the Environmental Impact Statement (EIS) and lies primarily in Tunica County and includes portions of De Soto, Coahoma, Quitman, and Tate Counties. Primary streams represented in the study area include Coldwater River, McKinney Bayou, Lake Cormorant Bayou, White Oak Bayou, Muddy Bayou, Phillips Bayou, and David Bayou. The primary focus of the EIS is to evaluate features designed to alleviate water resource problems in the study area. The local cost-sharing project sponsors are the Tunica County Soil and Water Conservation District and the Yazoo-Mississippi Delta Joint Water Management District.

DATES: A public scoping meeting will be held on September 23, 2003, at 7 p.m. in the Economic Development Building, 3092 U.S. Highway 61 South, Tunica, MS.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Draft EIS should be directed to Ms. Karen Dove-Jackson (telephone (601) 631–7136), U.S. Army Corps of Engineers, Vicksburg District, ATTN: CEMVK–PP–PQ, 4155 Clay Street, Vicksburg, MS 39180–3435.

SUPPLEMENTARY INFORMATION: This project is authorized by Senate Resolution adopted June 29, 1973, by the Committee on Public Works of the U.S. Senate. The resolution reads as follows:

''Resolved by the Committee on Public Works of the United States Senate, That the Chief of Engineers, U.S. Army, is hereby requested to review the report on the Mississippi River and Tributaries Project contained in House Document No. 308, 88th Congress, 2d Session, and other reports with a view to determining whether any modifications of the recommendations contained therein are advisable at the present time with reference to providing a plan for the development, utilization and conservation of water related land resources of the Yazoo Basin, including the backwater areas of the Mississippi and Yazoo Rivers. Such study should include appropriate considerations of the needs for flood protection, wise use of flood plain lands, bank stabilization, navigation facilities, regional water supply and waste water management facilities systems, general recreation facilities, enhancement and control of water quality, enhancement and conservation of fish and wildlife and other measures for the protection and enhancement of the environment.''

1. A Section 905(b) reconnaissance analysis was conducted for the Coldwater River Basin Below Arkabutla Lake, Mississippi, project, and it was determined that the planning process should proceed into the more detailed feasibility phase based on a preliminary appraisal of Federal interest, estimated costs, potential benefits, and possible environmental impacts of various alternatives. The Feasibility Cost-Sharing Agreement was signed by the Vicksburg District and project sponsors on June 18, 2003. The District Engineer has decided to prepare a Draft EIS to fully address/evaluate problems and potential solutions and/or opportunities within the Coldwater River Basin Below Arkabutla Lake, Mississippi, project area.

2. The proposed action involves the development of an integrated and comprehensive plan for addressing multiple project objectives, including water quality, local drainage, low stream base flows, and flood damage reduction from expected increases in development in the study area.

3. A public scoping meeting will be held in Tunica, Mississippi, in the Economic Development Building, on September 23, 2003 (See DATES). Significant issues identified during this scoping process will be analyzed in depth in the Draft EIS. The U.S. Coast Guard; Natural Resources Conservation Service; U.S. Forest Service; Environmental Protection Agency; U.S. Fish and Wildlife Service; Mississippi Department of Environmental Quality; and Mississippi Department of Wildlife, Fisheries and Parks will be invited to become cooperating agencies. Federally recognized Indian tribes will also be invited to become cooperators. These agencies and tribes will be asked to participate in the review of data and the feasibility report and appendixes.

4. Upon completion, the Draft EIS will be distributed for agency and public review and comment. Additionally, a public meeting will be held to present results of the Draft EIS evaluations and the recommended plan.

5. The Draft EIS is estimated to be completed in May 2007.

Dated: August 15, 2003.

Frederick L. Clapp, Jr.,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 03–22023 Filed 8–27–03; 8:45 am]

BILLING CODE 3710–PU–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Coastal Engineering Research Board; Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committees: Coastal Engineering Research Board (CERB).

Date: September 10, 2003.

Place: U.S. Army Engineer Division, North Atlantic, Brooklyn, NY.

Time: 10 a.m. to 2:30 p.m.

Proposed Agenda: The Board will meet in Executive Session to discuss updates of ongoing Board activities, such as Region sediment Management (RSM), the National Shoreline Management Study, Section 227, the status of the Louisiana Coastal Area Project, the Gulf of Mexico RSM, and the IOOS Coordination Activities.

FOR FURTHER INFORMATION CONTACT: Inquires and notice of intent to attend the meeting may be addressed to Thomas W. Richardson, Acting Executive Secretary, Coastal and hydraulics Laboratory, U.S. Army Engineer Research and Development Center, Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, Mississippi 39180–6199.

SUPPLEMENTARY INFORMATION: This meeting is open to the public, but since seating capacity of the meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements for those wishing to attend.

Lutz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–22022 Filed 8–27–03; 8:45 am]

BILLING CODE 3710–61–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Surface Optics Corporation

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. The Department of the Navy hereby gives notice of its intent to grant to Surface Optics Corporation a revocable, nonassignable, exclusive license to practice in the United States, the Government-Owned invention described below:

Patent application 10/601,893 (Navy Case 84,509): filed June 26, 2003, entitled ''TWO BAND IMAGING SYSTEM''.

DATES: Anyone wishing to object to the grant of this license has fifteen (15) days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with 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.

(Authority: 35 U.S.C. 207, 37 CFR part 404)

Dated: August 15, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–22034 Filed 8–27–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive License; Unique Technologies, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy gives notice of its intent to grant Unique Technologies, Inc., a revocable, nonassignable, partially exclusive license, with exclusive fields of use in commercial and residential bactericide and fungicide, commercial and residential decontamination, fuel additive, post harvest preservation, pre-emergent, and frost mediation, in the United States to practice the Government-owned inventions, U.S. Patent Application Serial Number 10/283,352 entitled ''Nitrate-Hydrogen Peroxide Chemical Adducts and Use Thereof,'' and U.S. Patent Number 6,165,295 entitled ''Gas-Generating Liquid Compositions (PERSOL 1).''

DATES: Anyone wishing to object to the grant of this license has fifteen (15) days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with Indian Head Division, Naval Surface Warfare Center, Code OC4, 101 Strauss Avenue, Indian Head, MD 20640–5035.

FOR FURTHER INFORMATION CONTACT: Dr. J. Scott Deiter, Head, Technology Transfer Office, Naval Surface Warfare Center Indian Head Division, Code 05T, 101 Strauss Avenue, Indian Head, MD 20640–5035, telephone (301) 744–6111.

Dated: August 15, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–22033 Filed 8–27–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC03–714–001, FERC Form 714]

Commission Information Collection Activities, Proposed Collection; Comment Request; Submitted for OMB review

August 21, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for reinstatement, review and a new expiration date. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of March 31, 2003 (68 FR 15441) and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by September 26, 2003.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may be reached by fax at 202–395–7285 or by e-mail at *pamelabeverly.oira submission@omb.eop.gov.* A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–30, Attention: Michael Miller, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE. Washington, DC 20426 and should refer to Docket No. IC03–714–001.

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 *http://www.ferc.gov* and click on ''Make an E-filing,'' and then follow the instructions for each 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 filings 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 may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the FERRIS link. For assistance, please

contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, for TTY (202)502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC Form 714 Annual Electric Control and Planning Area Report@.

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* 1902–0140.

The Commission is now requesting that OMB reinstate and approve this information collection for a period of three years with no changes to the existing collection. The information filed with the Commission is mandatory.

4. *Necessity of the Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of Sections 202, 207, 210, 211–213, 304, 309 and 311 of the Federal Power Act (FPA), as amended (49 Stat. 838; 16 U.S.C. 791a-825r) and Section 3(4) of the Public Utility Regulatory Policies Act of 1978 (26 U.S.C. 2602). The Commission implements Form No. 714 filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 141.51. FERC Form No. 714 gathers basic utility operating and planning information, primarily on a control area basis, for the purpose of evaluating utility operations related to proposed mergers, interconnections, wholesale rate investigations, and wholesale market changes and trends under emerging competitive forces. Such evaluations are made to assess reliability, costs and other operating attributes.

5. *Respondent Description:* The respondent universe currently comprises approximately 238 public utilities.

6. *Estimated Burden:* 17,850 total hours, 238 respondents (average), 75 hours per respondent (average), one response per year.

7.*Estimated Burden:* Estimated Cost Burden to respondents: 17,850 hours × 2080 hours per years × $117,041 per year = $1,004,414. The cost per respondent is equal to $4,220.

Statutory Authority: Sections 202, 207, 210, 211–213, 304, 309, and 311 of the Federal Power Act (FPA), as amended (49 Stat. 838; 16 U.S.C. 791a–825r) and Section 3(4) of the Public Utility Regulatory Policies Act, 26 U.S.C. 2602.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21997 Filed 8–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–572–000]

Northern Natural Gas Company; Notice of Tariff Filing

August 21, 2003.

Take notice that on August 15, 2003, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Seventh Revised Sheet No. 263H, and Sixth Revised Sheet No. 263H.1, to be effective November 1, 2003.

Northern states that Seventh Revised Sheet No. 263H and Sixth Revised Sheet No. 263H.1 reflect any reallocation of the Carlton Sourcers' annual flow obligations as a result of the Appendix B customers' election to source their flow obligation at Carlton or to buyout their flow obligation. Northern further explains that this filing is made pursuant to Section 29(C)(2) of Northern's tariff.

Northern states that copies of the filing were served upon Northern's 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 ¶ 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 (FERRIS) 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.

Comment Date: August 27, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21999 Filed 8–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–221–000]

Borough of Zelienople, PA, Complainant v. American Transmission Systems, Inc., Respondent; Notice of Complaint

August 21, 2003.

Take notice that on August 19, 2003, the Borough of Zelienople, Pennsylvania, (Zelienople) filed with the Federal Energy Regulatory Commission (Commission) a Complaint under Section 206 of the Federal Power Act against American Transmission Systems, Inc. (ATSI). Zelienople complains that ATSI has demanded, charged, and sought to collect from Zelienople a charge for interconnecting its 138 kV transmission line to connect to the Borough's new 138 kV substation that is unjust, unreasonable, unduly discriminatory, preferential, and otherwise unlawful as to Zelienople. Zelienople states that a copy of this complaint was served on ATSI.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date below. 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

(FERRIS) 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 for TTY, contact (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: September 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21996 Filed 8–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–762–001, et al.]

Alliant Energy Corporate Services, Inc., et al.; Electric Rate and Corporate Filings

August 20, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Alliant Energy Corporate Services, Inc.

[Docket No. ER03–762–001]

Alliant Energy Corporate Services, Inc.

[Docket No. ER99–230–004]

Take notice that on August 15, 2003, Alliant Energy Corporate Services, Inc., on behalf of the Alliant Energy Operating Companies, submitted a response to the deficiency letter issued by the Staff of the Federal Energy Regulatory Commission requesting additional analyses and information in support of Alliant Energy's filings.

Comment Date: September 5, 2003.

2. Entergy Services, Inc.

[Docket No. ER03–851–001]

Take notice that on August 14, 2003, Entergy Services, Inc., on behalf of Entergy Gulf States, Inc., tendered for filing with the Federal Energy Regulatory Commission a compliance interconnection and operating agreement with ExxonMobil Oil Corporation in response to the Commission's July 15, 2003, Order in Entergy Services, Inc., 104 FERC ¶ 61,084.

Comment Date: September 4, 2003.

3. PG&E Dispersed Generating Company, LLC

[Docket No. ER03–1026–001]

Take notice that on August 14, 2003, PG&E Dispersed Generating Company, LLC (Dispersed Generating), tendered for filing pursuant to 18 CFR 35.9 and 35.10 a Notice of Termination seeking to terminate the tolling agreement between Dispersed Generating and PG&E Energy Trading—Power, L.P., that was originally filed in Docket No. ER02–449–000.

Comment Date: September 4, 2003.

4. Covanta Union, Inc.

[Docket No. ER03–1085–001]

Take notice that on August 15, 2003, Covanta Union, Inc., (Covanta Union) tendered for filing an amendment to a July 16, 2003, Notice of Succession filed by Covanta Union in Docket No. ER03–1085–000. The amendment consists of tariff sheets for Rate Schedule FERC No. 1 and FERC Electric Tariff, Original Volume No. 1 in compliance with Order No. 614.

Comment Date: September 5, 2003.

5. PacifiCorp

[Docket No. ER03–1210–000]

Take notice that on August 14, 2003, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, the Control Area Services Agreement between PacifiCorp and Deseret Generation & Transmission Cooperative (Deseret), dated August 13, 2003 (PacifiCorp's Rate Schedule No. 590) and the Second Amended and Restated Transmission Service and Operating Agreement between PacifiCorp and Deseret Dated August 13, 2003 (PacifiCorp's Second Revised Rate Schedule No. 280).

PacifiCorp has requested a waiver of the Commission's notice requirements and an effective date for each of the agreements of August 13, 2003. PacificCorp states that copies of this filing were supplied to the Washington Utilities and Transportation Commission, the Public Utility Commission of Oregon, and the Public Service Commission of Utah.

Comment Date: September 4, 2003.

6. American Transmission Company LLC

[Docket No. ER03–1211–000]

Take notice that on August 14, 2003, American Transmission Company LLC (ATCLLC) tendered for filing a revised Generation-Transmission Interconnection Agreement between ATCLLC and Fox Energy Company LLC (Second Revised Service Agreement No. 233) consisting of amendments to Exhibit 11 and otherwise remaining as originally filed and accepted by the Commission by Letter Order dated March 20, 2002, subject to a previous amendment accepted by the Commission on May 29, 2003. ATCLLC requests retention of the original effective date of January 15, 2002.

Comment Date: September 4, 2003.

7. St. Paul Cogeneration, LLC

[Docket No. ER03–1212–000]

Take notice that on August 14, 2003, St. Paul Cogeneration, LLC filed with the Federal Energy Regulatory Commission an application pursuant to section 205 of the Federal Power Act for authorization to sell energy and capacity at market-based rates.

Comment Date: September 4, 2003.

8. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–1213–000]

Take notice that on August 14, 2003, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.12 of the Commission's regulations, 18 CFR 35.12, submitted for filing an Interconnection and Operating Agreement among Traer Municipal Utilities and Interstate Power and Light Company, a wholly-owned subsidiary of Alliant Energy.

Midwest ISO states that a copy of this filing was served on Traer Municipal Utilities and Interstate Power and Light Company.

Comment Date: September 4, 2003.

9. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–1214–000]

Take notice that on August 15, 2003, Midwest Independent Transmission System Operator, Inc., (Midwest ISO), pursuant to Section 205 of the Federal Power Act and Section 35.12 of the Commission's regulations, submitted for filing an Interconnection and Operating Agreement among Maquoketa Municipal Electric Utility and Interstate Power and Light Company, a wholly-owned subsidiary of Alliant Energy.

Midwest ISO states that a copy of this filing was served on Moquoketa Municipal Electric Utility and Interstate Power and Light Company.

Comment Date: September 5, 2003.

10. Southern Company Services, Inc.

[Docket No.ER03–1215–000]

Take notice that on August 14, 2003, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern Companies), filed a Notice of Cancellation of Service Schedule A of the Restated Interchange Contract dated December 22, 1988 between Florida Power Corporation and Southern Companies (First Revised Rate Schedule FERC No. 70). This cancellation was made pursuant to a bilateral amendment to the Interchange Contract.

Comment Date: September 4, 2003.

11. Southern Company Services, Inc.

[Docket No.ER03–1216–000]

Take notice that on August 15, 2003, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern Companies), filed a Notice of Cancellation of Service Schedule A and Service Schedule EP to the Interchange Contract dated October 18, 1979 between Florida Power & Light Company and Southern Companies (First Revised Rate Schedule FERC No. 47). These cancellations were made pursuant to a bilateral amendment to the Interchange Contract.

Comment Date: September 5, 2003.

12. California Independent System Operator Corporation

[Docket No. ER03–1217–000]

Take notice that on August 15, 2003, the California Independent System Operator Corporation (ISO), tendered for filing revisions to the Transmission Control Agreement for acceptance by the Commission. The ISO states that the purpose of the revisions is to identify the transmission interests that Trans-Elect NTD Path 15, LLC (Trans-Elect) will be turning over to the ISO's Operational Control, by including those interests in a new Appendix A to the TCA, and to identify the persons to contact at Trans-Elect for notice purposes by expanding Appendix F of the TCA.

The ISO states that this filing has been served on the Public Utilities Commission of California, the California Energy Commission, the California Electricity Oversight Board, the Participating TOs, Trans-Elect, and all parties with effective Scheduling Coordinator Agreements under the ISO Tariff.

The ISO is requesting waiver of the 120-day advance filing limit to allow the revisions to be made effective upon notice after January 1, 2004, as described in the transmittal letter.

Comment Date: September 5, 2003.

13. Nevada Power Company

[Docket No. ER03–1218–000]

Take notice that on August 15, 2003, Nevada Power Company (Nevada Power) tendered for filing an executed Letter of Understanding (LOU) between Nevada Power and five generators: Duke Energy Moapa, LLC; GenWest, LLC; Las Vegas Cogeneration II, LLC; Mirant Las Vegas, LLC; and Reliant Energy Bighorn, LLC. The LOU is submitted as Service Agreement No. 03–00980 under Nevada Power's Open Access Transmission Tariff. Nevada Power requests that the LOU be made effective as of August 2, 2003.

Comment Date: September 5, 2003.

14. Power Receivable Finance, L.L.C.

[Docket No. ES03–51–000]

Take notice that on August 15, 2003, Power Receivable Finance, L.L.C (PRF) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue up to $800 million in aggregate debt securities.

PRF also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: September 5, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary (FERRIS) 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 for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21998 Filed 8–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM01–12–000 et al.]

Notice of Technical Conference

August 19, 2003.

In the matter of: RM01–12–000, RT01–2–000, RT01–98–000, ER03–404–000, ER03–405–000, ER03–406–000, EL03–116–000, PA03–12–000, EC98–40–000, ER98–2770–000 and ER98–2876–000, ER03–262–000, ER03–263–000, EL02–65–000, RT01–88–000, ER99–3144–000 and EC99–80–000, ER01–2992–000, RT01–84–000, ER01–123–000, ER01–2999–000, RT01–26–005, ER01–2993–000, RT01–37–000 and ER01–2997–000, ER01–2995–000, EL02–111–000, OA97–261–000 and ER97–1082–000, ER97–3189–000, EC97–38–000, ER97–3273–000, EL97–44–000, OA97–678–000, ER96–2516–000, EC96–28–000, and EL96–69–000, ER96–2668–000 and EC96–29–000; Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design; PJM Interconnection, LLC; PJM Interconnection, LLC; PJM Interconnection, LLC; PJM Interconnection, LLC; PJM Interconnection, LLC; Reliant Energy Mid-Atlantic Power Holdings, LLC v. PJM Interconnection, LLC; Transmission Congestion on the Delmarva Peninsula; American Electric Power Company, Inc. and South West Corporation; American Electric Power Service Corporation, Commonwealth Edison Company, Dayton Power and Light Company and Virginia Electric and Power Company (New PJM Companies) and PJM Interconnection, LLC; Commonwealth Edison Company; Alliance Companies, *et al.*; Alliance Companies, *et al.*; Alliance Companies, *et al.*; Exelon Corporation *et al.*; Illinois Power

Company; Northern Indiana Public Service Company; Virginia Electric and Power Company; Dayton Power and Light Company; American Electric Power Service Corporation; Midwest Independent System Operator *et al.*; Pennsylvania-New Jersey-Maryland Interconnection; Atlantic City Electric Company, *et al.*; Pennsylvania Electric Company, *et al.*; Pennsylvania Electric Company, *et al.*; Pennsylvania-New Jersey-Maryland Interconnection Restructuring; PJM Interconnection, L.L.C.; Atlantic City Electric Company, *et al.*; PECO Energy Company.

As announced in the Notice of Technical Conference issued on August 7, 2003, a technical conference will be held on August 28, 2003, to discuss with states and market participants in the PJM region the timetables for addressing wholesale power market design issues and to explore ways to provide flexibility the region may need to meet the requirements of the final rule in this proceeding. Members of the Commission will attend and participate in the discussion.

The conference will focus on the issues identified in the agenda, which is appended to this notice as Attachment A. However, participants/stakeholders may present their views on other important issues that relate to the development of the Wholesale Power Market Platform.

The conference will begin at 1 p.m. Eastern Time and will adjourn at about 5 p.m. Eastern Time at the Wyndham Hotel, 700 King Street, Wilmington, Delaware. The conference is open for the public to attend, and registration is not required; however, in-person attendees are asked to register for the conference on-line at *http://www.ferc.gov /whats-new/registration/smd_0828-form.asp.*

This technical conference will immediately follow a meeting of the PJM Members Committee, which will be held that morning at the same location. PJM offers a web broadcast of its meeting through the PJM Web site and will also broadcast the FERC technical conference. To access the web broadcast, go to *http://www.pjm.com/committees/members/members.html.* To access the broadcast window directly, go to *http://events01.activate.net/pmtv/pjm/10064/.*

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available for the public on the Commission's eLibrary (FERRIS) seven calendar days after FERC receives the transcript. Additionally, Capitol Connection offers the opportunity to remotely listen to the conference via the Internet or a Phone Bridge Connection for a fee. Interested persons should make arrangements as soon as possible by visiting the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and clicking on ''FERC.'' If you have any questions contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100).

For more information about the conference, please contact Sarah McKinley at (202) 502–8004 or *sarah.mckinley@ferc.gov.*

Magalie R. Salas,

Secretary.

Appendix A

Agenda

1–1:20 p.m. Opening Remarks.
- Pat Wood, III, Chairman, Federal Energy Regulatory Commission
- Gail C. McDonald, Commissioner, Maryland Public Service Commission
- David W. Hadley, Commissioner, Indiana Utility Regulatory

Commission 1:20–1:45 p.m.—PJM's Compliance with the White Paper Phil Harris, CEO, PJM Interconnection

1:45–2:30 p.m.—State Commission Input
- Glen R. Thomas, Commissioner, Pennsylvania Public Utility Commission
- Frederick F. Butler, Commissioner, New Jersey Board of Public Utilities
- Arnetta McRae, Chair, Delaware Public Service Commission
- Kevin K. Wright, Chairman, Illinois Commerce Commission

2:30–3:15 p.m.—Stakeholder Presentations
- Generator Sector
- Bruce Bleiweis, Director, Asset Commercialization, Reliant Energy Services, Inc.
- Transmission Sector
- Ralph Bourquin, Executive Director, Transmission, Baltimore Gas & Electric Company
- Other Supplier Sector (split time)
- Ronald Matlock, Manager of Regulatory Affairs Duke Energy Trading & Marketing, L.L.C.
- To be named
- Electric Distributor Sector
- Patrick McCullar, President & CEO Delaware Municipal Electric Cooperative
- End Use Sector
- David Kleppinger, Counsel, McNees Wallace & Nurick, L.L.C.

3:15–3:30 p.m.—Break

3:30–5 p.m.—State Commissioner/FERC/Industry Dialogue and Summary of Next Steps
- (All attending State Commissioners, stakeholder representatives, FERC Commissioners)

[FR Doc. 03–22009 Filed 8–27–03; 8:45 am,

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–2003–0020, FRL–7550–5]

Agency Information Collection Activities: Proposed Collection; Comment Request; Land Disposal Restrictions—Base ICR, EPA ICR Number 1442.18, OMB Control Number 2050–0085

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on February 29, 2004. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 27, 2003.

ADDRESSES: Submit your comments, referencing docket ID number RCRA–2003–0020, to EPA online using EDOCKET (our preferred method), by email to *rcra-docket@epamail.epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, RCRA Docket Information Center, 5303T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Peggy Vyas, Office of Solid Waste, 5302W, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–5477, fax number: (703) 308–8433, email address: *vyas.peggy@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number RCRA–2003–0020, which is available for public viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use

EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

Affected entities: Entities potentially affected by this action are business and government.

Title: Land Disposal Restrictions—Base ICR.

Abstract: Section 3004 of the Resource Conservation and Recovery Act (RCRA), as amended, requires that EPA develop standards for hazardous waste treatment, storage, and disposal as may be necessary to protect human health and the environment. Subsections 3004(d), (e), and (g) require EPA to promulgate regulations that prohibit the land disposal of hazardous waste unless it meets specified treatment standards described in subsection 3004(m).

The regulations implementing these requirements are codified in the *Code of Federal Regulations* (CFR) Title 40, part 268. EPA requires that facilities maintain the data outlined in this ICR so that the Agency can ensure that land disposed waste meets the treatment standards. EPA strongly believes that the recordkeeping requirements are necessary for the agency to fulfill its congressional mandate to protect human health and the environment.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement:

- *Average Annual Reporting Burden:* 1,182,708 hours.
- *Estimated Average Burden Hours Per Response:* 4.28 hours.
- *Proposed Frequency of Response:* on occasion.
- *Estimated Number of Likely Respondents:* 167,353.
- *Capital and Start-up Cost:* $1,627,000.
- *Operation and Maintenance:* $71,224,000.

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

Dated: August 18, 2003.

Robert Springer,

Director, Office of Solid Waste.

[FR Doc. 03–22055 Filed 8–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7550–1]

First Draft Staff Paper for Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a draft for public review and comment.

SUMMARY: On or about August 29, 2003, the Office of Air Quality Planning and Standards (OAQPS) within EPA's Office of Air and Radiation will make available for public review and comment a draft document, Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information (First Draft Staff Paper). The purpose of the Staff Paper is to evaluate the policy implications of the key scientific and technical information contained in a related EPA document, Air Quality Criteria for Particulate Matter, required under sections 108 and 109 of the Clean Air Act (CAA) for use in the periodic review of the national ambient air quality standards (NAAQS) for particulate matter (PM). The OAQPS also will make available for public review and comment a related document, Particulate Matter Health Risk Assessment for Selected Urban Areas (Draft Risk Assessment).

DATES: Comments on the first draft Staff Paper and draft Risk Assessment should be submitted on or before October 28, 2003.

ADDRESSES: For information on how to submit comments, see **SUPPLEMENTARY INFORMATION**, Section C.

Availability of Documents for Review

For information on obtaining copies of the draft documents now being made available for review, see **SUPPLEMENTARY INFORMATION,** Section B.

FOR FURTHER INFORMATION CONTACT: Dr. Mary Ross, Office of Air Quality Planning and Standards (mail code C539–01), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; e-mail: *ross.mary@epa.gov*; telephone: (919) 541–5170; fax (919) 541–0237.

SUPPLEMENTARY INFORMATION:

A. General Information

The EPA is currently reviewing the NAAQS for PM. Sections 108 and 109 of the CAA require that EPA carry out a periodic review and revision, where appropriate, of the scientific criteria and the NAAQS for ''criteria'' air pollutants such as PM. Details of EPA's plans for

review of the NAAQS for PM were announced in a previous **Federal Register** notice (62 FR 55201, October 23, 1997).

The purpose of the Staff Paper is to evaluate the policy implications of the key scientific and technical information contained in a related EPA document, Air Quality Criteria for Particulate Matter (AQCD), and identify critical elements that EPA staff believe should be considered in reviewing the PM NAAQS. The Staff Paper is intended to ''bridge the gap'' between the scientific review contained in the Air Quality Criteria document and the public health and welfare policy judgments required of the Administrator in reviewing the NAAQS.

In June, 2001, a preliminary draft of this Staff Paper was released for public review and comment and for consultation with the Clean Air Scientific Advisory Committee (CASAC) at a public meeting in July 2001 (66 FR 32621, June 15, 2001). The preliminary draft Staff Paper was based on information contained in the second external review draft of the AQCD that was previously made available by the National Center for Environmental Assessment of EPA's Office of Research and Development for public review and comment (66 FR 18929, April 12, 2001). A fourth external review draft of the AQCD has recently been made available for public review and comment (66 FR 18929, June 30, 2003), and for review by CASAC at a public meeting on August 25–26, 2003.

Building upon an earlier preliminary draft Staff Paper (EPA, 2001), and taking into account the information in the fourth external review draft of the AQCD, this first draft Staff Paper includes results from initial staff analyses (*e.g.*, analyses of air quality and visibility data, and human health risk analyses), plans for additional analyses to be incorporated into a subsequent draft of this document, and preliminary staff conclusions and recommendations on the PM NAAQS.

As a first step in developing a health risk assessment for the PM NAAQS review, OAQPS previously released for public and CASAC review (67 FR 3897, January 28, 2002) a draft document, Proposed Methodology for Particulate Matter Risk Analysis for Selected Urban Areas. EPA has considered comments provided in a CASAC advisory on this draft document (May 23, 2002, EPA–SAB–CASAC–ADV–02–002, *http://www.epa.gov/sab/pdf/casacadv02002.pdf)* and from a CASAC consultation held on May 1, 2003 (68 FR 17939, April 14, 2003), as well as public comments in developing the draft Risk Assessment being released at this time. The draft Risk Assessment describes and presents the preliminary results from a PM health risk assessment for fine particles ($PM_{2,5}$), coarse fraction particles ($PM_{10-2.5}$), and PM_{10}. The risk assessment methodology and preliminary results also are summarized in the first draft Staff Paper.

The first draft Staff Paper and draft Risk Assessment will be reviewed at a public meeting of the CASAC to be held later this year. A future **Federal Register** notice will inform the public of the date and location of that meeting. Following the CASAC meeting, EPA will prepare a second draft Staff Paper and Risk Assessment, taking into account public and CASAC comments and results of additional analyses, and will make the revised draft documents available for review and comment by CASAC and the public.

B. How Can I Get Copies of These Documents?

1. *Docket.* The EPA has established an official public docket for this action under Docket ID No. OAR–2001–0017. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to the PM NAAQS review. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The Docket telephone number is (202) 566–1744; fax (202) 566–1741. 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. A reasonable fee may be charged for copying.

2. *Electronic Access.* 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 access the documents specifically referenced in this action. These documents are also available at *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_index.html;* the draft Staff Paper is available under ''Staff Papers'' and the draft Risk Assessment document is available under ''Technical Documents.'' You may also use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. The 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 above. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket. For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA

Dockets online or see 67 FR 38102, May 31, 2002.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' The EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. The EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. OAR–2001–0017. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *a-and-r-Docket@epa.gov,* Attention Docket ID No. OAR–2001–0017. 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. Any 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 above. 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: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mail code: 6102T, 1200 Pennsylvania Ave., NW, Washington, DC, 20460, Attention Docket ID No. OAR–2001–0017.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center, 101 Constitution Ave., NW., Room B108, Washington, DC 2004, Attention Docket ID No. OAR–2001–0017. Such deliveries are only accepted during the Docket's normal hours of operation as identified above.

4. *By Facsimile.* Fax your comments to: 202–566–1741, Attention Docket ID. No. OAR–2001–0017.

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

Dated: August 21, 2003.

Stephen D. Page,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 03–22051 Filed 8–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7550–6]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding the Hilo Coast Power Company and Brewer Environmental Industries, Pepeekeo Mill Power Generating Facility, Proceeding Under Clean Water Act Section 309(g)(1), (2)(B) and 40 CFR 22.13(b)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act (the ''Act''). EPA is also providing notice of opportunity to comment on the proposed assessment.

EPA is authorized under section 309(g) of the Act, 33 U.S.C. 1319(g), to assess a civil penalty after providing the person subject to the penalty notice of the proposed penalty and the opportunity for a hearing, and after providing interested persons notice of the proposed penalty and a reasonable opportunity to comment on its issuance. Under section 309(g), any person who without authorization discharges a pollutant to a navigable water, as those terms are defined in section 502 of the Act, 33 U.S.C. 1362, may be assessed a penalty in a ''Class II'' administrative penalty proceeding.

Class II proceedings under section 309(g) are conducted in accordance with the ''Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits'' (''part 22''), 40 CFR part 22. The procedures through which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in part 22. The deadline for submitting public comment on a proposed Class II order is October 7, 2003.

On August 7, 2003, EPA filed with Danielle Carr, Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne

Street, San Francisco, California 94105, (415) 744–1391, the following Administrative Complaint:

In the Matter of Hilo Coast Power Company and Brewer Environmental Industries, Pepeekeo Mill Power Generating Facility, Docket No. CWA–9–2003–0002.

For the alleged violations set forth in the Administrative Complaint, EPA proposes to assess penalties of up to One Hundred Thirty-seven Thousand and Five Hundred Dollars ($137, 500) for violations of NPDES Permit No. HI0000191 and section 301(a) of the Act, 33 U.S.C. 1311(a), at the Pepeekeo Mill Power Generating Facility in Pepeekeo, Hawaii.

Procedures by which the public may comment on a proposed Class II penalty or participate in a Class II penalty proceeding are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II penalty is forty days after issuance of public notice.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed assessment, or otherwise participate in the proceeding should contact Danielle Carr, Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1391. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the Respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to forty (40) days after the date of publication of this notice.

Dated: August 19, 2003.

John Kemmerer,

Acting Director, Water Division.

[FR Doc. 03–22054 Filed 8–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7550–4]

Public Water System Supervision Program Revision for the State of New Mexico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of New Mexico is revising its approved Public Water System Supervision Program. New Mexico has revised its administrative penalty authority, its public water system definition, adopted the Consumer Confidence Report Rule, the Interim Enhanced Surface Water Treatment Rule, the Stage 1 Disinfection By Products Rule, the new Variances and Exemptions Rule, the revised Public Notification Rule, the new Radionuclides Rule, the Lead and Copper Rule Minor Revisions, the Arsenic Rule, and the Filter Backwash Recycling Rule. EPA has determined that these revisions are no less stringent than the corresponding federal regulations. Therefore, EPA intends to approve these program revisions.

DATES: All interested parties may request a public hearing. A request for a public hearing must be submitted by September 29, 2003 to the Regional Administrator at the EPA Region 6 address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by September 29, 2003, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on September 29, 2003. Any request for a public hearing shall include the following information: The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices: New Mexico Environment Department, Drinking Water Bureau, 525 Camino De Los Marquez, Suite 4, Santa Fe, New Mexico, 87505 and the United States Environmental Protection Agency, Region 6, Drinking Water Section (6WQ–SD), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Kim Ngo, EPA Region 6, Drinking Water Section at the Dallas address given above or at telephone (214) 665–7158, or *ngo.kim@epa.gov.*

Authority: Section 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations.

Dated: August 20, 2003.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 03–22052 Filed 8–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7550–7]

Applicability of the Safe Drinking Water Act to Submetered Properties

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) is seeking public comment on revising the current policy regarding regulatory requirements under the Safe Drinking Water Act (SDWA) of submetered properties. The draft revised policy is shown in the Supplementary Information section below, in the memorandum form it would take if the policy is made final. Under SDWA section 1411, the national primary drinking water regulations apply to public water systems (PWS) that have their own water source, treat, or ''sell'' water. EPA staff and program managers have previously issued memoranda stating that any building or property owner who meets the definition of a PWS and receives water from a regulated public water system, but bills tenants separately for this water, is ''selling'' the water and therefore is independently subject to SDWA's drinking water requirements. As a way to promote full cost and conservation pricing to achieve water conservation, the EPA now proposes to change its interpretation of section 1411 as it applies to a limited aspect of

submetering and direct billing of residential tenants. EPA believes this change in interpretation would not adversely affect public health protection for consumers served by these submetered systems.

DATES: Comments must be submitted on or before October 27, 2003.

ADDRESSES: Comments may be submitted by mail to: Water Docket, Environmental Protection Agency, Mail Code 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW–2003–0065. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions as provided in section I.C. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For more information please contact Ronald Bergman at *bergman.ronald@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Draft Revised Policy

If the revised policy is made final, the following statement will be announced by EPA Assistant Administrator for Water, G. Tracy Mehan III, to the Regional Administrators

Draft Memorandum

From: G. Tracy Mehan, III, *Assistant Administrator, Office of Water*

To: Regional Administrators Regions I–X

Subject: Applicability of the Safe Drinking Water Act to Submetered Properties

Water conservation is an integral part of watershed protection, particularly in arid and drought-stricken areas. In recent speeches, I have called for full cost and conservation pricing to achieve water conservation. The use of water meters by which to measure consumption is a necessary prerequisite to using these price mechanisms. For those 15% of Americans who live in apartments, submeters are needed if their water consumption is to be linked to prices. Throughout the country, submetering of apartment buildings has been found to be an effective but little-used tool to support water conservation.

Some owners of multifamily housing, however, have expressed concern that, under EPA's current policy, the installation of submeters subjects them to the full regulatory requirements of the Safe Drinking Water Act (SDWA). In 1996, Congress also expressed concern about EPA's policy in this specific situation, and, in response, EPA agreed to reconsider the matter and issue further guidance.[1] This memorandum represents the promised further guidance on this issue and sets out a revised policy with respect to residential properties such as apartment buildings that submeter for water.

Under the revised policy, a property owner who had not previously been (or would not be) subject to SDWA national primary drinking water regulations through SDWA section 1411, and who installs submeters to accurately track usage of water by tenants on his or her property, will not then be subject to SDWA regulations solely as a result of taking the action to submeter and bill. The water being provided would already meet drinking water standards because the water would be coming from a regulated public water system.

Background

Section 1401 of SDWA defines a public water system (PWS) as a system that provides water through pipes or other constructed conveyances to the public for human consumption, if the system has at least 15 service connections or regularly serves at least 25 people. Under SDWA section 1411, the SDWA national primary drinking water regulations apply to PWSs that have their own water source, treat, or ''sell'' water. EPA staff and program managers have issued several memoranda stating that any building or property owner who meets the definition of a PWS and receives water from a regulated public water system without adding further treatment, but bills tenants separately for this water, is ''selling'' the water and therefore is independently subject to SDWA's drinking water requirements. Today's memorandum reflects a change in EPA's interpretation of section 1411 as it applies in the specific context of submetering and direct billing of tenants.

The EPA memoranda referenced above were based on a single statement in the 1974 legislative history for the SDWA in which Congress explained its intent in enacting section 1411. In that legislative history, the Committee report states that it ''intends to exempt businesses which merely store and distribute water provided by others, unless that business sells water as a separate item or bills separately for water it provides.''[2] Under EPA's interpretation to date, an apartment building or similar residential property that is exempt under section 1411 but that merely installs a submeter and bills the tenants for the water, or simply begins billing tenants (even without a submeter), would become a fully regulated public water system, even though there had been no other change relevant to the delivery or potential health concerns associated with the water. This application of the legislative history has been cited as a discouragement to submetering and, as a result, to water conservation measures.

After further review, we no longer believe that Congress intended the legislative history to be applied in this manner for the following reasons:

- The legislative history from 1974 does not specifically address the submetering of apartment buildings for water conservation purposes. Rather, the legislative history was one Committee's attempt to explain broadly what the term ''selling'' water in section 1411 might mean. The statute itself does not define the term ''selling'' or suggest an interpretation that any billing of water would automatically trigger full SDWA regulation.
- A Congressional committee expressed its concern that this application of SDWA might discourage the practice of submetering, as owners of a multifamily housing property (*e.g.*, apartment buildings and/or complexes, mobile home parks) would become subject to national primary drinking water regulations if they billed separately for water. Congress asked that EPA review its guidance on this matter to prevent unnecessary requirements that do not further public health protection and that might inhibit water conservation efforts.[3]
- EPA's approach in previous memoranda—simply applying the concept of ''sell'' to every billing transaction—may have created a disincentive to water conservation, which can undermine water quality over the long term.
- Finally, it makes no sense, as a matter of statutory interpretation, health protection, or SDWA implementation policy, to subject an entity to the full suite of SDWA requirements simply as a result of a decision about who sends a water bill, especially when the water is already coming from a regulated public water system. As a result, we no longer consider that the blanket approach to defining ''sell'' as meaning any type of billing in any circumstance is appropriate.

[1] H. Rep. 104–632 (104th Cong., 2d Sess.) at 55 and 134 (1996).

[2] H. Rep. 93–1185 (93rd Cong., 2nd Session), reprinted in *A Legislative History of the Safe Drinking Water Act,* Committee Print Serial 97–9 (1982) at 549.

[3] H . Rep. 104–632 at 55 (1996)

Revised Policy

Consistent with Congressional requests to reconsider this matter, we now believe that, if a property owner, who had not previously been (or would not be) subject to PWS national primary drinking water regulations, installs submeters to accurately track usage of water by residential tenants on his or her property, that owner should not then be subject to regulations solely as a result of taking the action to submeter and bill. Likewise, a property owner who does not submeter, but charges tenants for water based on a ratio utility billing or other apportioning system, would also remain exempt from full SDWA requirements.

The addition of a submeter, or direct billing, should not in any way change the public health protections provided to water consumers on the property, as they are still subject to plumbing codes and provided water from a PWS that is fully regulated by SDWA. The PWS providing water to the property is still responsible for providing public notification under 40 CFR 141.201(c) (or approved State equivalent) to consumers and making ''good faith'' efforts to provide the tenants with the annual Consumer Confidence Reports under 40 CFR 141.155(b). A submetered property would still be considered a PWS under SDWA section 1401, hence States and EPA would retain the ability to take corrective action under SDWA's emergency powers authority (section 1431) if public health risks arise.

Although EPA is not requiring that submetered systems be tracked, each State has flexibility to determine whether, and how, to best track multifamily residential properties that submeter. For example, in Alabama, the State defines a submetered property as a ''segmented public water system'' and requires that it have access to a certified operator. Texas requires that submetered properties allow access to the property by the public water system providing water, register with the Texas Commission on Environmental Quality and follow regulations for submetering. Other States may place submetered properties under the jurisdiction of public utility commissions.

While submetering and billing for water usage may positively induce water conservation actions, States may still want to take other steps to ensure that apartment owners convert to water efficient fixtures and appliances. For example, Texas requires that apartment buildings have water-efficient plumbing fixtures and appliances as a condition of approval of a submetered billing system.

This memorandum clarifies EPA's policy change and reconfirms our strong interest in advocating water conservation. Any previous EPA statements or policy memoranda on this issue are superceded by this memorandum.

1. Request for Comments

While comments will be accepted on any portion of the draft revised policy, EPA would specifically appreciate comments on the following issues:

i. Should the parent public water system be required to have access to submetered properties for the purposes of monitoring, inspection, repair, etc., to assure compliance with SDWA?

ii. Are there public health risks raised by this submetering policy that EPA has not taken into consideration?

iii. Should EPA maintain the limitation of the draft revised policy to residential properties such as apartment buildings, or is it appropriate to extend the SDWA exemption for submetering to other property types?

iv. Does data exist that indicates submetering may present a disincentive to landlords to convert to water efficient fixtures and appliances, or could this approach impact other methods that promote water conservation?

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–2003–0065. 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 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). For access to docket materials, please call (202) 566–2426 to schedule an appointment.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.B.1.

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 identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. However, late comments may be considered if time permits.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. OW–2003–0065. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *OW-Docket@epa.gov,* Attention Docket ID No. OW–2003–0065. 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 section 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 three copies of your comments to: Water Docket, Environmental Protection Agency, Mail Code 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW–2003–0065.

3. *By Hand Delivery or Courier.* Deliver your comments to: Environmental Protection Agency, EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. Attention Water Docket ID No. OW–2003–0065. Such deliveries are only accepted during the Docket's normal hours of operation as identified in section I.B.1.

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 any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To insure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

Dated: August 22, 2003.

G. Tracy Mehan III,

Assistant Administrator, Office of Water.

[FR Doc. 03–22053 Filed 8–27–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

August 20, 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 current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 27, 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 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: 3060–0692.

Type of Review: Extension of a currently approved collection.

Title: Home Wiring Provisions.

Form Number: N/A.

Respondents: Business or other for-profit entities; Individuals or households.

Number of Respondents: 30,500.

Estimated Time per Response: 5 mins (0.083 hrs) to 20 hrs.

Frequency of Response: Recordkeeping; Annual and on occasion reporting requirements; Third party disclosure.

Total Annual Burden: 46,114 hours.

Total Annual Cost: None.

Needs and Uses: On January 29, 2003, the Commission issued a First Order on Reconsideration and Second Report and Order, FCC 03–9, which grants in part and denies in part the petitions for reconsideration filed in response to the Report and Order. The Commission's home run wiring rules were modified in the First Order on Reconsideration to provide that in the event of sale, the home run wiring be made available to the MDU owner or alternative provider during the 24-hour period prior to actual service termination by the incumbent and that home run wiring located behind sheet rock is physically inaccessible for purposes of determining the demarcation point between home wiring and home run wiring. In the Second Report and Order, the Commission adopted a limited exemption for small non-cable MVPDs from the signal leakage reporting requirements and concluded that the cable and home run wiring rules should apply to all MVPDs in the same manner that they apply to cable operators. The Commission declined to restrict exclusive contracts or ban perpetual contracts. The Commission also declined to allow MDU owners to require sharing of incumbent-owned cable wiring.

OMB Control Number: 3060–1038.

Type of Review: Extension of a currently approved collection.

Title: Digital Television Transition Information Questionnaires.

Form Number: N/A.

Respondents: Business or other for-profit entities.

Number of Respondents: 844.

Estimated Time per Response: 4 to 24 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 4,823 hours.

Total Annual Cost: $251,400.

Needs and Uses: In the Telecommunications Act of 1996, Congress directed that every broadcaster be given a second channel for digital operations. At the end of the transition, broadcasters' analog channels will be returned to the government. Congress set a target date of December 31, 2006 for the end of the transition, although that date can be extended if 85% of viewers in a particular market do not have access to the digital signals. In addition, at the end of the transition the broadcast spectrum will contract from channels 2–69 to channels 2–51. This 108 MHz of spectrum (channels 52–69) can then be used by advanced wireless services and public safety authorities. There are several key building blocks to a successful transition. First, content '' consumers must perceive something significantly different than what they have in analog. Second, distribution—the content must be delivered to consumers in a simple and convenient way. Third, equipment—equipment must be capable, affordable and consumer-friendly. And fourth, education—consumers must be educated about what digital television is, and what it can do for them. These information requests are designed to gather data in these key areas.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–22070 Filed 8–27–03; 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 September 11, 2003.

A. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. David A. Frailing, Everett H. Frailing, Cecelia S. Frailing, Ronald J. Frailing, Fay A. Frailing, and Derrick J. Frailing, Iron River, Michigan, to retain voting shares of MSB Bankshares, Inc., Iron River, Michigan, and thereby indirectly retain voting shares of The Miners State Bank, Iron River Michigan.

Board of Governors of the Federal Reserve System, August 22, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–21977 Filed 8–27–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Agency for Toxic Substances and Disease Registry

[Program Announcement 04004]

Public Health Conference Support Grant Program; Notice of Availability of Funds

Application Deadline:

Cycle A: November 19, 2003.

Cycle B: March 8, 2004.

Cycle C: June 1, 2004.

A. Authority and Catalog of Federal Domestic Assistance Number

The Centers for Disease Control and Prevention (CDC) program is authorized under section 317(k)(2) of the Public Health Service Act, (42 U.S.C. 247b(k)(2)) as amended. The Catalog of Federal Domestic Assistance (CFDA) number is 93.283.

The Agency for Toxic Substances and Disease Registry (ATSDR) program is authorized under sections 104(i)(14) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), [42 U.S.C. 9604(i)(14) and (15)]. The CFDA number is 93.161 for ATSDR.

B. Purpose

CDC and ATSDR announce the pending availability of appropriated fiscal year (FY) 2004 funds for a grant program for Public Health Conference Support. This program addresses the ''Healthy People 2010'' focus areas of Arthritis, Osteoporosis and Chronic Back Conditions, Cancer, Diabetes, Disability and Secondary Conditions, Educational and Community-Based Programs, Environmental Health, Heart Disease and Stroke, Immunization and Infectious Diseases, Injury and Violence

Prevention, Maternal, Infant and Child Health, Occupational Safety and Health, Oral Health, Physical Activity and Fitness, Public Health Infrastructure, Respiratory Diseases, Sexually Transmitted Diseases, and Tobacco Use. Conferences on Access to Quality Health Services, Family Planning, Food Safety, Health Communications, Medical Product Safety, Substance Abuse, and Vision and Hearing, are not priority focus areas of CDC or ATSDR, and should be directed to other Federal Agencies.

HIV Conferences and HIV subject matter are covered under another program and are not permitted under this announcement.

The purpose of conference support funding is to provide partial support for specific non-Federal conferences (not a series) in the areas of health promotion and disease prevention information and education programs, and applied research.

Conference support by CDC/ATSDR creates the appearance of CDC/ATSDR co-sponsorship, and Congress has required that there will be active participation by CDC/ATSDR in the development and approval of the conference agenda to make sure there are no subjects that would embarrass the Government or be an improper use of funds. CDC/ATSDR funds will be expended only for approved portions of the conference.

C. Eligible Applicants

Applications for CDC support may be submitted by public and private non-profit, and faith-based organizations. Public and private non-profit entities include State and local governments or their bona fide agents, faith-based organizations, voluntary associations, foundations, civic groups, scientific or professional associations, universities, and Federally-recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Applications for ATSDR support may be submitted by the official public health agencies of the States, or their bona fide agents. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Island, the Republic of Palau, and Federally-recognized Indian Tribal governments. State organizations, including State universities, State colleges, and State research institutions must establish that they meet their respective State's legislature definition of a State entity or political subdivision to be considered an eligible applicant.

Also eligible are nationally and internationally recognized associations of health professionals and other chartered organizations generally recognized as demonstrating a need for information to protect the public from the health effects of exposure to hazardous substances. Faith-based organizations are encouraged to apply.

Only conferences planned for May 1, 2004 through September 30, 2005 are eligible to apply under this announcement.

To be eligible to apply the applicant must:

1. Propose a conference that matches only one or two topic areas identified in the ''Topic Areas of Programmatic Interest'' as listed in Attachment II of this announcement. (All attachments are posted with this announcement on the CDC Web site.)

2. Identify the estimated total cost of the conference and the dollar amount of the total cost requested from CDC/ATSDR (which must be less than 100 percent).

This information should be included in the cover letter submitted with the application. Applications that do not include this information and respond directly to the above information will be determined as non-responsive and will be returned without review.

Note: Title 2 of the United States Code, Chapter 26, Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

D. Funding

Availability of Funds: Approximately $1,100,000 may be available from CDC in FY 2004 to fund approximately 60 to 80 awards. It is expected that the average award will be $20,000.

Approximately $25,000 is available from ATSDR in FY 2004 to fund approximately three to five awards. It is expected that the average award will be $8,000, ranging from $5,000 to $10,000.

Application requests that exceed $50,000 (CDC) or $10,000 (ATSDR) will be determined as non-responsive and will be returned to the applicant without review.

It is expected that the awards will begin on or about sixty days before the date of the conference. For FY 2004, awards will be made for each cycle with a 12-month budget period within a 12-month project period. Funding estimates may change.

Recipient Financial Participation: Matching funds are not required for this program.

Use of Funds

1. Funds may be used for direct cost expenditures: salaries; speaker fees (for services rendered); rental of necessary conference-related equipment; registration fees; and transportation costs (not to exceed economy class fare) for non-Federal individuals.

2. Funds may be used for only those parts of the conference specifically supported by CDC or ATSDR as documented in the grant award.

3. Funds may not be used for the purchase of equipment; payments of honoraria (for conferring distinction); alterations or renovations; organizational dues; support entertainment or personal expenses; food or snack breaks; cost of travel and payment of a Federal employee or per diem or expenses for local participants (other than local mileage). Travel for Federal employees will be supported by CDC/ATSDR. Travel for other Federal employees will be supported by the employees' Federal agency.

4. Funds may not be used for reimbursement of indirect costs.

5. CDC and ATSDR will not fund 100 percent of any conference proposed under this announcement. Part of the cost of the proposed conference must be supported with funds other than Federal funds.

6. CDC and ATSDR will not fund a conference after it has taken place.

7. Federal funds may not be used to fund novelty items or souvenirs.

E. Programmatic Interest Areas

The mission of CDC is to promote health and improve the quality of life by preventing and controlling disease, injury, and disability.

Through the support of conferences and meetings (not a series) in the areas of public health research, education, prevention research in program and policy development, managed care, and prevention application, CDC is meeting its overall goal of dissemination and implementation of new cost-effective intervention strategies.

The mission of ATSDR is to prevent both exposure and adverse human health effects that diminish the quality of life associated with exposure to hazardous substances from waste sites, unplanned releases, and other sources of pollution present in the environment.

ATSDR's systematic approaches are needed for linking applicable resources in public health with individuals and organizations involved in the practice of applying such research. Mechanisms are also needed to shorten the time frame between the development of disease prevention and health promotion

techniques and their practical application. ATSDR believes that conferences and similar meetings (not a series) that permit individuals to engage in hazardous substances and environmental health research, education, and application (related to actual and/or potential human exposure to toxic substances) to interact, are critical for the development and implementation of effective programs to prevent adverse health effects from hazardous substances.

(See Attachment II for the specific topic areas that each Center/Agency is requesting.)

F. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the following activities:

1. The conference organizer(s) may use CDC's/ATSDR's name only in factual publicity for the conference. CDC/ATSDR involvement in the conference does not necessarily indicate support for the organizer's general policies, activities, products, or the content of speakers' presentations.

2. Any national conference co-sponsored under this announcement shall be held in facilities that are fully accessible to the public as required by the Americans with Disabilities Act Accessibility Guidelines (ADAAG). Accessibility under ADAAG addresses accommodations for persons with sensory impairments as well as persons with physical disabilities or mobility limitations.

3. Manage all activities related to program content (*e.g.*, objectives, topics, attendees, session design, workshops, special exhibits, speaker's fees, agenda composition, and printing). Many of these items may be developed in concert with assigned CDC or ATSDR project personnel.

4. Provide draft copies of the agenda and proposed ancillary activities to CDC or ATSDR for approval. All but ten percent of the total funds awarded for the proposed conference will be initially restricted pending approval by CDC or ATSDR of a full, final agenda. The remaining 90 percent of funds will be released by letter to the grantee upon the approval of the final agenda. Because conference support by CDC and ATSDR creates the appearance of CDC co-sponsorship, there will be active participation by CDC or ATSDR in the development and approval of those portions of the agenda supported by CDC funds. CDC funds will not be expended for non-approved portions of meetings. In addition, CDC will reserve the right to approve or reject the content of the full agenda, press events, promotional materials (including press releases), speaker selection, and site selection. CDC and ATSDR reserves the right to terminate co-sponsorship if it does not concur with the final agenda.

5. Determine and manage all promotional activities (*e.g.*, title, logo, announcements, mailers, press, *etc.*). CDC or ATSDR must review and approve any materials with reference to CDC or ATSDR involvement or support.

6. Manage all registration processes with participants, invitees, and registrants (*e.g.*, travel, reservations, correspondence, conference materials and handouts, badges, registration procedures, *etc.*).

7. Plan, negotiate, and manage conference site arrangements, including all audio-visual needs.

G. Content

Letter of Intent (LOI): A Letter of Intent (LOI) is required for this Program Announcement. The LOI will not be evaluated or scored. Your letter of intent will be used to estimate the potential reviewer workload and to avoid conflicts of interest during the review. If you do not submit a LOI, you will not be allowed to submit an application.

You must submit an original and two copies. The LOI should be two to three pages in-depth, single-spaced, and typewritten. Use English only and avoid jargon and unusual abbreviations.

Applications: Beginning October 1, 2003, applicants will be required to have a Dun and Bradstreet Number (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge.

You are encouraged to obtain a DUNS number now if you believe you will be submitting an application to any Federal agency on or after October 1, 2003. Proactively obtaining a new DUNS number at the current time will facilitate the receipt and acceptance of applications after September 2003.

To obtain a DUNS number, access the following Web site: *http://www.dunandbradstreet.com* OR call 1–866–705–5711.

Use the information in the Program Requirements and Evaluation Criteria sections to develop the application content. The application narrative should be no longer than 12 double-spaced pages, printed on one side, with one-inch margins, and 12-point font. Use English only and avoid jargon and unusual abbreviations. Pages must be clearly numbered, and a complete index to the application and its appendices must be included. The original and two required copies of the application must be submitted unstapled and unbound. Materials that are part of the basic plan should not be in the appendices.

The application should include:

1. A one-page cover letter addressing Eligibility. Include the Announcement title, number and programmatic interest area being addressed by your conference. This cover letter does not count toward the 12-page narrative limit.

2. A one-page project summary cover sheet that includes:

a. Name of organization
b. Name of conference
c. Location of conference
d. Date(s) of conference
e. Intended audience and number
f. Dollar amount requested
g. Total conference budget amount

This project summary cover sheet does not count toward the 12-page narrative limit.

3. A narrative that includes:

a. A brief background of your organization—include the organizational history, purpose, and previous experience related to the proposed conference topic.

b. A clear statement of the need for, and purpose of, the conference. This statement should also describe any problems the conference will address or seek to solve, and the action items or resolutions it may stimulate.

c. An elaboration on the conference objectives and target audience. A list should be included of the principal areas or topics to be addressed. A proposed or final agenda must be included.

d. A clear description of the evaluation plan and how it will assess the accomplishments of the conference objectives. A sample of the evaluation instrument that will be used must be included and a step-by-step schedule and detailed operation plan of major conference planning activities necessary to attain specified objectives.

e. Budget plan and justification—A clearly justified budget narrative that is consistent with the purpose, objectives, and operation plan of the conference. It should include the share requested from this grant as well as those funds from other sources, including organizations, institutions, conference income, and/or registration fees.

4. Biographical sketches are required of the individuals responsible for planning and implementing the conference. Experience and training related to conference planning and implementation as it relates to the

proposed topic should be noted. The biosketches should be placed in an appendix, and will not be counted toward the 12-page narrative limit.

5. Letters of endorsement or support—Letters of endorsement or support for the sponsoring organization and its capability to perform the proposed conference activity. Letters of support should be placed in an appendix, and will not be counted toward the 12-page narrative limit.

H. Submission and Deadline (For All Applicants) Deadline

LOI and application deadlines have now been imposed for all conference support grants, and dates should be strictly followed by applicants to ensure that their LOI's and applications are received in a timely manner.

There will be three conference support reviews this year:

If your conference dates fall between May 1, 2004 and April 30, 2005, you should apply under Cycle A under this announcement.

If your conference dates fall between August 1, 2004 and July 31, 2005, you should apply under Cycle B under this announcement.

If your conference dates fall between November 1, 2004 and September 30, 2005, you should apply under Cycle C under this announcement.

If your conference dates fall between October 1, 2003 and April 30, 2004, you should have applied under the previous Program Announcement 03012, and your LOI will be considered non-responsive to Program Announcement 04004.

Letter of Intent Due Dates

Cycle A: October 1, 2003.
For conferences May 1, 2004–April 30, 2005.
Cycle B: January 6, 2004.
For conferences August 1, 2004–July 31, 2005.
Cycle C: April 1, 2004.
For conferences November 1, 2004–September 30, 2005.

Letter of Intent (LOI) Submission: On or before October 1, 2003; January 6, 2004; and April 1, 2004 submit an original and two signed copies of the LOI to: Technical Information Management (TIMS)—PA#04004, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applicants who do not submit a LOI will not be eligible to submit an application for review or funding.

Application Forms: Applicants must also submit the original and two copies of PHS form 5161–1, (OMB Number 0937–0189). Forms are available on the CDC Web site at: *http://forms.psc.gov/forms/PHS/PHS–5161–1.pdf.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Application due dates	Earliest possible award dates
Cycle A: November 19, 2003.	April 1, 2004.
Cycle B: March 8, 2004.	June 30, 2004.
Cycle C: June 1, 2004.	September 1, 2004.

Application Submission: On or before November 19, 2003; March 8, 2004; and June 1, 2004 submit an original and two signed copies of the application to: Technical Information Management—PA#04004, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically. Applications received that were not preceded by a LOI will not be reviewed or funded.

CDC Acknowledgement of Application Receipt: If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

Letters of Intent and applications shall be considered as meeting the deadline if they are received in the CDC Procurement and Grants Office before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

I. Evaluation Criteria

Letter of Intent: The required Letter of Intent will not be evaluated or scored.

A conference is a symposium, seminar, workshop, or any other organized and formal meeting lasting one day or more (not a series), where persons assemble to exchange information and views, explore, or clarify a defined subject, problem, or area of knowledge, whether or not a published report results from such meeting. The conference should support CDC or ATSDR's public health principles in furtherance of CDC's mission or ATSDR's mission.

Application: Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

Section 1.a., is ATSDR specific.

Section 1.b., is CDC specific.

Section 1.c., and all other sections in these criteria are applicable to both CDC and ATSDR. Each application will be evaluated based on the following criteria:

1. Proposed Program and Technical Approach (25 Points)

a. The public health significance of the proposed conference, including the degree to which the conference can be expected to influence the prevention of exposure, adverse human health effects, and diminished quality of life associated with exposure to hazardous substances from waste sites, unplanned releases, and other sources of pollution present in the environment (Applicable to ATSDR applications only).

b. The applicant's description of the proposed conference as it relates to specific non-Federal conferences in the areas of health promotion and disease prevention information/education programs (except substance abuse), including the public health need of the proposed conference and the degree to which the conference can be expected to influence public health practices. Evaluation will also be based on the extent of the applicant's collaboration with other organizations serving the intended audience (Applicable to all CDC applications except ATSDR).

c. The applicant's description of conference objectives, in terms of quality, specificity, and the feasibility of the conference based on the operational plan, will also be evaluated.

2. Conference Objectives (25 Points)

a. The overall quality, reasonableness, feasibility, and logic of the designed conference objectives, including the overall work plan and timetable.

b. The likelihood of accomplishing conference objectives, as they relate to

disease prevention and health promotion goals, and the feasibility of the project in terms of the operational plan.

3. The Qualifications of Program Personnel (20 Points)

a. The extent to which the application provides evidence of the qualifications, experience, and commitment of the principal staff person, and his/her ability to devote adequate time and effort to provide effective leadership.

b. The extent to which the application provides evidence of the competence of associate staff persons, discussion leaders, speakers, and presenters to accomplish conference objectives.

c. The extent to which the application demonstrates the knowledge of nationwide and educational efforts currently underway which may affect, and be affected by, the proposed conference.

4. Evaluation Methods (20 Points)

Evaluation instrument(s) for the conference should adequately assess increased knowledge, attitudes, and behaviors of the target audience.

5. Applicant's Capability (10 Points)

a. The applicant's capability includes the adequacy of the applicant's resources (additional sources of funding, organization's strengths, staff time, proposed physical facilities, *etc.*) available for conducting conference activities.

b. The extent to which the applicant demonstrates a history (at least three years) of managing conferences.

6. Budget Justification and Adequacy of Facilities (Not Scored)

The proposed budget will be evaluated on the basis of its reasonableness, concise and clear justification, and consistent with the intended use of grant funds. The application will also be reviewed as to the adequacy of existing or proposed facilities and resources for conducting conference activities.

J. Other Requirements

Technical Reporting Requirements: Provide the CDC with original plus two copies of:

1. A performance report or, in lieu of a performance report, proceedings of the conference, no later than 90 days after the end of the budget/project period.

2. Financial status report, no later than 90 days after the end of the budget/project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Additional Requirements: The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of this announcement as posted on the CDC Web site.

AR–7—Executive Order 12372 Review.

AR–9—Paperwork Reduction Act Requirements.

AR–10—Smoke-Free Workplace Requirements.

AR–11—Healthy People 2010.

AR–12—Lobbying Restrictions.

AR–13—Prohibition on Use of CDC Funds for Certain Gun Control Activities.

AR–15—Proof of Non-Profit Status.

AR–20—Conference Support.

K. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (770) 488–2700.

For business management assistance, contact: Rick Jaeger, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Atlanta, Georgia 30341–4146, Telephone: (770) 488–2727, e-mail address: *rjaeger@cdc.gov.*

For program technical assistance, contact: Janet Telman, Funding Resource Specialist, Office of the Director Extramural Services Activity, Public Health Practice Program Office (PHPPO), Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, MS K38, Atlanta, Georgia 30341–3714, Telephone: (770) 488–2834, e-mail address: *jtelman@cdc.gov.*

Dated: August 21, 2003.

Sandra R. Manning,

Director, Program and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–22007 Filed 8–27–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–195]

Public Health Assessments Completed

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces those sites for which ATSDR has completed public health assessments during the period from April 2003 through June 2003. This list includes sites that are on or proposed for inclusion on the National Priorities List (NPL), and includes sites for which assessments were prepared in response to requests from the public.

FOR FURTHER INFORMATION CONTACT: Robert C. Williams, P.E., DEE, Assistant Surgeon General, Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE, Mailstop E–32, Atlanta, Georgia 30333, telephone (404) 498–0007.

SUPPLEMENTARY INFORMATION: The most recent list of completed public health assessments was published in the **Federal Register** on August 8, 2003 [68 FR 47324]. This announcement is the responsibility of ATSDR under the regulation, Public Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities [42 CFR part 90]. This rule sets forth ATSDR's procedures for the conduct of public health assessments under section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604(i)].

Availability

The completed public health assessments and addenda are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 1825, Century Blvd., Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. The completed public health assessments are also available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield,

Virginia 22161, or by telephone at (703) 605–6000. NTIS charges for copies of public health assessments and addenda. The NTIS order numbers are listed in parentheses following the site names.

Public Health Assessments Completed or Issued

Between April 1, 2003 and June 30, 2003, public health assessments were issued for the sites listed below:

NPL Sites

California

Edwards Air Force Base (PB2003–104567)

Markleeville (PB2003–104568)

Illinois

Circle Smelting Corporation (PB2003–104617)

Hartford Residential Vapor Resources (a/k/a Hartford Residences) (PB2003–105779)

Maine

Callahan Mining Corporation (PB2003–104534)

Massachusetts

General Electric Site—Unkamet Brook (a/k/a GE-Housatonic River) (PB2003–104653)

General Electric Site—Lyman Street (a/k/a GE-Housatonic River) (PB2003–104654)

General Electric Site—Former Oxbows (a/k/a GE-Housatonic River) (PB2003–104655)

Sutton Brook Disposal Area (PB2003–104569)

New York

Cayuga County Groundwater Contamination (PB2003–105778)

Petitioned

Florida

Eglin Air Force Base (a/k/a USAF Eglin Air Force Base Armament Division) (PB2003–104185)

Dated: August 22, 2003.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 03–22002 Filed 8–27–03; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee (CLIAC)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Clinical Laboratory Improvement Advisory Committee (CLIAC).

Times and Dates: 8:30 a.m.–5 p.m.; September 17, 2003. 8:30 a.m.–3:30 p.m.; September 18, 2003.

Place: Sheraton Colony Square Hotel, 188 14th Street NE., Atlanta, Georgia 30361.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This committee is charged with providing scientific and technical advice and guidance to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the need for, and the nature of, revisions to the standards under which clinical laboratories are regulated; the impact on medical and laboratory practice of proposed revisions to the standards; and the modification of the standards to accommodate technological advances.

Matters To Be Discussed: The agenda will include updates from CDC, the Centers for Medicare & Medicaid Services, and the Food and Drug Administration; a report on the results of the General Services Administration's Office of Government-wide Policy Federal Advisory Committee Stakeholder Engagement Survey; presentations and discussion on the CLIA waiver criteria and process, previous CLIAC recommendations related to such, and AdvaMed's CLIAC waiver criteria proposal; a report on the Coordinating Council for Clinical Laboratory Workforce's June 2003 meeting; a report on the April 2003 Quality Institute; a summary of the March 2003 CLIAC meeting on direct access testing; a presentation on Lab Tests Online; a report on the first meeting of the Secretary's Advisory Committee on Genetics, Health and Society; and several presentations on CDC's various genetic testing activities.

Agenda items are subject to change as priorities dictate.

Providing Oral or Written Comments: It is the policy of CLIAC to accept written public comments and provide a brief period for oral public comments whenever possible. *Oral Comments:* In general, each individual or group requesting to make an oral presentation will be limited to a total time of five minutes (unless otherwise indicated). Speakers must also submit their comments in writing for inclusion in the meetings Summary Report. *Written Comments:* For individuals or groups unable to attend the meeting, CLIAC accepts written comments until the date of the meeting (unless otherwise stated). However, the comments should be received at least one week prior to the meeting date so that the comments may be made available to the Committee for their consideration and public distribution. Written comments, one hard copy with original signature, should be provided to the contact person below. Written comments will be included in the meetings Summary Report.

Contact Person for Additional Information: Rhonda Whalen, Chief, Laboratory Practice Standards Branch, Division of Laboratory Systems, Public Health Practice Program Office, CDC, 4770 Buford Highway, NE., Mailstop F–11, Atlanta, Georgia 30341–3717; telephone (770) 488–8042; fax (770) 488–8279; or via e-mail at *RWhalen@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: August 20, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–22008 Filed 8–27–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Information Relevant to Toluene Exposure

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Notice of request for comments and information relevant to occupational exposure to toluene.

SUMMARY: NIOSH is reviewing the recommendations in its document ''Criteria for a Recommended Standard: Occupational Exposure to Toluene'' [NIOSH 1973] (*http://www.cdc.gov/niosh/73–11023.html*). A review of recent literature indicates that the NIOSH recommended exposure limit (REL) of 100 ppm as an 8-hr time-weighted average (TWA) does not sufficiently protect workers from the adverse effects of exposure to toluene. NIOSH is requesting (1) comments and information relevant to the evaluation of the health risks associated with occupational exposure to toluene, (2) reports or other data that demonstrate adverse health effects in workers exposed to toluene at or below the NIOSH REL, and (3) information pertinent to establishing a more protective REL for toluene.

Comments concerning this notice must be received within 60 days after date of publication.

ADDRESSES: Comments may be transmitted either electronically to *niocindocket@cdc.gov*, by facsimile to 513/533–8230, or by regular mail or hand delivery to NIOSH Docket Office, M/S C–34, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226. E-mail attachments should be formatted as WordPerfect 7/8/9 or Microsoft Word.

FOR FURTHER INFORMATION CONTACT: Henryka Nagy, M/S C–32, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226, 513/533–8369.

SUPPLEMENTARY INFORMATION: In the document ''Criteria for a Recommended Standard: Occupational Exposure to Toluene'' [NIOSH 1973] (*http://www.cdc.gov/niosh/73–11023.html*), NIOSH recommended that exposure to toluene be limited to 100 ppm as an 8-hr TWA. This exposure limit was expected to prevent acute and chronic effects on the central and peripheral nervous system from exposures to toluene. NIOSH has conducted a literature review of the health effects data on toluene exposure and finds evidence that adverse effects on the central and peripheral nervous systems and reproductive system, as well as irritation of the eye and respiratory tract may occur in workers exposed to concentrations at and below the current NIOSH REL of 100 ppm [Andersen *et al.* 1983; Larsen and Leira 1988; Ørbæk and Nise 1989; Foo *et al.* 1990; Ng *et al.* 1992; ATSDR 2000; NEG 2000].

NIOSH seeks to obtain materials, including published and unpublished reports and research findings, to evaluate the possible health risks of occupational exposure to toluene at concentrations below 100 ppm. Examples of requested information include, but are not to be limited to, the following:

1. Identification of industries or occupations in which exposures to toluene may occur.
2. Trends in production, use, and import of toluene over the past 10 years.
3. Description of work tasks and scenarios with a potential for exposure to toluene.
4. Current occupational exposure concentrations in various types of industries and jobs and, if available, data to document these concentrations.
5. Case reports or other health data that demonstrate adverse health effects in workers exposed to toluene, or animal data (published or peer-reviewed data are preferred).
6. Description of work practices and engineering controls used to reduce or prevent workplace exposure.
7. Educational materials for worker safety or training on the safe handling of toluene.
8. Data pertaining to the technical feasibility of establishing a more protective REL for toluene.

NIOSH will use this information to determine the need for developing new recommendations for reducing occupational exposure to toluene.

All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

References

Andersen I, Lundqvist GR, Molhave L, Pedersen OF, Proctor DF, Væth M, Wyon DP [1983]. Human response to controlled levels of toluene in six-hour exposures. Scand J Work Environ Health 9:405–418.

ATSDR [2000]. Toxicological profile for toluene (update). Atlanta, GA: U.S. Department of Health and Human Services, Public Health Service, Agency for Toxic Substances and Disease Registry.

Foo SC, Jeyaratnam J, Koh D [1990]. Chronic neurobehavioural effects of toluene. Br J Ind Med 47:480–484.

Larsen F, Leira HL [1988]. Organic brain syndrome and long-term exposure to toluene: a clinical, psychiatric study of vocationally active printing workers. J Occup Med 30(11):875–878.

NEG [2000]. Toluene. Stockholm, Sweden: The Nordic Expert Group for Criteria Documentation of Health Risks from Chemicals.

Ng TP, Swee CF, Yoong T [1992]. Risk of spontaneous abortion in workers exposed to toluene. Br J Ind Med 49:804–808.

NIOSH [1973]. Criteria for a recommended standard occupational exposure to toluene. Rockville, MD: U.S. Department of Health, Education, and Welfare, Public Health Service, Centers for Disease Control, National Institute for Occupational Safety and Health, DHEW (NIOSH) Publication No. 73–11023.

Ørbæk P, Nise G [1989]. Neurasthenic complaints and psychometric function of toluene-exposed rotogravure printers. Am J Ind Med 16:67–77.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 23, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–22102 Filed 8–26–03; 10:03 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0199]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Importer's Entry Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the collection of information by September 29, 2003.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on

the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance:

Importer's Entry Notice—(OMB Control Number 0910–0046)—Extension

Section 801 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 381) charges FDA with the following responsibilities: (1) Ensuring that foreign-origin FDA-regulated foods, drugs, cosmetics, medical devices, and radiological health products offered for import into the United States meet the same requirements of the act as do domestic products, and (2) preventing shipments from entering the country if they are not in compliance.

The information collected by FDA consists of the following: (1) Product code, an alpha-numeric series of characters that identifies each product FDA regulates; (2) FDA country of origin, the country where the FDA-registered or FDA-responsible firm is located; (3) FDA manufacturer, the party who manufactured, grew, assembled, or otherwise processed the goods, (if more than one, the last party who substantially transformed the product); (4) shipper, the party responsible for packing, consolidating, or arranging the shipment of goods to their final destinations; (5) quantity and value of the shipment; and (6) if appropriate, affirmation of compliance, a code that conveys specific FDA information, such as registration number, foreign government certification, etc. This information is collected electronically by the entry filer via the U.S. Customs Service's Automated Commercial System at he same time he/she files an entry for import with the U.S. Custom Service. FDA uses this information to make admissibility decisions about FDA-regulated products offered for import into the United States.

The annual reporting burden is derived from the basic processes and procedures used in fiscal year (FY) 1995. The total number of entries submitted to the automated system in FY 2002 was 5,496,954. The total number of entries less the disclaimer entries will represent the total FDA products entered into the automated system. A total of 53 percent of all entries entered into the automated system were entries dealing with FDA-regulated products. The number of respondents is a count of filers who submit entry data for foreign-origin FDA-regulated products. The estimated reporting burden is based on information obtained by FDA contacting some potential respondents. Disclaimer entries are not FDA commodities.

In the **Federal Register** of May 23, 2003 (68 FR 28235), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Section of the Act	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Section 801 for FY 2002 Updated	3,406	652	2,955,595	.14	413,833

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: August 22, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–21982 Filed 8–27–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0191]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Submission of Validation Data for Reprocessed Single-Use Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Submission of Validation Data for Reprocessed Single-Use Devices'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 8, 2003 (68 FR 40676), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0514. The approval expires on January 31, 2004.

A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: August 22, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–21983 Filed 8–27–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0364]

Draft Guidance for Industry on Providing Regulatory Submissions in Electronic Format—Annual Reports for New Drug Applications and Abbreviated New Drug Applications; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—

Annual Reports for NDAs and ANDAs.'' This draft guidance is one in a series of guidance documents on providing regulatory submissions to FDA in electronic format. The draft guidance discusses issues related to the electronic submission of annual reports for approved new drug applications (NDAs) and abbreviated new drug applications (ANDAs) to FDA's Center for Drug Evaluation and Research (CDER). It is expected that the submission of these reports in electronic format will improve the agency's efficiency in processing, archiving, and reviewing the reports.

DATES: Submit written or electronic comments on the draft guidance by October 27, 2003. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Randy Levin, Center for Drug Evaluation and Research (HFD–001), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5411, e-mail: *levinr@cder.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—Annual Reports for NDAs and ANDAs.'' The draft document provides guidance to industry regarding submission of annual reports in electronic format for approved NDAs and ANDAs. This draft guidance is consistent with the forthcoming guidance being developed on the submission of annual reports based on the Electronic Common Technical Document.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on providing annual reports for approved NDAs and ANDAs in electronic format. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the draft guidance. Two paper copies of mailed comments are to be submitted, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. The Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comment on the following topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques and other forms of information technology, when appropriate.

Title: Draft Guidance for Industry on Providing Regulatory Submissions in Electronic Format—Annual Reports for NDAs and ANDAs.

Description: FDA is issuing a draft guidance for industry on the electronic submission of annual reports for approved NDAs and ANDAs. The guidance is one in a series of guidance documents on providing regulatory submissions to FDA in electronic format. It is expected that the submission of these reports in electronic format will improve the agency's efficiency in processing, archiving, and reviewing the reports.

Sections 314.70(d), 314.81(b)(2), and 314.98 of FDA regulations (21 CFR 314.70(d), 314.81(b)(2), and 314.98) provide reporting requirements for submitting annual reports for approved NDAs and ANDAs. Section 314.81(b)(2) and FDA Form 2252 (Transmittal of Periodic Reports for Drugs for Human Use) specify the information required in the submission of annual reports. The submission of annual reports under these regulations, including FDA Form 2252, is approved by OMB until March 31, 2005, under OMB control number 0910–0001. The draft guidance states that this information, currently required to be submitted on paper, may be submitted in electronic format as described in the draft guidance.

The draft guidance also requests information that is not specifically required in the regulations and is not approved by OMB under control number 0910–0001. Section 314.81(b)(2)(iv) requires that chemistry, manufacturing, and controls (CMC) changes be submitted in the annual report. To facilitate the review of this information, the draft guidance requests that applicants provide in electronic format a current list of approved CMC information to better document the changes occurring in applications. This information is currently requested in paper format in the guidance for industry entitled ''Format and Content for the CMC Section of an Annual Report'' (September, 1994) (see sections I and IV of part IV. Format and also attachment 1 of the guidance). The draft guidance requests that the list of approved CMC information include all information shown in attachment 1 of the September 1994 guidance, including: (1) The type and date of each change to each component; (2) the type of submission used to report the change (original, supplemental, or annual report); and (3) the date the change was reported and approved, if applicable.

Description of Respondents: Applicants that are required to submit annual reports updating information in an approved NDA or ANDA.

Burden Estimate: Table 1 of this document provides an estimate of the annual reporting burden for the

submission of the current list of approved CMC information. Based on the number of annual reports received for approved NDAs and ANDAs in calendar year 2002, FDA estimates that approximately 2,589 annual reports will be submitted by approximately 295 applicants for approved NDAs, and approximately 4,991 annual reports will be submitted by approximately 240 applicants for approved ANDAs. FDA estimates that it will take an applicant approximately 1 hour to prepare and attach the list of approved CMC information as requested in the draft guidance.

FDA invites comments on this analysis of information collection burdens.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

	No. of Respondents	Annual of Responses per Respondent	Total Responses	Hours per Response	Total Hours
NDAs	295	9	2,589	1	2,589
ANDAs	240	21	4,991	1	4,991
Total Hours					7,580

To ensure that comments on the information collection are received, OMB recommends that written comments be electronically mailed to *fyokata@omb.eop.gov* or faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Desk Officer for FDA, FAX: 202–395–6974.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: August 20, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–21985 Filed 8–27–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0165]

Draft Guidance for Industry on the Current Good Manufacturing Practices for Medical Gases; Availability; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending the comment period on the draft guidance for industry entitled ''Current Good Manufacturing Practice for Medical Gases.'' The agency issued this draft guidance in the **Federal Register** of May 6, 2003 (68 FR 24005). The initial comment period closes on September 3, 2003. To provide interested persons additional time to review the draft guidance and submit comments, the agency has decided to extend the comment period.

DATES: Written comments on the draft guidance may be submitted by November 3, 2003. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Duane S. Sylvia, Center for Drug Evaluation and Research (HFD–320), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–9040, e-mail: *Sylviad@cder.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is extending the comment period on the draft guidance for industry entitled ''Current Good Manufacturing Practice for Medical Gases.'' This draft guidance is intended to provide recommendations on how to comply with current good manufacturing practice (CGMP) regulations for manufacturing, filling, transfilling, cascading, and transferring compressed and cryogenic medical gases. The guidance should help manufacturers and distributors comply with the CGMP requirements to ensure the identity, strength, quality, and purity of medical gases.

The agency issued this draft guidance on May 6, 2003. The initial comment period closes on September 3, 2003, but at the request of the medical gas industry, the agency has decided to extend the comment period for an additional 60 days, until November 3, 2003.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the draft guidance . Two copies of any mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Copies of this draft guidance for industry are available on the Internet at *http://www.fda.gov/cder/guidance/index.htm*, *http://www.fda.gov/ohrms/dockets/default.htm*, and *http://www.fda.gov/cder/dmpq/gases.htm*.

Dated: August 20, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–21984 Filed 8–27–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given that the 37th meeting of the Substance Abuse and Mental Health Service Administration's (SAMHSA)

Center for Substance Abuse Treatment (CSAT) National Advisory Council will be held in September 2003.

A portion of the meeting is open and includes discussion of the Center's policy issues and current administrative, legislative, and program developments. The Council's meeting will include reports on Proposed Standard Funding Mechanisms; SAMHSA's Competitive Sourcing Activities; Collaboration with other Health and Human Services (HHS) Agencies; Overview of SAMHSA's Center for Substance Abuse Prevention's Programs and Initiatives; National Institute on Drug Abuse's Clinical Trials Network; Methadone Deaths; How Sovereignty Impacts Funding for Native Americans; Partners for Recovery Initiative; and Nicotine/Tobacco Substance Abuse and Mental Health Issues. In addition, the CSAT Director will provide an update on CSAT's program and activities.

The meeting will also include the review, discussion, and evaluation of individual grant applications. Therefore a portion of the meeting will be closed to the public as determined by the SAMHSA Administrator, in accordance with Title 5 U.S.C. 552b (c) and (6) and 5 U.S.C. App. 2, Sec. 10(d).

SAMHSA/CSAT welcomes the attendance of the public at its advisory committee, and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please inform the contact person at least 7 days in advance of the meeting. Substantive program information, a summary of the meeting and a roster of Council members may also be obtained from the contact person.

Committee Name: Center for Substance Abuse Treatment National Advisory Council.

Meeting Dates: September 16—8:30 a.m.–4:30 p.m.; September 17—8:30 a.m.–12:30 p.m.

Place: Sheraton Four Points Hotel, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Type: Closed: September 16, 2003—8:30 a.m.–10 a.m.; Open: September 16, 2003—10 a.m.–4:30 p.m.; Closed: September 17, 2003—8:30 a.m.–9:30 a.m.; Open: September 17, 2003—9:30 a.m.–12:30 p.m.

FOR FURTHER INFORMATION CONTACT: Cynthia Graham, NAC Executive Secretary, SAMHSA/CSAT NAC, 5600 Fishers Lane, RW II, Ste 619, Rockville, MD 20857, (301) 443–8923, Fax: (301) 480–6077.

Dated: August 21, 2003.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–21979 Filed 8–27–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary for Management, Homeland Security.

ACTION: Submission for OMB review; comment request.

DATE: August 22, 2003.

SUMMARY: The Department of Homeland Security (DHS) has submitted the following (see below) 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 Homeland Security, Theresa M. O'Malley ((202) 358–3571), or by e-mail to: *Terry.OMalley@dhs.gov.*

Comments: Comments and questions concerning this ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for Homeland Security, Office of Management and Budget, Room 10235, Washington, DC 20503 (Fax (202) 395–6974).

Comments must be received by September 29, 2003. The Office of Management and Budget 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 clarify 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.

Agency: Department of Homeland Security, Under Secretary of Management, Office of the Chief Information Officer.

Title: Supplemental Investigative Data.

OMB Number: 1620–0001.

Agency Form Number: SSF 86A.

Frequency: On occasion—reporting.

Affected Public: Individuals or households; Federal Government; State, Local or Tribal Government.

Number of Respondents: 10,000.

Estimated Time Per Respondent: 3 hours.

Total Burden Hours: 30,000.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $250,000 ($25 per application × 10,000).

Description: Respondents are all Secret Service applicants. Applicants approved for hire require a Top Secret Clearance, and possibly Special Compartmented Information (SCI) Access. Responses to questions on the SSF 886A form provide information necessary for the adjudication for eligibility of the clearance, as well as ensuring that the applicant meets all internal agency requirements.

Steven I. Cooper,

Chief Information Officer.

[FR Doc. 03–22056 Filed 8–25–03; 2:39 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker License

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

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker license and any and all associated local and national permits are canceled without prejudice:

Name	License #	Issuing port
Ronald Milton Clarke	03549	Los Angeles.
Edward K. Devlin	04174	Los Angeles.
Jesse Peralez	04783	Los Angeles.
Elio Vivante	07102	Los Angeles.
Robert K. Copeland	07382	Los Angeles.
Emerald Customs Brokers, Inc.	13115	Los Angeles.
Lisa Kearney	15340	Champlain.
James A. Daily	04341	Champlain.
Midas Express, Inc.	12860	San Francisco.

Dated: August 20, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–22063 Filed 8–27–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker License

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

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker license are canceled without prejudice.

Name	License #	Issuing Port
Michael Dugan	04718	Champlain.
Douglas McKenny	09061	Champlain.

These brokers hold multiple Customs broker licenses. They continue to hold other valid Customs broker licenses.

Dated: August 20, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–22065 Filed 8–27–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Revocation of Customs Broker License

AGENCY: Customs Service, DHS.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930 as amended (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.53) the following Customs broker license is revoked with prejudice.

Name	License	Port
Byung Wu Lee	10535	Los Angeles, California.

Dated: August 20, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–22066 Filed 8–27–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker Permit

AGENCY: Customs Service, DHS.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker local permits are canceled without prejudice.

Name	Permit #	Issuing port
Masterpiece International, Ltd.	21–02–002	Port Arthur.
R.W. Smith and Co., Inc.	95–2101–1	Port Arthur.
CK Logistics, Inc.	53–02–KT5	Houston.
Holland Custom Brokers, Inc.	01–17–007	Atlanta.
International Cargo Exchange Logistics Inc.	17–02	Atlanta.
USF Worldwide, Inc.	85011	Houston.
USF Worldwide, Inc.	99038	Los Angeles.
Clasquin Laperriere CHB, Inc.	00–17–001	Atlanta.
DHL Airways, Inc.	9174	San Francisco.

Name	Permit #	Issuing port
DHL Airways, Inc.	30–87–F11	Seattle.
Rajendra Lal	28–02–NZ2	San Francisco.
Hankyu International Transport (USA), Inc.	5200610	Miami.
The following local permits were incorrectly cancelled for the Port of Houston:		
Rulewave, Inc.	96–2101–1	Port Arthur.
Jeanette Larbardini CHB	98–007	Port Arthur.
W.R. Zanes & Co., of LA, Inc.	96–2101–2	Port Arthur.
XL Brokers International, Inc.	97–003	Port Arthur.

Dated: August 20, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–22068 Filed 8–27–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Retraction of Revocation Notice

AGENCY: Customs Service, DHS.

ACTION: General notice.

SUMMARY: The following Customs broker license was erroneously included in a list of revoked Customs broker licenses.

Name	License	Port name
Linda K. Pettingill	17122	San Diego.

Customs broker license No. 17122 remains valid.

Dated: August 20, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–22067 Filed 8–27–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Cancellation of Customs Broker License Due to Death of the License Holder

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

ACTION: General notice.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 111.51(a), the following individual Customs broker license and any and all associated permits have been cancelled due to the death of the broker:

Name	License #	Port name
Jose A. Roman	04860	San Juan.
David Michael Cline	17369	Los Angeles.
Roger Mann	14963	Los Angeles.
Oscar Zaldivar	15660	Los Angeles.
Harvey Yaffe	02484	New Orleans.

Dated: August 20, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–22064 Filed 8–27–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Recovery Plan for *Fritillaria gentneri* (Gentner's Fritillary)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (''we''), announce the availability of the final Recovery Plan for *Fritillaria gentneri* (Gentner's fritillary). This plan includes specific criteria and measures to be taken in order to effectively recover the species to the point that delisting is warranted.

ADDRESSES: Copies of this final recovery plan are available by written request to the Field Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE. 98th Avenue, Suite 100, Portland, Oregon 97266–1398. An electronic copy of this recovery plan is also available at: *http://endangered.fws.gov/recovery/index.html#plans.*

FOR FURTHER INFORMATION CONTACT: Andy Robinson, Fish and Wildlife Biologist, at the Portland address above (telephone: 503–231–6179).

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants is a primary goal of our endangered species program and the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*). Recovery means improvement of the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the measures needed for recovery.

The Act requires the development of recovery plans for listed species unless

such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice, and an opportunity for public review and comment, be provided during recovery plan development. The draft recovery plan for *Fritillaria gentneri* was available for public comment from November 22, 2002 through January 21, 2003 (67 FR 70452). Information presented during the public comment period has been considered in the preparation of this final recovery plan, and is summarized in the appendix to the recovery plan. We will forward substantive comments regarding recovery plan implementation to the appropriate Federal or other entities so they can take these comments into account in the course of implementing recovery actions.

Fritillaria gentneri, also known as Gentner's fritillary and/or Gentner's mission-bells, is a rare, red-flowered member of the lily family (Liliaceae). This species is found primarily in very small, scattered occurrences in Jackson and Josephine Counties in southwestern Oregon; one small additional population was recently discovered in northern California, near the Oregon border. *Fritillaria gentneri* is threatened by a variety of factors including habitat loss associated with rapidly expanding residential and agricultural development, alteration of habitat by invasive weeds and successional encroachment by trees and brush, habitat disturbance from timber harvest and recreational activities, and vulnerability associated with extremely small population sizes. Other potential threats to *Fritillaria gentneri* include bulb collecting for gardens, and herbivory by deer and livestock.

Recovery of *Fritillaria gentneri* will be based on the conservation of the species through protected populations (''*Fritillaria* management areas'') distributed in natural densities across the historical range of the species in four designated recovery units. Recovery units are geographically bounded areas containing extant *Fritillaria gentneri* populations that are the focus of recovery actions. Recovery units include lands both essential and not essential to the long-term conservation of *Fritillaria gentneri*.

The overall objective of this recovery plan is to reduce the threats to *Fritillaria gentneri* to the point where it can be reclassified (downlisted) to threatened, with the ultimate goal of being removed from the Act's protection entirely (delisted). The recovery measures identified include: (1) Establishing, managing, and maintaining a minimum number of *Fritillaria* management areas within the four designated recovery units, to be achieved through protection of existing populations, population augmentation, and reintroduction at historically occupied sites; (2) providing information to private landowners to assist with the identification of *Fritillaria gentneri* and management of its habitat; (3) conducting surveys and research essential to the conservation of the species; and (4) development of off-site germplasm banks to maintain reproductive materials.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 21, 2003.

David J. Wesley,

Acting Regional Director, Region 1, Fish and Wildlife Service.

[FR Doc. 03–22000 Filed 8–27–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Meetings of the Klamath River Basin Fisheries Task Force

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath River Basin Fisheries Task Force, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public. The purpose of the meeting is to continue providing recommendations from the affected interests to the Department of the Interior on implementation of their program to restore anadromous fisheries, including salmon and steelhead, of the Klamath River in California and Oregon.

DATES: The first meeting will be from 9 a.m. to 5 p.m. on February 18, 2004, and from 8 a.m. to 1 p.m. on February 19, 2004. The second meeting will be from 9 a.m. to 5 p.m. on June 23, 2004, and from 8 a.m. to 1 p.m. on June 24, 2004. The third meeting will be from 9 a.m. to 5 p.m. on October 13, 2004, and from 8 a.m. to 1 p.m. on October 14, 2004.

ADDRESSES: The first meeting will be held at the Best Western Beachfront Inn, 16008 Boat Basin Road, Brookings, Oregon. The second meeting will be held at the Olympic Inn, 2627 South 6th Street, Klamath Falls, Oregon. The third meeting will be held at the Convention Center, Best Western Miner's Inn, 112 E. Miner Street, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Phil Detrich, Field Supervisor, U.S. Fish and Wildlife Service, 1829 South Oregon Street, Yreka, California 96097, telephone (530) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Task Force, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Dated: August 22, 2003.

John Engbring,

Acting Manager, California/Nevada Operations, Fish and Wildlife Service.

[FR Doc. 03–22062 Filed 8–27–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–360–1430–EU; CACA–42659]

Notice of Realty Action, Noncompetitive Sale of Public Land in Siskiyou County, CA

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice to Withdraw Lands from Exchange Proposal, Opening of Public Land Notice of Segregation for Exchange, Notice of Segregation for Sale and Sale of Public Land.

SUMMARY: Notice is hereby given that the Bureau of Land Management has withdrawn certain lands in Siskiyou County from proposed land exchange CACA–41373. This notice terminates the temporary segregation of those lands for exchange effective August 28, 2003. Notice is also hereby given that those same certain lands have been found suitable for direct sale at not less than the estimated fair market value of $7,250.00.

DATES: Submit comments on or before October 14, 2003.

FOR FURTHER INFORMATION CONTACT: Susie Rodriguez, Redding Field Office, 355 Hemsted Drive, Redding, CA 96002; 530–224–2142.

SUPPLEMENTARY INFORMATION: Pursuant to the regulations contained in 43 CFR 2091.3–2(b), the following described land will be relieved of the temporary segregative effect of the exchange application CACA–41373. The following public land has been found suitable for direct sale under section 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713). Mount Diablo

Meridian, T. 43 N., R.10 W., Section 11, Lots 12&13.

The land described contains 7.36 acres.

The land will not be offered for sale until at least 60 days after the date of this notice.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by direct sale to Richard Dews, consistent with 43 CFR 2711.3–3(a)(1). It has been determined that the parcel contains no known minerals; therefore, mineral interests may be conveyed simultaneously.

The lands are not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest.

The patent, when issued, will contain certain reservations to the United States and will be subject to all existing rights. Detailed information concerning these reservations as well as specific conditions of the sale are available for review at the Redding Field Office, Bureau of Land Management, 355 Hemsted Drive, Redding, California 96002.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit written comments regarding the proposed sale to Charles M. Schultz, Field Office Manager, Redding Field Office, Bureau of Land Management, 355 Hemsted Dr., Redding, CA 96002. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: June 20, 2003.

Charles M. Schultz,

Field Manager.

[FR Doc. 03–22057 Filed 8–27–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–040–1430–EU; SDM 89350]

Notice of Realty Action, Direct Sale of Public Lands, Lawrence County, SD

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The below described lands are suitable for disposal by direct sale.

DATES: Interested parties may submit comments pertaining to this action. The lands will not be offered for sale until October 14, 2003.

ADDRESSES: Written comments concerning the proposed sale should be sent to the Bureau of Land Management, South Dakota Field Office, 310 Roundup Street, Belle Fourche, South Dakota 57717.

FOR FURTHER INFORMATION CONTACT: You may contact Chuck Berdan, at 605–892–7000. Additional information concerning the land sale, including relevant planning and environment documentation, may be obtained from the South Dakota Field Office at the above address.

SUPPLEMENTARY INFORMATION: Under section 203 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1719), the following described lands are available for direct sale. The subject land will be sold at the approved appraised fair market value of $700. The potential buyer of the land will also make application under section 209 of the Federal Land Policy and Management Act of October 21, 1976, to purchase the mineral estate along with the surface estate.

Black Hills Meridian, South Dakota

T. 4 N., R. 2 E.,
Sec. 1, lots 22, 23 and 27;
Sec. 12, lot 1.
T. 4 N., R. 3 E.,
Sec. 6, lots 7, 13–18 inclusive, 27 and 30;
Sec. 7, lot 2.
Containing 8.93 acres.

The purpose of the proposed sale is to dispose of parcels that are isolated and uneconomic to manage as a part of the public lands and are not suitable for management by another Federal department or agency. The parcels are small tracts with no public access. The proposed sale is consistent with the South Dakota Resource Management Plan (November 1985), and the public interest will be served by offering the parcels for sale.

The adjoining land ownership pattern and lack of access indicate that a direct sale is appropriate. The parcels will be offered for non-competitive sale to Golden Reward Mining Company, LP, the adjacent and surrounding landowner.

A mineral examination of the subject lands determined that any minerals associated with these parcels have been removed by prior mining operations in the area, and that they now have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. Conveyance of the available mineral interests would occur simultaneously with the sale of the land. The applicant will be required to pay a $50 non-returnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservation: A right-of-way thereon for ditches and canals constructed by the authority of the United States, pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

The State Director, who may sustain, vacate, or modify this realty action, will review objections to the sale. In the absence of any objections, this proposal will become the final determination of the Department of the Interior.

Publication of this notice in the **Federal Register** will segregate the public lands from appropriations under the public land laws, including the mining laws, pending disposition of this action or May 24, 2004, which ever occurs first. Under the application to convey the mineral estate, the mineral interests of the United States are segregated from appropriation under the public land laws, including the mining laws, for a period of 2 years from the date of filing the application.

Russell W. Pigors,

Acting South Dakota Field Manager.

[FR Doc. 03–22058 Filed 8–27–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–040–1430–EU; SDM 87107]

Notice of Realty Action, Direct Sale of Public Lands, Lawrence County, SD

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The below described lands are suitable for disposal by direct sale.

DATES: Interested parties may submit comments pertaining to this action. The lands will not be offered for sale until October 14, 2003.

ADDRESSES: Written comments concerning the proposed sale should be sent to the Bureau of Land Management, South Dakota Field Office, 310 Roundup Street, Belle Fourche, South Dakota 57717.

FOR FURTHER INFORMATION CONTACT: You may contact Chuck Berdan, at 605–892–7000. Additional information concerning the land sale, including relevant planning and environment documentation, may be obtained from the South Dakota Field Office at the above address.

SUPPLEMENTARY INFORMATION: Under section 203 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C 1719), the following described lands are available for direct sale. The subject land will be sold at the approved appraised fair market value of $300. The potential buyer of the land will also make application under section 209 of the Federal Land Policy and Management Act of October 21, 1976, to purchase the mineral estate along with the surface estate.

Black Hills Meridian, South Dakota

T. 4 N., R. 2 E.,
Sec. 1, lots 7 and 25.
T. 4 N., R. 3 E.,
Sec. 36, lots 10, 22 and 23.
Containing 4.05 acres.

The purpose of the proposed sale is to dispose of parcels that are isolated and uneconomic to manage as a part of the public lands and are not suitable for management by another Federal department or agency. The parcels are small tracts with no public access. The proposed sale is consistent with the South Dakota Resource Management Plan (November 1985), and the public interest will be served by offering the parcels for sale.

The adjoining land ownership pattern and lack of access indicate that a direct sale is appropriate. The parcels will be offered for non-competitive sale to Wharf Resources (U.S.A.), Inc., who is the adjacent and surrounding landowner.

A mineral examination of the subject lands determined that any minerals associated with these parcels have been removed by prior mining operations in the area, and that they now have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests.

Conveyance of the available mineral interests would occur simultaneously with the sale of the land. The applicant will be required to pay a $50 non-refundable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservation: a right-of-way thereon for ditches and canals constructed by the authority of the United States, under the Act of August 30, 1890 (43 U.S.C. 945).

The State Director, who may sustain, vacate, or modify this realty action, will review objections to the sale. In the absence of any objections, this proposal will become the final determination of the Department of the Interior.

Publication of this notice in the **Federal Register** will segregate the public lands from appropriations under the public land laws, including the mining laws, pending disposition of this action or May 24, 2004, which ever occurs first. Under the application to convey the mineral estate, the mineral interests of the United States are segregated from appropriation under the public land laws, including the mining laws, for a period of 2 years from the date of filing the application.

Russell W. Pigors,
Acting South Dakota Field Manager.

[FR Doc. 03–22059 Filed 8–27–03; 8:45 am]
BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–072–1220–HB]

Notice of Proposed Supplementary Rules for Developed Recreation Sites Within the area managed by the Butte Field Office, Montana

AGENCY: Bureau of Land Management, Butte Field Office, Montana, Interior.

ACTION: Proposed supplementary rules.

SUMMARY: The Bureau of Land Management (BLM), Butte Field Office, is proposing supplementary rules. These supplementary rules will apply to the public lands within developed campgrounds and day-use areas managed by the Butte Field Office. BLM has determined these supplementary rules necessary to protect natural resources in the areas, to protect public health, to enhance the safety of area visitors and neighboring residents, and to provide campsites to visitors in a more equitable manner at higher use areas.

DATES: You should submit your comments on or before September 29, 2003. In developing final supplementary rules, BLM may not consider comments postmarked or received in person or by electronic mail after this date.

ADDRESSES: You may hand-deliver comments on the proposed rule to Bureau of Land Management, Butte Field Office, 106 N. Parkmont, Butte, Montana 59701, or mail comments to Bureau of Land Management, Butte Field Office, at the same address. You may also comment via the Internet to: *MT_Butte_FO@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Brad Rixford, Outdoor Recreation Planner, 106 N. Parkmont, Butte, Montana 59701, 406–533–7600.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures.
II. Background.
III. Areas Covered by the Supplementary Rules.
IV. Discussion of the Supplementary Rules.
V. Procedural Matters.

I. Public Comment Procedures

Please submit your comments on issues related to the proposed supplementary rules, in writing, according to the **ADDRESSES** section above. Comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed supplementary rules, and should explain the reason for any recommended change. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing. BLM may not necessarily consider or include in the Administrative Record for the final rule comments that BLM receives after the close of the comment period (*see* **DATES**) or comments delivered to an address other than those listed above (*see* **ADDRESSES**).

BLM will make your comments, including your name and address, available for public review at the Butte Field Office address listed in **ADDRESSES** above during regular business hours (8 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays).

Under certain conditions, BLM can keep your personal information confidential. You must prominently state your request for confidentiality at the beginning of your comment. BLM will consider withholding your name, street address, and other identifying information on a case-by-case basis to the extent allowed by law. BLM will make available to the public all submissions from organizations and businesses and from individuals identifying themselves as representatives or officials of organizations or businesses.

II. Background

BLM is proposing these supplementary rules under the authority of 43 CFR 8365.1–6, which allows State Directors to issue such rules for the protection of persons, property, and public lands and resources. This provision allows BLM to issue rules of less than national effect without overloading or expanding the Code of Federal Regulations.

The overall program authority for the operation of these campgrounds is found in Sections 302 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1740).

The campgrounds for which fees are charged are operated under the Fee Demo Project, which allows BLM to collect fees and use the revenues for the

management of recreation sites within the state where the fees are collected.

III. Areas Covered by the Supplementary Rules

The proposed supplementary rules containing rules of conduct would apply to the developed campgrounds at Holter Dam, Holter Lake, Log Gulch, Departure Point, Devil's Elbow, Clark's Bay, Divide Bridge Campground, Upper Divide Bridge, Upper and Lower Toston Dam, Beartooth Landing, Carbella, Galena, Crow Creek, East Bank, Bryant Creek, Jerry Creek, and Dickie Bridge campgrpounds, except as otherwise noted in the specific supplementary rules. All of these campgrounds are on public lands managed by the Butte Field Office, BLM.

A second set of the supplementary rules relating to permits and campsite administration apply at Holter Dam, Holter Lake, Log Gulch, Departure Point, Devil's Elbow, Clark's Bay, Divide Bridge Campgrounds.

IV. Discussion of the Supplementary Rules

The rules of conduct in section 1 of the supplementary rules are self-explanatory and do not require any commentary here. However, the administrative rules in section 2 may need a bit of background explanation.

a. We would require that you pay for boat ramp and other day-use facilities before you launch or otherwise use them, rather than waiting for the end of the day when you may be in a hurry to return home. At campgrounds, the BLM personnel will advise you what campsites are available. Once you select a site, you must return to the entrance station to make payment and complete your registration.

b. Each campsite has a wooden post to which you must attach your payment receipt. This way, we can see that you are properly registered without searching around your vehicle or otherwise bothering you during your visit.

c. We have had problems with people claiming or holding campsites for friends arriving later by placing coolers, deck chairs, vehicles, or other equipment on the sites. This is unfair to other visitors. Our campsites are available first come, first served.

d. Because of increasing demand for recreational sites, and because some of BLM's sites have been closed for maintenance and road construction, we propose to reduce the length-of-stay rule from 14 to 7 days for some campgrounds, as listed. We may restore the longer term at a later date if it turns out that demand does not increase as we expect.

f. The same reasoning applies to claiming extra boat dock slips as to claiming extra campsites in paragraph c., discussed above.

h. We have had problems with vandalism and after-dark keg parties getting out of hand at the Clark's Bay day-use area, so we propose to close the area temporarily each day after dark to 9 a.m. from May through September and for the entire day during the off-season from October through April.

i. Although the Clark's Bay day-use area would be closed to vehicles and social gatherings during the periods identified in the preceding paragraph, individuals wishing to hike, jog, walk their dogs, or otherwise make pedestrian use of the area during the closure periods are welcome.

V. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These supplementary rules are not a significant regulatory action and are not subject to review by Office of Management and Budget under Executive Order 12866. These supplementary rules will not have an effect of $100 million or more on the economy. They are not intended to affect commercial activity, but contain rules of conduct for public use of certain recreational areas. They will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These proposed supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The supplementary rules do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues.

Clarity of the Supplementary Rules

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed supplementary rules easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed supplementary rules clearly stated?

(2) Do the proposed supplementary rules contain technical language or jargon that interferes with their clarity?

(3) Does the format of the proposed supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

(4) Would the supplementary rules be easier to understand if they were divided into more (but shorter) sections?

(5) Is the description of the proposed supplementary rules in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed supplementary rules? How could this description be more helpful in making the supplementary rules easier to understand?

Please send any comments you have on the clarity of the supplementary rules to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

BLM has prepared an environmental assessment (EA) or management agreement and has found that the proposed supplementary rules would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the Environmental Protection Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The supplementary rules merely contain rules of conduct for certain recreational lands in Montana. These rules are designed to protect the environment and the public health and safety. A detailed statement under NEPA is not required. BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section. The BLM invites the public to review these documents and suggests that anyone wishing to submit comments in response to the EA and FONSI do so in accordance with the ''Public comment procedure'' section above.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The supplementary rules do not pertain specifically to commercial or governmental entities of any size, but to public recreational use of specific public lands. Therefore, BLM has determined under the RFA that these proposed supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These supplementary rules do not constitute a ''major rule'' as defined at 5 U.S.C. 804(2). Again, the supplementary rules merely contain rules of conduct for recreational use of certain public lands. The supplementary rules have no effect on business, commercial or industrial use of the public lands.

Unfunded Mandates Reform Act

These supplementary rules do not impose an unfunded mandate on State, local or tribal governments or the private sector of more than $100 million per year; nor do these proposed supplementary rules have a significant or unique effect on State, local, or tribal governments or the private sector. The supplementary rules do not require anything of State, local, or tribal governments. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*)

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights. The supplementary rules do not address property rights in any form, and do not cause the impairment of anybody's property rights. Therefore, the Department of the Interior has determined that the supplementary rules would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The supplementary rules 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. The supplementary rules affect land in only one state, Montana, and do not address jurisdictional issues involving the State government. Therefore, in accordance with Executive Order 13132, BLM has determined that these proposed supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that these proposed supplementary rules would not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

These proposed supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.*

Dated: May 7, 2003.

A. Jerry Meredith,

State Director, Acting, Bureau of Land Management, Montana State Office.

[FR Doc. 03–22060 Filed 8–27–03; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1420–BJ]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of surveys.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, 30 days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Bureau of Land Management to meet certain administrative needs of the Bureau of Land Management. The lands we surveyed are:

The plat representing the dependent resurvey of a portion of the Boise Meridian (west boundary), subdivisional lines, and the adjusted 1896 record meanders of ''Gamble'' Lake in section 7, and the subdivision of section 7, and the survey of the 2002 meanders of an unnamed island within Gamlin Lake in section 7, and the metes-and-bounds survey of the public land boundary in the E½, the right-of-way lines of Camp Bay Road in the SW¼, and the north line of lot 12, all in section 7, in T. 56 N., R. 1 E., Boise Meridian, Idaho, was accepted August 15, 2003.

Dated: August 22, 2003.

Harry K. Smith,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 03–22003 Filed 8–27–03; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1910–BJ–5040]

ES–051987, Group No. 157, Wisconsin; Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plat of survey; Wisconsin.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey, in two (2) sheets, of the lands described below in the BLM Eastern States Office, Springfield, Virginia, 30 calender days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Indian Affairs and the Lac Courte Oreilles Tribal Governing Board because of extensive obliteration of original corner evidence within the reservation boundaries.

The lands we surveyed are:

Fourth Principal Meridian, Wisconsin

T. 39 N., R. 7 W.

The plat of survey represent the dependent resurvey of the north boundary, a portion of the south, east, and west boundaries, a portion of the subdivisional lines, the subdivision of certain sections, a survey of a portion of the present shoreline of Blueberry Lake, and the corrective resurvey of a portion of the subdivisional lines, the reestablishment of a portion of the original meander line, the apportionment of the shoreline frontage to original lots 5 and 6, in section 9, and the subdivision of section 9, Township 39 North, Range 7 West, Fourth Principal Meridian, in the state of Wisconsin, and was accepted August 21, 2003.

We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file the plat until the day after

we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: August 22, 2003.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 03–22005 Filed 8–27–03; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

National Park Service

Joshua Tree National Park, CA: Boundary Revision To Include Certain Adjacent Real Property

Pursuant to the authority contained in the Act of September 3, 1964 (Pub. L. 88–578, 78 Stat. 27), ''The Land and Water Conservation Fund Act of 1965,'' as amended (16 U.S.C. 460*l*–9(c)(1)(ii)), notice is hereby given that the boundary of Joshua Tree National Park is modified to include approximately 70 acres of real property adjacent to the park's prior boundary. This adjustment is accomplished to include two pieces of private property which the owners have desired to donate to the United States for the use of Joshua Tree National Park, as well as contiguous acreage which the Bureau of Land Management has identified as excess to its needs. The properties are described below:

Tract 1

Parcel 1: The Southwest ¼ of the Southeast ¼ of the Southwest ¼ of Section 34, Township 1 North Range 8 East, San Bernardino Meridian, in the County of San Bernardino, State of California, according to the Official Plat thereof.

Parcel 2: The South ½ of the Northeast ¼ of the Southeast ¼ of the Southwest ¼ of Section 34, Township 1 North Range 8 East, San Bernardino Meridian, in the County of San Bernardino, State of California, according to the Official Plat thereof.

Parcel 3: The West ½ of the North ½ of the Southeast ¼ of the Southwest ¼ of Section 34, Township 1 North, Range 8 East, San Bernardino Meridian, in the County of San Bernardino, State of California, according to the Official Plat thereof.

Parcel 4: The Southeast ¼ of the Southeast ¼ of the Southwest ¼ of Section 34, Township 1 North, Range 8 East, San Bernardino Meridian, in the County of San Bernardino, State of California, according to the Official Plat thereof.

Tract 2

Lots 26, 27, 28, 33 and 34 in Section 34, Township 1 North, Range 8 East, San Bernardino Meridian, according to the Official Plat thereof.

Tract 3

Parcel 1: The North Half of the Southeast Quarter of the Southeast Quarter of the Southeast Quarter of Section 14, Township 1 South, Range 6 East, San Bernardino Meridian, in the County of San Bernardino, State of California, according to the Official Plat thereof.

Parcel 2: The South Half of the Southeast Quarter of the Southeast Quarter of the Southeast Quarter of Section 14, Township 1 South, Range 6 East, San Bernardino Meridian, in the County of San Bernardino, State of California, according to the Official Plat thereof.

These revisions in the park boundary are depicted on Drawing No. 156/80,049, Sheet 1 of 1, dated April 1, 2003. This map is on file and available for inspection, and further information regarding this boundary change is available, at the following addresses:

Director, National Park Service, Department of the Interior, Washington, DC 20240;

Regional Director, Pacific West Region, National Park Service, 1111 Jackson St., Ste. 700, Oakland, CA 94607;

Superintendent, Joshua Tree National Park, 74485 National Park Drive, Twentynine Palms, CA 92277.

Dated: April 24, 2003.

Jonathan B. Jarvis,

Regional Director, Pacific West Region.

[FR Doc. 03–21968 Filed 8–27–03; 8:45 am]

BILLING CODE 4310–EK–M

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Assessment for the Arlington County Virginia Potomac Interceptor Sewer System Improvements Project

AGENCY: National Park Service, Interior.

ACTION: Availability of the Environmental Assessment for the Potomac Interceptor Sewer System Improvements Project, Arlington County, Virginia.

SUMMARY: Pursuant to Council on Environmental Quality regulations and National Park Service (NPS) policy, the NPS announces the availability of an Environmental Assessment (EA) for the construction of a replacement sewer for the existing Potomac Interceptor sewer. The Potomac Interceptor sewer system is a major regional sanitary sewer which serves the east-central portions of Arlington County, including the Ballston-Courthouse-Rosslyn Metro Corridor area. The existing sewer system was constructed in the mid-1930s and is nearing the end of its useful life. The existing sewer system is also undersized and does not have the capacity to convey the peak flows produced by severe past and projected storm events. Additionally, the existing sewer system will experience surcharging on a daily basis under future build-out land use conditions. The EA examines several alternatives for construction of a replacement sewer system for the portion of the Potomac Interceptor sanitary sewer extending from the River Place Co-Op south to Columbia Pike. The subject project is designed to maintain continuous sewer service to existing local users, increase the carrying capacity of the sewer in order to eliminate surcharging and overflows which have occurred in this portion of the system, provide capacity for anticipated build-out conditions, and allow for future maintenance. The NPS is soliciting comments on this EA. These comments will be considered in evaluating it and making decisions pursuant to the National Environmental Policy Act.

DATES: The EA will remain available for public comment 30 days from the date of publication in the **Federal Register**. Written comments should be received no later than this date.

ADDRESSES: Comments on this EA should be submitted in writing to: Ms. Audrey F. Calhoun, Superintendent, George Washington Memorial Parkway, Turkey Run Park, McLean, Virginia 22101. The EA will be available for public inspection Monday through Friday, 8 a.m. through 4 p.m. at the GWMP Headquarters, Turkey Run Park, McLean, Virginia; and at the following libraries: Columbia Pike Library, Arlington, Virginia; and Arlington County Central Library, Arlington, Virginia.

SUPPLEMENTARY INFORMATION: Arlington County proposes to construct a replacement sanitary sewer for the Potomac Interceptor sewer extending from the River Place Co-Op to Columbia Pike. The goals and objectives of the proposed action include the following:

1. Provide additional sewer capacity to eliminate sewer overflows, backups, and surcharging (overflows have occurred at River Place),

2. Minimize environmental and community impacts,

3. Comply with pending Environmental Protection Agency Sanitary Sewer Overflow Regulations,

4. Address aging elements of the sewer system (the subject sewer is nearing the end of its useful life) and maintain system operating conditions at an adequate level of functionality,

5. Maintain continuous sewer service to existing local users,

6. Provide service availability to potential future users (Arlington Ridge Park, Arlington National Cemetery, etc.,

7. Consolidate utilities in Eisenhower Drive in accordance with the 1998 Master Plan for Arlington National Cemetery,

8. Maximize acreage for additional grave sites at Arlington National Cemetery,

9. Implement a cost-effective project for the ratepayers, and

10. Minimize capital and operating costs and operation and maintenance requirements.

All interested individuals, agencies, and organizations are urged to provide comments on the EA. The NPS, in making a final decision regarding this matter, will consider all comments received by the closing date.

FOR FURTHER INFORMATION CONTACT: Ms. Heather Germaine (703) 289–2540.

Audrey F. Calhoun,

Superintendent, George Washington Memorial Parkway.

[FR Doc. 03–21973 Filed 8–27–03; 8:45 am]

BILLING CODE 4310–DL–P

DEPARTMENT OF THE INTERIOR

National Park Service

Record of Decision, General Management Plan, Final Environmental Impact Statement, Tonto National Monument, Arizona

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of a Record of Decision on the Final Environmental Impact Statement for the General Management Plan, Tonto National Monument.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91–190, 83 Stat. 852, 853, codified as amended at 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of the Record of Decision for the General Management Plan, Tonto National Monument, Arizona. On July 28, 2003, the Acting Director, Intermountain Region approved the Record of Decision for the project. As soon as practicable, the National Park Service will begin to implement the Preferred Alternative contained in the FEIS issued on March 14, 2003. The following course of action will occur under the preferred alternative:

The selected alternative integrates a combination of actions that will preserve cultural and natural resources and provide opportunities for high quality visitor experiences based on resource values. This alternative provides the balance and flexibility necessary to accomplish both of these objectives in a realistic manner. A new administrative facility constructed inside the monument will improve staff needs. The existing visitor center will be remodeled to increase visitor orientation and education opportunities. A 10-to 50-vehicle transportation staging area will be built and an alternative transportation system to access park resources will be developed and implemented to transport visitors from the new staging area near the entrance station to the visitor center during the busiest times of the year. A seasonal employee/volunteer residence will be constructed increasing the park's ability to obtain needed help for resource stewardship and visitor services. The management of cultural and natural resources will improve with more staff and the information needed to conduct preservation programs.

This course of action plus three other alternatives were analyzed in the Draft and Final Environmental Impact Statements. The full range of foreseeable environmental consequences was assessed, and appropriate mitigating measures were identified.

The Record of Decision includes a statement of the decision made, synopses of other alternatives considered, the basis for the decision, a description of the environmentally preferable alternative, a finding on impairment of park resources and values, a listing of measures to minimize environmental harm, and an overview of public involvement in the decision-making process.

FOR FURTHER INFORMATION CONTACT: Shirley Hoh, HC02 Box 4602, Roosevelt, Arizona 85545, (928) 467–2241, *TONTSuperintendent@nps.gov.*

SUPPLEMENTARY INFORMATION: Copies of the Record of Decision may be obtained from the contact listed above or online at *www.nps.gov/tont/index.html.*

Dated: July 26, 2003.

Michael D. Snyder,

Acting Director, Intermountain Region, National Park Service.

[FR Doc. 03–21969 Filed 8–27–03; 8:45 am]

BILLING CODE 4312–DN–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan/ Environmental Impact Statement, Harpers Ferry National Historical Park, West Virginia, Virginia, and Maryland

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Intent to prepare an environmental impact statement for the general management plan, Harpers Ferry National Historical Park.

SUMMARY: Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an environmental impact statement for the general management plan for Harpers Ferry National Historical Park. The Regional Director, National Capital Region, will approve the environmental impact statement.

Harpers Ferry National Historical Park is in Jefferson County, West Virginia; Loudoun County, Virginia; and Washington County, Maryland. The park was authorized by Congress in June 1944. Congress charged the National Park Service with managing the site as ''a public national memorial commemorating historical events at or near Harpers Ferry.'' The enabling legislation also states that the Director of the National Park Service ''shall maintain and preserve it for the benefit and enjoyment of the people of the United States, subject to the provisions of the [NPS Organic Act].''

The general management plan will prescribe the resource conditions and visitor experiences that are to be achieved and maintained in the park over the next 15 to 20 years. The clarification of what must be achieved according to law and policy will be based on review of the park's purpose, significance, special mandates, and the body of law and policies directing park management. Management decisions to be made where law, policy, or regulations do not provide clear guidance or limits will be based on the purposes of the park; the range of public expectations and concerns; resource analysis; an evaluation of the natural, cultural, and social impacts of alternative courses of action; and consideration of long-term economic costs. Based on determinations of desired conditions, the general management plan will outline the kinds of resource management activities, visitor activities, land acquisition and development that would be appropriate in the park in the future. Alternatives will be developed through this planning

process and will include, at a minimum, no-action and the preferred alternative.

Major issues include protection and interpretation of natural and cultural resources, adaptive re-use of historic structures, quality of visitor experience, land acquisition, and potential partnerships with other agencies, organizations, and local interests.

DATES: The National Park Service will conduct public scoping for 60 days from the date of publication of this notice in the **Federal Register**. Open meetings regarding the general management plan will be held during the public scoping period. Specific dates, times, and locations will be made available in the local media, on the Harpers Ferry National Historical Park Web site (*http://www.nps.gov/hafe*), or by contacting the Superintendent.

ADDRESSES: Throughout the scoping and planning process, information will be available for public review and comment in the office of the superintendent (Donald Campbell, Harpers Ferry National Historical Park, PO Box 65, Harpers Ferry, WV 25425).

FOR FURTHER INFORMATION CONTACT: Superintendent Donald Campbell, Harpers Ferry National Historical Park, PO Box 65, Harpers Ferry, WV 25425; Tel: (304) 535–6224; FAX: (304) 535–4022.

SUPPLEMENTARY INFORMATION: If you wish to comment on the general management planning process for Harpers Ferry National Historical Park, or on any issues associated with the plan, you may submit your comments by any one of several methods. You may mail comments to Superintendent Donald Campbell, Harpers Ferry National Historical Park, PO Box 65, Harpers Ferry, WV 25425. You may also e-mail comments to the Superintendent's Office at *Judy_Coleman@nps.gov.* Finally, you may hand-deliver comments to the Harpers Ferry Visitor Center (off U.S. Highway 340). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations, businesses, or individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: June 13, 2003.

Terry Carlstrom,

Regional Director, National Capital Region.

[FR Doc. 03–21972 Filed 8–27–03; 8:45 am]

BILLING CODE 4310–71–P

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Statements: Notice of Intent

AGENCY: National Park Service, Interior.

ACTION: Notice of intent to prepare a General Management Plan and Environmental Impact Statement.

SUMMARY: Pursuant to section 102 (2)(C) of the National Environmental Policy Act of 1969, the National Park Service announces its intent to prepare a General Management Plan and Environmental Impact Statement (GMP/EIS) for the Hopewell Furnace National Historic Site, Elverson, Pennsylvania. The park comprises 848 acres, including the finest surviving example of a cold-blast charcoal fired furnace, and related structures, including 50 listed on the National Register of Historic Places. Prepared by planners in the NPS Northeast Region, with assistance from advisors and consultants, the GMP/EIS will propose a long-term approach to managing the Hopewell Furnace National Historic Site. Consistent with the site's mission, NPS policy, and other laws and regulations, alternatives will be developed to guide the management of the site over the next 15 to 20 years. The alternatives will incorporate various zoning and management prescriptions to ensure resource preservation and public enjoyment of the site. The environmental consequences that could result from implementing the various alternatives will be evaluated in the plan. Impact topics will include cultural and natural resources, visitor experience, park operations, the socioeconomic environment, impairment, and sustainability. The public will be invited to express concerns about the management of the site early in the process through public meetings and other media; and will have an opportunity to review and comment on a draft GMP/EIS. Following public review processes outlined under NEPA, the final plan will become official, authorizing implementation of a preferred alternative. The target date for the Record of Decision is October 28, 2005.

FOR FURTHER INFORMATION CONTACT: Superintendent, Hopewell Furnace National Historic Site, (610) 582–8773.

Dated: July 10, 2003.

William A. Sanders,

Superintendent, Hopewell Furnace National Historic Site.

[FR Doc. 03–21975 Filed 8–27–03; 8:45 am]

BILLING CODE 4312–JJ–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan/ Environmental Impact Statement, Hovenweep National Monument, Colorado and Utah

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Intent to prepare an environmental impact statement for a general management plan for Hovenweep National Monument.

SUMMARY: Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an environmental impact statement for a general management plan for Hovenweep National Monument. This effort will result in a comprehensive general management plan that provides a framework for making management decisions regarding the preservation of natural and cultural resources, visitor use and interpretation, and development of appropriate park facilities. In cooperation with the Bureau of Land Management, the United States Forest Service, the Colorado and Utah State Historic Preservation Offices, and Utah State Parks, attention will also be given to resources outside the boundaries that affect the integrity of Hovenweep National Monument. Alternatives to be considered include no-action, the proposed action and other reasonable alternatives.

Major opportunities and concerns at Hovenweep National Monument include:

1. Hovenweep NM does not have a general management plan to provide a comprehensive vision for the monument and forum for public input on the management of the monument. The creation of a new national monument, the Canyon of the Ancients increases the need for interagency cooperation and consultation on issues relating to resource protection, visitor education and enjoyment of these resources.

2. Oil and gas development and pressure to explore and develop other reserves on lands adjacent to the monument poses the potential for impacts on the monument's natural and cultural resources.

3. Grazing on lands adjacent to the monument has resulted in domestic livestock encroaching on park lands, posing adverse impacts on the park's archeological resources and habitat for native species.

4. The monument does not have an adequate maintenance facility.

5. The monument relies heavily on partnerships with a number of state, tribal, private and academic agencies, organizations and institutions. The general management planning process will provide a forum for discussion and consultation that will strengthen the foundations of these partnerships.

A public forum for comment on the full range of appropriate visitor experiences will be provided throughout the course of the GMP process. Public involvement is essential for the development of creative solutions to guide future park management.

A briefing statement has been prepared that summarizes the issues identified to date. Copies of that information may be obtained from: Superintendent, Hovenweep National Monument.

DATES: The Park Service will accept comments from the public for 30 days from the date this notice is published in the **Federal Register**.

ADDRESSES: Information will be available for public review and comment in the office of the Superintendent, Greg Dudgeon, Hovenweep National Monument. The director, Intermountain Region, National Park Service will approve the environmental impact statement.

The National Park Service will conduct public scoping (public meetings and solicitation of comments from state, county and town agencies and organizations; park neighbors; state historic preservation officer; and associated American Indian tribes) for the Hovenweep General Management Plan/Environmental Impact Statement from July, 2003 to August, 2005. Public involvement will play a critical role in the preparation of the environmental impact statement that will analyze the impacts of the management alternatives in the draft general management plan.

DATES: The National Park Service will conduct further public scoping for the draft alternatives and environmental impact statement for a period of 30-days beyond publication of this Notice of Intent.

ADDRESSES: You may mail comments to: Superintendent's Office, Hovenweep National Monument, McElmo Route, Cortez, CO 81321. You may also hand-deliver comments to the Superintendent's Office, Hovenweep National Monument, Cortez, CO. (Attn: General Management Plan).

FOR FURTHER INFORMATION CONTACT: Contact Superintendent Greg Dudgeon at 435.719.2100 or e-mail: *hove_superintendent@nps.gov.*

SUPPLEMENTARY INFORMATION: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. If you wish us to withhold your address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: June 20, 2003.

Karen P. Wade,

Director, Intermountain Region, National Park Service.

[FR Doc. 03–21974 Filed 8–27–03; 8:45 am]

BILLING CODE 4312–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 9, 2003. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by September 12, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places.

DISTRICT OF COLUMBIA

District of Columbia

Immaculate Conception Church, 1315 8th St., NW., Washington, 03000946.

Seventh Street Savings Bank (Banks and Financial Institutions MPS), 1300 7th St., NW., Washington, 03000944.

United Brotherhood of Carpenters and Joiners—Local 132, 1010 10th St., NW., 1001 K St. NW., Washington, 03000945.

FLORIDA

Manatee County

Terra Ceia Village Improvement Association Hall (Clubhouses of Florida's Woman's Clubs MPS), 1505 Center Rd., Terra Ceia, 03000942.

Pinellas County

Pass-A-Grille Historic District (Boundary Increase), Pass-a-Grille Way, 1st Ave., Gulf Way, Sunset Way, 32 Ave., St. Pete Beach, 03000943.

ILLINOIS

Cook County

Bersbach, Alfred, House, 1120 Michigan Ave., Wilmette, 03000941.

NORTH CAROLINA

Pitt County

Greenville Commercial Historic District: Roughly bounded by West Third, South Evans and East and West Fifth Sts. Greenville, 03000419.

A request for removal has been made for the following resource:

SOUTH DAKOTA

Yankton County

Yankton County Courthouse, 3rd St. and Broadway, Yankton, 76001759.

[FR Doc. 03–21970 Filed 8–27–03; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 2, 2003. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed

comments should be submitted by September 12, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ARIZONA

Maricopa County

Rancho Arroyo, 6737 N. 20th St., Phoenix, 03000901

Pima County

Arizona Hotel (Downtown Tucson, Arizona MPS) 31–47 N. Sixth Ave., 135 E. Tenth St., Tucson, 03000902
El Paso and Southwestern Railroad Depot, (Downtown Tucson, Arizona MPS), 419 W. Congress St., Tucson, 03000903
First Hittinger Block (Downtown Tucson, Arizona MPS), 116 E. Congress St., Tucson, 03000904
Foz Theatre (Downtown Tucson, Arizona MPS), 17 W. Congress St., Tucson, 03000905
Hotel Congress (Downtown Tucson, Arizona MPS), 303–311 E. Congress St., Tucson, 03000906
J. C. Penney—Chicago Store (Downtown Tucson, Arizona MPS), 130 E. Congress St., Tucson, 03000907
Rebeil Block (Downtown Tucson, Arizona MPS), 72 E. Congress, Tucson, 03000910
Rialto Building (Downtown Tucson, Arizona MPS), 300–320 E. Congress St., Tucson, 03000908
Rialto Theatre (Downtown Tucson, Arizona MPS), 318 E. Congress St., Tucson, 03000909
Valley National Bank Building (Downtown Tucson, Arizona MPS), 27 S. Stone Ave., Tucson, 03000911

Santa Cruz County

Barrio de Tubac Archeological District (Tubac Settlement MPS), Address Restricted, Tubac, 03000912

Yuma County

Camp Horn Monument, Approx 7 mi. of Dateland, Dateland, 03000900

ILLINOIS

Cook County

Flat Iron Building, 1441–1449 Emerald Ave., Chicago Heights, 03000917

Du Page County

Pentecost, John L., House, 259 Cottage Hill Ave., Elmhurst, 03000916

Lake County

Stevenson, Adlai E., II, Farm, 25200 N. Saint Mary's Rd., Mettawa, 03000918

Winnebago County

Jameson, H.D., House, 900 N. Prairie St., Rockton, 03000915

IOWA

Cedar County

Cedar County Sheriff's House and Jail (Municipal, County and State Corrections Properties MPS), 118 W. 4th St., Tipton, 03000913

Jefferson County

Louden, R. Bruce, House (Louden Machinery Company, Fairfield Iowa MPS), 501 W. Adams Ave., Fairfield, 03000940

Page County

Stauer, Peter, House, 629 Main St., McGregor, 03000914

KENTUCKY

Menifee County

Red River Gorge District, Address District, Menifee, 03000919

MAINE

York County

Spiller Farm Paleoindian Site (Maine Fluted Point Paleoindian Sites MPS) Address Restricted, Wells, 03000922

MASSACHUSETTS

Franklin County

Whately Center Historic District, 155–215 Chestnut Plain Rd. and 330–348 Haydenville Rd., Whately, 03000920

Norfolk County

First Baptist Church of Medfield, 438 Main St., Medfield, 03000921

MONTANA

Cascade County

Union Bethel African Methodist Episcopal Church, 916 Fifth Ave. S, Great Falls, 03000924

Custer County

Snell, Walrond and Elizabeth, House, 402 S. Lake St., Miles City, 03000923

NEW HAMPSHIRE

Merrimack County

Waterloo Historic District, 78–183 Waterloo St., 12 and 68 Newmarket Rd., 4 Willoughby-Colby Rd., Bean Road Cemetery, Warner, 03000926

Rockingham County

Freewill Baptist Church—Peoples Baptist Church—New Hope Church, 45 Pearl St., Portsmouth, 03000925

NEW JERSEY

Somerset County

St. John's Church Complex, 154–158 W. High School, Somerville, 03000933

NORTH CAROLINA

Surry County

Cedar Point, 350 W. Main St., Elkin, 03000927

Wake County

Avera, Dr. Thomas H., House, (Wake County MPS) 6600 Robertson Pond Rd., Wendell, 03000928
Green, Herman, House (Wake County MPS), NC 1371, 0.4 N of NC 1375 (5500 Lake Wheeler Rd.), Raleigh, 03000930
Occidental Life Insurance Company Building, 1001 Wade Ave., Raleigh, 03000929
Pugh House (Wake County MPS), 10018 Chapel Hill Rd., Morrisville, 03000932
Smith, Frank and Mary, House (Wake County MPS), 2935 John Adams Rd., Willow Spring, 03000931

PENNSYVLANIA

Bradford County

Wyalusing Borough Historic District, Roughly bounded by Prospect, First, Second, Third, Noble Sts., and Taylor Ave., Wyalusing Borough, 03000934

TEXAS

Harris County

Myers-Spalti Manufacturing Plant, 2115 Runnels St., Houston, 03000936

Menard County

Menard County Courthouse, 206 E. San Saba St., Menard, 03000935

Travis County

Old West Austin Historic District, Roughly bounded by W. 13th, Lamar Blvd., W. 35th and Mo-Pac Expy., Austin, 03000937

WISCONSIN

Barron County

Wajiwan ji Mashkode Archeological District, Address Restricted, Rice Lake, 03000938

WYOMING

Teton County

Jackson Hole American Legion Post No. 43, 182 N. Cache, Jackson, 03000939

[FR Doc. 03–21971 Filed 8–27–03; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the American Museum of Natural History, New York, NY. The human remains and associated funerary objects were removed from Skamania County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not

responsible for the determinations within this notice.

A detailed assessment of the human remains was made by American Museum of Natural History professional staff in consultation with representatives of the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Chehalis Reservation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Grand Ronde Community of Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Hoh Indian Tribe of the Hoh Indian Reservation, Washington; Jamestown S'Klallam Tribe of Washington; Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington; Lummi Tribe of the Lummi Reservation, Washington; Makah Indian Tribe of the Makah Indian Reservation, Washington; Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington; Nisqually Indian Tribe of the Nisqually Reservation, Washington; Nooksack Indian Tribe of Washington; Port Gamble Indian Community of the Port Gamble Reservation, Washington; Puyallup Tribe of the Puyallup Reservation, Washington; Quileute Tribe of the Quileute Reservation, Washington; Quinault Tribe of the Quinault Reservation, Washington; Samish Indian Tribe, Washington; Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington; Skokomish Indian Tribe of the Skokomish Reservation, Washington; Squaxin Island Tribe of the Squaxin Island Reservation, Washington; Stillaguamish Tribe of Washington; Swinomish Indians of the Swinomish Reservation, Washington; Tulalip Tribes of the Tulalip Reservation, Washington; and Upper Skagit Indian Tribe of Washington.

In 1882, human remains representing a minimum of 10 individuals were removed from Chenoworth Rock, Little White Salmon, in the vicinity of the Columbia River, Skamania County, WA, by James Terry. In 1891, the American Museum of Natural History purchased the human remains from Mr. Terry. No known individuals were identified. No associated funerary objects are present.

In 1891, the American Museum of Natural History purchased additional human remains representing a minimum of two individuals from Mr. Terry. Museum records indicate the provenience of the human remains as ''WA?, Skamania County?, Columbia River?, Little White Salmon?, Chenoworth rock?'' No known individuals were identified. The 13 associated funerary objects are 9 metal bracelets, 3 metal finger rings, and 1 string of brass and glass beads. The metal and glass objects indicate a postcontact date for the burials.

Based on geographic location and the presence of cranial shaping, the individuals have been identified as Native American. The associated funerary objects suggest a postcontact age for some of the human remains, and the geographic origin for all of the human remains is consistent with the postcontact territory of Chinook- and Sahaptin-speaking groups of the Confederated Tribes and Bands of the Yakama Nation, Washington and the Confederated Tribes of the Warm Springs Reservation of Oregon.

Officials of the American Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of a minimum of 12 individuals of Native American ancestry. Officials of the American Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 13 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the American Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Confederated Tribes and Bands of the Yakama Nation, Washington and Confederated Tribes of the Warm Springs Reservation of Oregon.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Luc Litwinionek, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024-5192, telephone (212) 769-5846, before September 29, 2003. Repatriation of the human remains and associated funerary objects to the Confederated Tribes and Bands of the Yakama Nation, Washington and Confederated Tribes of the Warm Springs Reservation of Oregon may proceed after that date if no additional claimants come forward.

The American Museum of Natural History is responsible for notifying the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Chehalis Reservation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Grand Ronde Community of Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Hoh Indian Tribe of the Hoh Indian Reservation, Washington; Jamestown S'Klallam Tribe of Washington; Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington; Lummi Tribe of the Lummi Reservation, Washington; Makah Indian Tribe of the Makah Indian Reservation, Washington; Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington; Nisqually Indian Tribe of the Nisqually Reservation, Washington; Nooksack Indian Tribe of Washington; Port Gamble Indian Community of the Port Gamble Reservation, Washington; Puyallup Tribe of the Puyallup Reservation, Washington; Quileute Tribe of the Quileute Reservation, Washington; Quinault Tribe of the Quinault Reservation, Washington; Samish Indian Tribe, Washington; Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington; Skokomish Indian Tribe of the Skokomish Reservation, Washington; Squaxin Island Tribe of the Squaxin Island Reservation, Washington; Stillaguamish Tribe of Washington; the Swinomish Indians of the Swinomish Reservation, Washington; Tulalip Tribes of the Tulalip Reservation, Washington; and Upper Skagit Indian Tribe of Washington that this notice has been published.

Dated: June 20, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–21976 Filed 8–27–03; 8:45 am]

BILLING CODE 4310–70–S

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–131–25 and TA–2104–7]

U.S.-Dominican Republic Free Trade Agreement: Advice Concerning the Probable Economic Effect

AGENCY: United States International Trade Commission.

ACTION: Correction of notice of investigation.

SUMMARY: The Commission's notice published in the **Federal Register** on August 22, 2003 (68 F.R. 50808–50809) contained a typographical error that incorrectly identified the TA–2104 investigation number for the U.S.-Dominican Republic Free Trade Agreement: Advice Concerning the Probable Economic Effect study. The study was instituted August 15, 2003

under section 131 of the Trade Act of 1974 and section 2104(b)(2) of the Trade Act of 2002. The correct investigation Nos. are TA–131–25 and TA–2104–7.

By order of the Commission.

Issued: August 22, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–21978 Filed 8–26–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office on Violence Against Women; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: Semi-Annual Progress Report for the Training Grants to Stop Abuse and Sexual Assault Against Older Individuals or Individuals with Disabilities Program.

The Department of Justice (DOJ), Office on Violence Against Women has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until October 27, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Cynthia J. Schwimer, Comptroller (202) 307–0623, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Semi-annual Progress Report for Training Grants to Stop Abuse and Sexual Assault Against Older Individuals or Individuals with Disabilities Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: The affected public includes the 18 grantees from the Training Grants to Stop Abuse and Sexual Assault Against Older Individuals or Individuals with Disabilities Program. These grants provide funds for training programs to assist law enforcement officers, prosecutors, and relevant officers of Federal, State, tribal, and local courts in recognizing, addressing, investigating, and prosecuting instances of elder abuse, neglect, and exploitation and violence against individuals with disabilities, including domestic violence and sexual assault, against older or disabled individuals.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the 18 respondents (grantees from Training Grants to Stop Abuse and Sexual Assault Against Older Individuals or Individuals with Disabilities Program) approximately one hour to complete a Semi-annual Progress Report. The Semi-annual Progress Report is divided into sections that pertain to the different types of activities that grantees may engage in with grant funds. Grantees must complete only those sections that are relevant to their activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the Semi-annual Progress Report is 36 hours.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: August 22, 2003.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–21993 Filed 8–27–03; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office on Violence Against Women; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: Semi-Annual Progress Report for the Safe Havens: Supervised Visitation and Safe Exchange Grant Program.

The Department of Justice (DOJ), Office on Violence Against Women has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until October 27, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Cynthia J. Schwimer, Comptroller (202) 307–0623, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(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 agencies estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Semi-annual Progress Report for the Safe Havens: Supervised Visitation and Safe Exchange Grant Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: The affected public includes the 33 grantees from the Safe Havens: Supervised Visitation and Safe Exchange Grant Program who are States, Indian tribal governments, and units of local government. The Safe Havens Program provides an opportunity for communities to support the supervised visitation and safe exchange of children, by and between parents, in situations involving domestic violence, child abuse, sexual assault, or stalking.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the 33 respondents (grantees from the Safe Havens: Supervised Visitation and Safe Exchange Grant Program) approximately one hour to complete a semi-annual progress report. The Semi-annual Progress Report is divided into sections that pertain to the different types of activities that grantees may engage in with grant funds. Grantees must complete only those sections that are relevant to their activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the Semi-annual Progress Report is 66 hours.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, D.C. 20530.

Dated: August 22, 2003.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–21994 Filed 8–27–03; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office on Violence Against Women; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: Semi-Annual Progress Report for the Grants to State Sexual Assault and Domestic Violence Coalitions Program.

The Department of Justice (DOJ) Office on Violence Against Women has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until October 27, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Cynthia J. Schwimer, Comptroller (202) 307–0623, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Semi-annual Progress Report for Grants to State Sexual Assault and Domestic Violence Coalitions Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: The affected public includes the 88 grantees from the Grants to State Sexual Assault and Domestic Violence Coalitions Program. The Grants to State Sexual Assault and Domestic Violence Coalitions Program is intended to provide federal financial assistance to state coalitions to support the coordination of state victim services activities, and collaboration and coordination with federal, state, and local entities engaged in violence against women activities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the 88 respondents (grantees from the Grants to State Sexual Assault and Domestic Violence Coalitions Program) approximately one hour to complete a semi-annual progress report. The Semi-annual Progress Report is divided into sections that pertain to the different types of activities that grantees may engage in with grant funds. Grantees must complete only those sections that are relevant to their activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total annual hour burden to complete the Semi-annual Progress Report is 176 hours.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 22, 2003.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–22011 Filed 8–27–03; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the Compact Council for the National Crime Prevention and Privacy Compact

AGENCY: Federal Bureau of Investigation, DOJ.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce a meeting of the Compact Council created by the National Crime Prevention and Privacy Compact Act of 1998 (Compact). Thus far, the federal government and 19 states are parties to the Compact which governs the exchange of criminal history records for licensing, employment, and similar purposes. The Compact also provides a legal framework for the establishment of a cooperative federal-state system to exchange such records.

The United States Attorney General appointed 15 persons from federal and state agencies to serve on the Compact Council. The Council will prescribe system rules and procedures for the effective and proper operation of the Interstate Identification Index system.

Matters for discussion are expected to include:

(1) Noncriminal Justice Outscourcing Initiatives and the Development of a Security and Management Control Outsourcing Standard; and

(2) Searching Federal Civil Fingerprint Records on Applicants in Positions of Trust; and

(3) Critique on the Draft Compliance Sanctions Rule; and

(4) FBI National Fingerprint File Qualification Requirements and Audit Criteria.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement with the Compact Council or wishing to address this session of the Compact Council should notify Mr. Todd C. Commodore at (304) 625–2803, at least 24 hours prior to the start of the session. The notification should contain the requestor's name and corporate designation, consumer affiliation, or government designation, along with a short statement describing the topic to be addressed, and the time needed for the presentation. Requestors will ordinarily be allowed up to 15 minutes to present a topic.

DATES: The Compact Council will meet in open session from 9 a.m. until 5 p.m., on October 2–3, 2003.

ADDRESSES: The meeting will take place at the Radisson Hotel Old Town Alexandria, 901 North Fairfax Street, Alexandria, Virginia, telephone (703) 683–6000.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Mr. Todd C. Commodore, FBI Compact Officer, Compact Council Office, Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0148, telephone (304) 625–2803, facsimile (304) 625–5388.

Dated: August 15, 2003.

Monte C. Strait,

Section Chief, Programs Development Section, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 03–22036 Filed 8–27–03; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: Semi-annual Progress Report for the Grants to Reduce Violent Crimes Against Women on Campus Program.

The Department of Justice (DOJ), Office on Violence Against Women has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until October 27, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Cynthia J. Schwimer, Comptroller, (202) 307–0623, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Semi-annual Progress Report for Grants to Reduce Violent Crimes Against Women on Campus Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: OMB Number 1121–0258. The U.S. Department of Justice, Office on Violence Against Women is sponsoring the collection.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: The affected public includes the 100 grantees (institutions of higher education) from the Grants to Reduce Violent Crimes Against Women on Campus Program. Campus Program grants may be used to enhance victim services and develop programs to prevent violent crimes against women on campuses. The Campus Program also enables institutions of higher education to develop and strengthen effective security and investigation strategies to combat violent crimes against women on campuses, including domestic violence, dating violence, sexual assault, and stalking.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the 100 respondents (grantees from the Grants to Reduce Violent Crimes Against Women on Campus Program—institutions of higher education)

approximately one hour to complete a semi-annual progress report. The Semi-annual Progress Report is divided into sections that pertain to the different types of activities that grantees may engage in and the different types of grantees that receive funds. Grantees must complete only those sections that are relevant to their activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden to complete the Semi-annual Progress Report is 155.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 22, 2003.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–21922 Filed 8–27–03; 8:45 am]

BILLING CODE 4410–18–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act; Meeting; Regular Board of Directors Meeting

TIME & DATE: 10 a.m., Wednesday, September 3, 2003.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, NW., Suite 800, Washington, DC 2005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey T. Bryson, General Counsel/Secretary (202) 220–2372; *jbryson@nw.org.*

AGENDA:

I. Call to Order
II. Approval of Minutes: May 28, 2003, Annual Meeting
VIII. Audit Committee Meeting
IX. Budget Committee Meeting
X. Treasurer's Report
XI. Executive Directors Quarterly Management Report
c. Strategic Planning Update
d. Friends of NeighborWorks®
XII. Adjournment

Jeffrey T. Bryson,

General Counsel/Secretary.

[FR Doc. 03–22121 Filed 8–26–03; 11:25 am]

BILLING CODE 7570–01–M

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Customer Satisfaction Surveys and Focus Groups

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation is requesting that the Office of Management and Budget extend its approval of a collection of information under the Paperwork Reduction Act. The purpose of the information collection, which will be conducted through focus groups and surveys over a three-year period, is to help the PBGC assess the efficiency and effectiveness with which it serves its customers and to design actions to address identified problems.

DATES: Comments should be submitted on or before September 29, 2003.

ADDRESSES: Comments should be mailed to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503.

Copies of the request for extension (including the collection of information) may be obtained by writing to the PBGC's Communications and Public Affairs Department, suite 240, 1200 K Street NW., Washington, DC 20005–4026, or by visiting that office or calling (202) 326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to (202) 326–4040.)

FOR FURTHER INFORMATION CONTACT: Thomas H. Gabriel, Attorney, Office of the General Counsel, Suite 340, 1200 K Street NW., Washington, DC 20005, (202) 326–4020. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to (202) 326–4020.)

SUPPLEMENTARY INFORMATION: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The PBGC is requesting that OMB extend its approval, for a three-year period, of a generic collection of information consisting of customer satisfaction focus groups and surveys (OMB No. 1212–0053; expires September 30, 2003). The information collection will further the goals of Executive Order 12862, Setting Customer Service Standards, which states the Federal Government must seek to provide ''the highest quality of service delivered to customers by private organizations providing a comparable or analogous service.''

The PBGC uses customer satisfaction focus groups and surveys to find out about the needs and expectations of its customers and assess how well it is meeting those needs and expectations. By keeping these avenues of communication open, the PBGC can continually improve service to its customers, including plan participants and beneficiaries, plan sponsors and their affiliates, plan administrators, pension practitioners, and others involved in the establishment, operation and termination of plans covered by the PBGC's insurance program. Because the areas of concern to the PBGC and its customers vary and may quickly change, it is important that the PBGC have the ability to evaluate customer concerns quickly by developing new vehicles for gathering information under this generic approval. The focus groups and surveys will provide important information on customer attitudes about the delivery and quality of agency services and will be used as part of an ongoing process to improve PBGC programs.

Participation in the focus groups and surveys will be voluntary. The PBGC estimates that the average annual burden will total 2,500 burden hours for 9,500 respondents (an average of about one-quarter hour per respondent). The PBGC will consult with OMB regarding each specific information collection during the approval period.

On March 7, 2003, the PBGC published in the **Federal Register** a notice of intention to request extension of OMB approval of this collection. No comments were received in response to the notice.

Issued at Washington, DC this 22nd day of August 2003.

Gail Sevin,

Acting Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 03–22017 Filed 8–27–03; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Filings and

Information Services, Washington, DC 20549.

Extension:

Schedule 13E–4F, OMB Control No. 3235–0375, SEC File No. 270–340.

Form F–X, OMB Control No. 3235–0379, SEC File No. 270–336.

Form DF, OMB Control No. 3235–0482, SEC File No. 270–430.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for approval.

Schedule 13E–4F (OMB Control No. 3235–0375; SEC File No. 270–340) may be used by any foreign private issuer if: (1) The issuer is incorporated or organized under the laws of Canada; (2) the issuer is making a cash tender or exchange offer for the issuer's own securities; and (3) less than 40 percent of the class of such issuer's securities outstanding that is the subject of the tender offer is held by U.S. holders. The information collected must be filed with the Commission and is publicly available. We estimate that it takes 2 burden hours to prepare Schedule 13E–4F and that the information is filed by 3 respondents for a total of 6 burden hours.

Form F–X (OMB Control No. 3235–0379; SEC File No. 270–336) is used to appoint an agent for service of process by Canadian issuers registering securities on Form F–7, F–8, F–9 or F–10 or filing periodic reports on Form 40-F under the Exchange Act. The information collected must be filed with the Commission and is publicly available. We estimate that it takes 2 hours to prepare and is filed 129 respondents for a total of 258 burden hours.

Form DF (OMB Control No. 3235–0482; SEC File No. 270–430) allows registrants to identify a filing that was filed late because of electronic filing difficulties in order to preserve the timeliness of the filing. The information collected must be filed with the Commission and is publicly available. We estimate that it takes 12 minutes to prepare and is filed by an estimated 500 respondents for a total annual burden of 100 hours.

Written comments are invited on: (a) Whether these proposed collection of information are necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comment to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: August 22, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–22029 Filed 8–27–03; 8:45 am]

BILLING CODE 8010–01–P

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 September 1, 2003:

A Closed Meeting will be held on Tuesday, September 2, 2003 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (4), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (4), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

The subject matter of the Closed Meeting scheduled for Tuesday, September 2, 2003 will be: Institution and settlement of administrative proceedings of an enforcement nature; Institution and settlement of injunctive actions; Regulatory matter involving enforcement implications; Formal orders of investigation; and Adjudicatory matter.

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: August 26, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–22224 Filed 8–26–03; 4:02 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27716]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

August 22, 2003.

Notice is hereby given that the following filings have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 15, 2003 to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After September 15, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Xcel Energy Inc. (70–10072)

Xcel Energy Inc., a registered holding company, 800 Nicollet Mall, Minneapolis, Minnesota 55402 (''Declarant'' or ''Xcel Energy'') has filed a declaration under section 12(d) of the Act and rules 44 and 54 under the Act.

Declarant requests authority to sell its ownership interest in Black Mountain Gas Company, a Minnesota corporation and gas utility company (''Black

Mountain'') to a non-affiliated third party, Southwest Gas Corporation (''Southwest'').

Xcel Energy directly owns six utility subsidiaries that serve electric and/or natural gas customers in twelve states. These six utility subsidiaries are Black Mountain; Northern States Power Company; Northern States Power Company; Public Service Company of Colorado; Southwestern Public Service Co.; and Cheyenne Light, Fuel and Power Company. Their service territories include portions of Arizona, Colorado, Kansas, Michigan, Minnesota, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Wisconsin and Wyoming. Xcel Energy also owns or has an interest in a number of nonregulated businesses, the largest of which is NRG Energy Inc. (''NRG''), an independent power producer.[1]

Black Mountain operates in Arizona and is certified by the Arizona Corporation Commission to provide natural gas and propane service within the State of Arizona. Black Mountain currently provides service to approximately 8,500 gas customers and about 2,500 propane customers and had revenues of approximately $9.5 million in 2002.

Southwest is a natural gas service company serving over 1.4 million households, businesses and industries in Arizona, Nevada and portions of California. Southwest is certified to provide natural gas service in Arizona.

On May 24, 2002, Xcel and Southwest entered into a Stock Purchase Agreement under which Xcel Energy agreed to sell and transfer to Southwest, and Southwest agreed to purchase from Xcel Energy, all of the issued and outstanding common stock of Black Mountain (the ''Stock''). In consideration for the sale and transfer of the Stock, Southwest agreed to pay to Xcel Energy $18,700,000 in cash plus an additional amount of up to $6,500,000 necessary to redeem, retire or defease certain long-term debt of Black Mountain at or prior to closing (''Consideration''). Declarant maintains that the Consideration was determined through arms-length negotiations between representatives of Xcel Energy and Southwest and that the Consideration constitutes fair and adequate compensation for the Stock. Declarant states that in order to verify the fairness and adequacy of Consideration, Xcel Energy considered, among other factors, the discounted cash flow of Black Mountain and examined comparable transactions, including Xcel Energy's acquisition of Black Mountain. The Consideration to be received by Xcel Energy will be contributed to Xcel Energy's general funds and used for general corporate purposes.

Progress Energy, Inc., et al. (70–10130)

Progress Energy, Inc. (''Progress Energy''), a registered holding company; Progress Energy's utility subsidiaries: Carolina Power & Light Company (''CP&L''), Florida Power Corporation (''FPC''), and North Carolina Natural Gas Corporation (''NCNG''); and Progress Energy's nonutility subsidiaries: Florida Progress Corporation (''Florida Progress''), Progress Energy Service Company, LLC (''Progress Service''), PV Holdings, Inc. (''PV Holdings''), Progress Ventures, Inc. (''Progress Ventures''), Strategic Resource Solutions Corp. (''SRS''), Progress Energy Solutions, Inc. (''Progress Solutions''), Progress Real Estate Holdings, Inc. (''Progress Real Estate''), CaroFund, Inc., CaroHome, LLC, Capitan Corporation, Caronet, Inc. (''Caronet''), CaroFinancial, Inc., NCNG Cardinal Pipeline Investment Corporation, NCNG Pine Needle Investment Corporation, Cape Fear Energy Corp., Progress Capital Holdings, Inc. (''Progress Capital''), Progress Fuels Corporation (''Progress Fuels''), Progress Telecommunications Corporation (''Progress Telecommunications''), FPC Del, Inc. (''FPC Del''), and Florida Progress Funding Corporation (''Progress Funding'') have filed an application-declaration, as amended (''Application''), under sections 6(a), 7, 9(a), 10, and 12 of the Act and rules 26(c), 42, 43, 45, 46, 53, and 54 under the Act. The address for all of the Applicants is 410 South Wilmington Street, Raleigh, North Carolina 27602, except for FPC, Florida Progress, Progress Capital, FPC Del, and Progress Funding, for whom the address is One Progress Plaza, St. Petersburg, Florida 33701.

CP&L, FPC and NCNG are referred to collectively as the ''Utility Subsidiaries.'' The term ''Nonutility Subsidiaries'' includes the nonutility subsidiaries named above and their respective subsidiaries, as well as any other nonutility company later acquired or formed, directly or indirectly, by Progress Energy under rule 58 or pursuant to an order of the Commission. The Utility Subsidiaries and Nonutility Subsidiaries are referred to collectively as the ''Subsidiaries.'' Progress Energy, Florida Progress and the Subsidiaries are referred to collectively as the ''Applicants.''

Applicants request authority to engage in various financing transactions, credit support arrangements, and other related proposals, as more fully discussed below, commencing on the effective date of an order issued in this proceeding and ending September 30, 2006 (''Authorization Period'').

In a separate application (File No. 70–10115), Progress Energy is seeking authorization pursuant to section 12(d) of the Act to sell all of the issued and outstanding common stock of NCNG, and NCNG's interest in Eastern North Carolina Natural Gas Company (''Eastern NCNG''). If the sale of NCNG and Eastern NCNG is consummated before the issuance of an order in this proceeding, the Application will be amended to delete NCNG and its subsidiaries as Applicants.

I. Introduction

Progress Energy is authorized under its Amended and Restated Articles of Incorporation to issue 500,000,000 shares of common stock, without par value (''Common Stock''), of which 239,823,869 shares were issued and outstanding as of March 31, 2003. Progress Energy is also authorized under its Amended and Restated Articles of Incorporation to issue 20,000,000 shares of preferred stock, without par value (''Preferred Stock''), of which none are currently issued and outstanding.

At March 31, 2003, Progress Energy had outstanding $4.8 billion principal amount of senior unsecured notes having various maturity dates from 2004 through 2031. Progress Energy also has in place $880.2 million in committed bank lines of credit primarily used to support its commercial paper program. At March 31, 2003 Progress Energy had $91.8 million of commercial paper outstanding. Progress Energy's senior unsecured debt is currently rated BBB by Standard & Poor's Inc. (''S&P'') and Baa2 by Moody's Investor Service (''Moody's''). Progress Energy's commercial paper is rated A–2 by S&P and P–2 by Moody's.

For the twelve months ended December 31, 2002, Progress Energy had total operating revenues of $7,945,120,000 of which $6,600,689,000 (83.1%) were derived from electric utility operations and $1,344,431,000

[1] On May 14, 2003, NRG filed a voluntary petition for relief under chapter 11 of the U.S. Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the ''New York Bankruptcy Court''). The making of this voluntary filing constitutes an order for relief under the Bankruptcy Code and NRG as a result became a debtor in possession subject to the jurisdiction of the bankruptcy court and the requirements of the Bankruptcy Code. Under the requirements of the Bankruptcy Code (11 U.S.C. 363), any significant or out of the ordinary course transactions by NRG require the prior approval of the New York Bankruptcy Court.

(16.9%) from nonutility businesses, including sales of electricity by Progress Energy's exempt wholesale generator (''EWG'') subsidiaries. For the three months ended March 31, 2003, Progress Energy had total operating revenues of $2,016,004,000, of which $1,653,887,000 (82%) were derived from electric utility operations and $362,117,000 (18%) from nonutility businesses.

At March 31, 2003, Progress Energy had total consolidated assets of $23,172,892,000 including net utility plant of $12,033,791,000 (as of December 31, 2002 and March 31, 2003, NCNG's results of operations and assets and liabilities were reported as ''discontinued operations'' and, therefore, are not included in Progress Energy's year-end or March 31, 2003 year-to-date consolidated operating revenues and utility plant accounts).

II. Current Financing Authority

By order dated December 12, 2000 in File No. 70–9659 (Holding Co. Act Release No. 27297), as supplemented and modified by orders dated September 20, 2001 (Holding Co. Act Release No. 27440), March 15, 2002 (Holding Co. Act Release No. 27500), April 18, 2002 (Holding Co. Act Release No. 27522), and May 5, 2003 (Holding Co. Act Release No. 27673) (collectively, the ''December 2000 Order''), the Commission authorized Progress Energy and its Subsidiaries to engage in a program of external financing, intrasystem financing, and other related transactions from time to time through September 30, 2003.

Under the December 2000 Order, the Commission authorized, among other things:

(i) Progress Energy to issue and sell common stock, preferred securities, unsecured long-term debt, short-term debt and other securities, including to issue and/or purchase shares of its common stock in the open market for purposes of reissuing the shares under its dividend reinvestment plan and other stock-based plans maintained for the benefit of employees, officers, and non-employee directors (collectively, the ''Stock Plans'');

(ii) Progress Energy to maintain the credit arrangements entered into to finance, in part, the acquisition of Florida Progress;

(iii) Progress Energy to enter into and perform interest rate hedging transactions to manage volatility of interest rates associated with its outstanding indebtedness and with respect to anticipated debt offerings;

(iv) CP&L to issue and sell short-term debt;

(v) NCNG to issue and sell long-term debt and preferred securities;

(vi) Progress Energy to issue guarantees and provide other forms of credit support with respect to obligations of its subsidiaries;

(vii) Florida Progress to maintain guarantees of obligations outstanding at the time Florida Progress was acquired, as well as other forms of credit support provided by Progress Capital to its nonutility subsidiaries;

(viii) Nonutility subsidiaries of Progress Energy to provide guarantees and other forms of credit support for other Nonutility subsidiaries;

(ix) Progress Energy to establish and fund, and the Utility Subsidiaries and certain Nonutility Subsidiaries to participate in separate money pool systems (the ''Utility Money Pool,'' the ''Nonutility Money Pool'' and, together, the ''Money Pools'');

(x) Progress Energy and the Nonutility Subsidiaries to make loans to less than wholly-owned Nonutility Subsidiaries;

(xi) Progress Energy and Subsidiaries to acquire, directly or indirectly, the equity securities of one or more special purpose entities (''Financing Subsidiaries'') created specifically for the purpose of facilitating a financing and to guarantee the securities issued by such Financing Subsidiary;

(xii) Nonutility Subsidiaries to declare and pay dividends out of capital and unearned surplus, subject to certain limitations;

(xiii) Progress Energy and its consolidated subsidiaries to enter into an agreement allocating taxes;

(xiv) Progress Energy to invest up to $1 billion in certain nonutility assets in the United States; and

(xv) Progress Energy to spend up to $250 million on certain development activities relating to nonutility business activities.

In addition to the financing and investment activities authorized above, the Applicants are also authorized under to the December 2000 Order to engage in the following transactions for a period of time that is not limited by the authorization period under the December 2000 Order:

(xvi) Progress Energy to organize and acquire, directly or indirectly, the securities of one or more intermediate Nonutility Subsidiaries (''Intermediate Subsidiaries'') to act as holding companies for Nonutility Subsidiaries and to consolidate or otherwise reorganize its ownership interests in existing and future Nonutility Subsidiaries under Intermediate Subsidiaries, and to engage in development and administrative activities relating to the nonutility businesses;

(xvii) Wholly-owned Subsidiaries are authorized to change their capitalization;

(xviii) Nonutility Subsidiaries are authorized to engage in certain energy-related activities permitted by rule 58 outside the United States, subject to the reservation of jurisdiction of certain energy-related activities;

(xix) Nonutility Subsidiaries are authorized to render services to each other at fair market prices in certain circumstances; and

(xx) Progress Energy and NCNG are authorized to pay dividends out of capital surplus, subject to specified limitations.

Finally, pursuant to an order dated July 17, 2002 (Holding Co. Act Release No. 27551), the Commission authorized Progress Energy to increase its ''aggregate investment'' as defined under rule 53(a) in EWGs to $4 billion using the proceeds of financings and guarantees previously authorized, or authorized in the future. The Commission reserved jurisdiction over the use of the proceeds of authorized financings to invest in foreign utility companies (''FUCOs'').

Applicants state that the authority sought in the current Application will supersede and replace the current authorization of the Applicants under the December 2000 Order to engage in the financing activities and related transaction described above in subsections (i) through and including (xv). The authorizations for the transactions described in paragraphs (xvi) through and including (xix) will remain unchanged. Progress Energy and NCNG are requesting a modification of their authority to pay dividends out of capital and unearned surplus (as set forth in paragraph (xx) above) in order to reflect changes to purchase accounting rules that became effective after the December 2000 Order.

III. Financing Conditions

Applicants request authority to engage in various financing transactions during the Authorization Period. Applicants state that the following general terms will be applicable, where appropriate, to the proposed financing activities requested by the Applicants:

A. Effective Cost of Money

The effective cost of capital on unsecured notes and debentures and other forms of unsecured long-term debt securities (''Long-term Debt''), Preferred Stock or other types of preferred securities (including specifically trust preferred securities or monthly income

preferred securities) (together, ''Preferred Securities''), equity-linked securities (''Equity-Linked Securities), and commercial paper, unsecured promissory notes and other forms of unsecured indebtedness having maturities of less than one year (''Short-term Debt'') will not exceed competitive market rates available at the time of issuance for securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality; provided that in no event will the effective cost of capital (1) on any series of Long-term Debt exceed 500 basis points over a U.S. Treasury security having a remaining term equal to the term of such series, (2) on any series of Preferred Securities or Equity-Linked Securities exceed 600 basis points over a U.S. Treasury security having a remaining term equal to the term of such series, and (3) on Short-term Debt exceed 500 basis points over the London Interbank Offered Rate for maturities of less than one year.

B. Maturity

The maturity date of any Long-term Debt will not exceed 50 years after issuance. Preferred Securities and Equity-Linked Securities will be redeemed no later than 50 years after the issuance, unless converted into shares of Common Stock, except that Preferred Stock issued directly by Progress Energy may be perpetual in duration.

C. Issuance Expenses

The underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution of securities pursuant to this Application will not exceed the greater of (1) 5% of the principal or total amount of the securities being issued or (2) issuance expenses that are generally paid at the time of the pricing for sales of the particular issuance, having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality.

D. Common Equity Ratio

At all times during the Authorization Period, Progress Energy and each Utility Subsidiary will maintain common equity of at least 30% of its consolidated capitalization (common equity, preferred stock, long-term debt and short-term debt); provided that Progress Energy will in any event be authorized to issue Common Stock (including pursuant to the Stock Plans) to the extent authorized by Commission order.

E. Investment Grade Ratings

Applicants further represent that, except for securities issued for the purpose of funding Money Pool operations, no guarantees or other securities, other than Common Stock, may be issued in reliance upon the authorization that may be granted by the Commission in accordance with this Application, unless (1) the security to be issued, if rated, is rated investment grade; (2) all outstanding securities of the issuer that are rated are rated investment grade; and (3) all outstanding securities of the top level registered holding company that are rated are rated investment grade. For purposes of this provision, a security will be deemed to be rated ''investment grade'' if it is rated investment grade by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3–1 under the Securities Exchange Act of 1934. Applicants request that the Commission reserve jurisdiction over the issuance of any such securities that are rated below investment grade. Applicants further request that the Commission reserve jurisdiction over the issuance of any guarantee or other securities at any time that the conditions set forth in clauses (1) through (3) above are not satisfied.

F. Use of Proceeds

The proceeds from the sale of securities in external financing transactions will be used for general corporate purposes including (1) financing, in part, of the capital expenditures of Subsidiaries, (2) financing working capital requirements of Progress Energy and its Subsidiaries, (3) the acquisition, retirement or redemption under rule 42 of securities previously issued by Progress Energy or its Subsidiaries or as otherwise authorized by Commission, (4) direct or indirect investments in companies authorized under the Act or by rule, including investments in EWGs and ''energy-related companies'' under rule 58, and (5) other lawful purposes. The Applicants represent that no such financing proceeds will be used to acquire the securities of a new subsidiary unless such acquisition is consummated in accordance with an order of the Commission or an available exemption under the Act.

IV. Progress Energy External Financing

Progress Energy requests authority to increase its capitalization by issuing and selling from time to time during the Authorization Period, directly or indirectly through one or more Financing Subsidiaries: (1) additional shares of Common Stock and/or options, warrants, forward equity purchase contracts, or other rights that are exercisable or exchangeable for or convertible into Common Stock, (2) Preferred Securities and Equity-Linked Securities, and (3) Long-term Debt, in an aggregate amount not to exceed $2.8 billion (excluding securities issued for purposes of refunding or replacing other outstanding long-term securities where Progress Energy's capitalization is not increased as a result) (''External Financing Limit''). In addition, Progress Energy requests authorization to issue and sell Short-term Debt in an aggregate principal amount at any time outstanding not to exceed $1.5 billion.

Progress Energy may issue and sell Common Stock (and/or options, warrants, forward equity purchase contracts, or other rights that are exercisable or exchangeable for or convertible into Common Stock), Preferred Securities, Equity-Linked Securities and Long-term Debt: (1) Through underwriters, initial purchasers or dealers, (2) through agents, (3) directly to a limited number of purchasers or a single purchaser, or (4) directly to employees of Progress Energy or its Subsidiaries (or to trusts established for their benefit), shareholders, officers and directors under the Stock Plans. If underwriters are used, the securities will be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. The securities may be offered to the public either through underwriting syndicates (which may be represented by a managing underwriter or underwriters designated by Progress Energy) or directly by one or more underwriters acting alone, or may be sold directly by Progress Energy or through agents designated by Progress Energy from time to time. If dealers are utilized, Progress Energy will sell the securities to the dealers, as principals. Any dealer may then resell the securities to the public at varying prices to be determined by the dealer at the time of resale. If Common Stock is being sold in an underwritten offering, Progress Energy may grant the underwriters a ''green shoe'' option permitting the purchase from Progress Energy at the same price additional shares then being offered solely for the purpose of covering over-allotments.

A. Common Stock

Progress Energy proposes to issue and sell Common Stock (and/or options, warrants, forward equity purchase contracts or other rights exercisable or exchangeable for or convertible into Common Stock) in accordance with underwriting agreements of a type generally standard in the industry. Public distributions may be made through private negotiation with underwriters, dealers or agents or effected through competitive bidding among underwriters. In addition, sales may be made through private placements or other non-public offerings to one or more persons. All such sales will be at rates or prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets.

Progress Energy also proposes to issue Common Stock in public or privately-negotiated transactions as consideration for the equity securities or assets of other companies, provided that the acquisition of any such equity securities or assets has been authorized by the Commission or is exempt under the Act or the rules thereunder. Progress Energy may use original issue shares of Common Stock in such transactions or use Common Stock purchased on the open market for such purpose.

The ability to offer Common Stock as consideration in connection with an acquisition may make the transaction more economical for Progress Energy as well as for the seller of the business being acquired. If original issue shares of Common Stock are used in such transactions, the value of such shares would be based upon the closing price on the day prior to the date of issuance (or, if appropriate, the date of a binding contract providing for the issuance of the Common Stock) or based upon average high and low prices for a period as negotiated by the parties and counted against the proposed External Financing Limit.

B. Preferred Securities

Applicants request authorization to issue Preferred Securities in one or more series with such rights, preferences and priorities as may be designated in the document creating each series, as determined by Progress Energy's Board of Directors. Dividends or distributions on the securities will be made periodically and to the extent funds are legally available for such purpose, but may be made subject to terms which allow the issuer to defer dividend payments for specified periods. Progress Energy may also issue and sell Equity-Linked Securities, typically in the form of stock purchase units, which combine a security with a fixed obligation (*e.g.*, preferred stock or debt) with a stock purchase contract that is exercisable (either mandatorily or at the option of the holder) within a relatively short period (*e.g.*, three to six years after issuance).

C. Long-Term Debt

Applicants request authority to issue Long-term Debt directly by Progress Energy or indirectly through one or more Financing Subsidiaries in the form of notes, medium-term notes or debentures under one or more indentures, or long-term indebtedness under agreements with banks or other institutional lenders. Each series of Long-term Debt would have such designation, aggregate principal amount, maturity, interest rate(s) or methods of determining the same, terms of payment of interest, redemption provisions, sinking fund terms and other terms and conditions as Progress Energy may determine at the time of issuance. Any Long-term Debt (1) may be convertible into any other securities of Progress Energy, (2) will have maturities ranging from one to 50 years, (3) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the principal amount thereof, (4) may be entitled to mandatory or optional sinking fund provisions, (5) may provide for reset of the coupon under a remarketing arrangement, (6) may be subject to tender or the obligation of the issuer to repurchase at the election of the holder or upon the occurrence of a specified event, (7) may be called from existing investors by a third party, and (8) may be entitled to the benefit of affirmative or negative financial or other covenants.

D. Short-Term Debt

Progress Energy proposes to issue and sell from time to time Short-term Debt in an aggregate principal amount at any time outstanding not to exceed $1.5 billion. Specifically, Progress Energy may sell commercial paper, from time to time, in established domestic or European commercial paper markets. Such commercial paper would typically be sold to dealers at the discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally. It is expected that the dealers acquiring commercial paper from Progress Energy will reoffer such paper at a discount to corporate, institutional and, with respect to European commercial paper, individual investors. It is anticipated that Progress Energy's commercial paper will be reoffered to investors such as commercial banks, insurance companies, pension funds, investment trusts, foundations, colleges and universities, finance companies and nonfinancial corporations. Progress Energy also proposes to maintain and renew from time to time committed bank lines of credit, provided that only the principal amount of any actual borrowings under the lines of credit will be counted against the proposed limit on Short-term Debt set forth above. Progress Energy may also engage in other types of short-term financing, including borrowings under uncommitted lines, generally available to borrowers with comparable credit ratings as it may deem appropriate in light of its needs and market conditions at the time of issuance.

E. Stock Plans

Progress Energy requests authorization to issue shares of its Common Stock, and/or options, warrants, stock appreciation rights, units, hypothetical shares and similar securities for purposes of delivery under its Stock Plans, as they may be amended or extended, or similar plans or plan funding arrangements that may be adopted in the future. The net proceeds of any new issuances of shares of Common Stock by Progress Energy will be counted toward the external Financing Limit. Progress Energy also requests authorization to purchase or cause to be purchased on the open market up to 11 million shares of Common Stock for purposes of delivery under its Stock Plans.

V. Utility Subsidiary Financing

CP&L and NCNG request authorization to issue and sell the following securities during the Authorization Period:

A. Short-Term Debt of CP&L

CP&L requests authorization to issue and sell from time to time during the Authorization Period Short-term Debt in an aggregate principal amount outstanding at any one time not to exceed $1 billion. Subject to such limitation, CP&L would engage in short-term financing as it may deem appropriate in light of its needs and market conditions at the time of issuance. Short-term financing could include, without limitation, commercial paper sold in established domestic or European commercial paper markets in a manner similar to Progress Energy, bank lines and debt securities issued under its indentures and note programs.

B. Long-term Debt of NCNG

NCNG requests authorization (for so long as it shall remain a subsidiary of Progress Energy) to make direct borrowings from Progress Energy in an amount which, when added to borrowings by NCNG under the Utility Money Pool shall not exceed $750 million. The interest rate and maturity on any note evidencing direct borrowings from Progress Energy will be designed to parallel the effective cost of capital of Progress Energy. The maturity on any note issued to Progress Energy will not exceed 50 years from the date of issuance.

VI. Financing by Nonutility Subsidiaries

If a Nonutility Subsidiary that is not wholly-owned engages in activities related to the development and expansion of energy, transportation, telecommunications or other functionally-related, nonutility businesses, authority is requested for Progress Energy or a Nonutility Subsidiary, as the case may be, to make loans to the non-wholly owned subsidiaries at interest rates and maturities designed to provide a return to the lendor of not less than its effective cost of capital. The borrower will not sell any services to any associate Nonutility Subsidiary unless the associate Nonutility Subsidiary falls within one of the categories of companies to which goods and services may be sold on a basis other than ''at cost'' under the terms of the December 2000 Order. Furthermore, if any loans are made, Progress Energy will include in the next certificate filed under rule 24 in this proceeding substantially the same information as that required on Form U–6B–2 with respect to the transaction.

VII. Guarantees

A. Progress Energy Guarantees

Progress Energy requests authorization to enter into guarantees, obtain letters of credit, enter into expense agreements or otherwise provide credit support (collectively, ''Progress Guarantees'') with respect to the obligations of any Subsidiary as may be appropriate to enable the Subsidiary to carry on in the ordinary course of its business, in an aggregate principal amount not to exceed $3 billion outstanding at any one time; *provided however,* that the amount of any Progress Guarantees in respect of obligations of any Subsidiaries shall also be subject to the limitations of rule 53(a)(1) or rule 58(a)(1), as applicable.

Progress Energy proposes to charge each Subsidiary a fee for each guarantee provided on its behalf that is not greater than the cost, if any, of obtaining the liquidity necessary to perform the guarantee (for example, bank line commitment fees or letter of credit fees, plus other transactional expenses) for the period of time the guarantee remains outstanding.

The debt of a Financing Subsidiary guaranteed by Progress Energy will comply with the External Financing Limit. However, in order to avoid double counting the amount of any Progress Guarantee issued with respect to securities issued by a Financing Subsidiary will not be counted against the proposed limit on Progress Guarantees.

Progress Guarantees may, in some cases, be provided to support obligations of Subsidiaries that are not readily susceptible of exact quantification or that may be subject to varying quantification. In that event, Progress Energy will determine the exposure under the guarantee for purposes of measuring compliance with the proposed limit on Progress Guarantees set forth above by appropriate means, including estimation of exposure based on loss experience or projected potential payment amounts. Any estimates will be made in accordance with generally accepted accounting principles, and will be reevaluated periodically.

B. Nonutility Subsidiary Guarantees

In addition to guarantees that may be provided by Progress Energy, Nonutility Subsidiaries request authority to provide to other Nonutility Subsidiaries guarantees and other forms of credit support (''Nonutility Guarantees'') in an aggregate principal amount not to exceed $500 million outstanding at any one time, in addition to any guarantees and other forms of credit support that are exempt under rule 45(b) and rule 52(b); *provided however,* that the amount of Nonutility Guarantees in respect of obligations of any Subsidiary that is an ''energy-related company'' as that term is defined under rule 58 shall remain subject to the limitations of rule 58(a)(1). The Nonutility Subsidiary providing any credit support may charge its associate company a fee for each guarantee provided on its behalf determined in the same manner as specified above.

C. Guarantees Issued by Florida Progress and Its Nonutility Subsidiaries

Florida Progress has in the past provided guarantees with respect to certain long-term and short-term indebtedness of Progress Capital and preferred securities issued by Progress Funding (via a special purpose trust), the proceeds of which are used to provide financing for Florida Progress's other subsidiaries. In addition, Florida Progress and Progress Capital have provided guarantees and/or other forms of credit support to third parties on behalf of Florida Progress's Nonutility Subsidiaries in the form of standby letters of credit, surety bonds, and guarantees of performance under leases and other agreements. Florida Progress and its Nonutility Subsidiaries request authorization to maintain in effect all of the outstanding guarantees and other forms of credit support described above, and to amend, renew, extend or replace such guarantees, as necessary. Further, the Applicants request that such guarantees and other forms of credit support not count against the $500 million limit proposed above on future Nonutility Guarantees.

VIII. Hedging Transactions

A. Interest Rate Hedges

Progress Energy, and to the extent not exempt under rule 52, the Subsidiaries, request authorization to enter into interest rate hedging transactions with respect to existing indebtedness (''Interest Rate Hedges''), subject to certain limitations and restrictions, in order to reduce or manage interest rate cost. Interest Rate Hedges would only be entered into with counterparties whose senior debt ratings, or the senior debt ratings of the parent companies of the counterparties, as published by S&P, are equal to or greater than BBB, or an equivalent rating from Moody's, Fitch-Ratings, or Duff and Phelps (''Approved Counterparties'').

Interest Rate Hedges will involve the use of financial instruments commonly used in today's capital markets, such as interest rate swaps, caps, collars, floors, and structured notes (*i.e.,* a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations. The transactions would be for fixed periods and stated notional amounts. In no case will the notional principal amount of any interest rate swap exceed that of the underlying debt instrument and related interest rate exposure. Thus the Applicants will not engage in speculative transactions. Fees, commissions and other amounts payable to the counterparty or exchange (excluding, however, the swap or option payments) in connection with an Interest Rate Hedge will not exceed those generally obtainable in

competitive markets for parties of comparable credit quality.

B. Anticipatory Hedges

Progress Energy and the Subsidiaries request authorization to enter into interest rate hedging transactions with respect to anticipated debt offerings (the ''Anticipatory Hedges''), subject to certain limitations and restrictions. Anticipatory Hedges would only be entered into with Approved Counterparties, and would be utilized to fix and/or limit the interest rate risk associated with any new issuance through (1) a forward sale of exchange-traded U.S. Treasury futures contracts, U.S. Treasury obligations and/or a forward swap (each a ''Forward Sale''), (2) the purchase of put options on U.S. Treasury obligations (a ''Put Options Purchase''), (3) a Put Options Purchase in combination with the sale of call options on U.S. Treasury obligations (a ''Zero Cost Collar''), (4) transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations, or (5) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to structured notes, caps and collars, appropriate for the Anticipatory Hedges.

Anticipatory Hedges may be executed on-exchange (''On-Exchange Trades'') with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade (''CBOT''), the opening of over-the-counter positions with one or more counterparties (''Off-Exchange Trades''), or a combination of On-Exchange Trades and Off-Exchange Trades. Progress Energy or a Subsidiary will determine the optimal structure of each Anticipatory Hedge transaction at the time of execution. Progress Energy or a Subsidiary may decide to lock in interest rates and/or limit its exposure to interest rate increases.

The Applicants will comply with Statement of Financial Accounting Standard (''SFAS'') 133 (Accounting for Derivative Instruments and Hedging Activities) and SFAS 138 (Accounting for Certain Derivative Instruments and Certain Hedging Activities) or other standards relating to accounting for derivative transactions as are adopted and implemented by the Financial Accounting Standards Board (''FASB''). The Applicants represent that each Interest Rate Hedge and each Anticipatory Hedge will qualify for hedge accounting treatment under the current FASB standards in effect and as determined as of the date such Interest Rate Hedge or Anticipatory Hedge is entered into. The Applicants will also comply with any future FASB financial disclosure requirements associated with hedging transactions.

IX. Money Pools

Progress Energy and the Utility Subsidiaries request authorization to continue to maintain and fund the Utility Money Pool, and CP&L and NCNG also request authorization to make unsecured short-term borrowings from the Utility Money Pool. The Utility Subsidiaries request authorization to contribute surplus funds to the Utility Money Pool, and to lend and extend credit to (and acquire promissory notes from) one another through the Utility Money Pool. In addition, Progress Energy and the Nonutility Subsidiaries request authorization to continue to maintain and fund the Nonutility Money Pool. The Nonutility Money Pool activities of all of the Nonutility Subsidiaries are exempt from the prior approval requirements of the Act under rules 45(b) and 52. Progress Energy is requesting authorization to contribute surplus funds and/or to lend and extend credit to (1) the Utility Subsidiaries through the Utility Money Pool and (2) the Nonutility Subsidiaries through the Nonutility Money Pool.

A. Utility Money Pool

Under the Utility Money Pool agreement, short-term funds are available from the following sources for short-term loans to the Utility Subsidiaries from time to time: (1) Surplus funds in the treasuries of Utility Money Pool participants other than Progress Energy; (2) surplus funds in the treasury of Progress Energy (funds in clauses (1) and (2) being referred to as ''Internal Funds''); and (3) proceeds from bank borrowings by Utility Money Pool participants or the sale of commercial paper by Progress Energy or the Utility Subsidiaries for loan to the Utility Money Pool (the ''External Funds'').

Funds are made available from sources, and in the order, as Progress Service, as administrator for the Utility Money Pool, may determine would result in a lower cost of borrowing, consistent with the individual borrowing needs and financial standing of the companies providing funds to the pool. The determination of whether a Utility Money Pool participant at any time has surplus funds to lend to the Utility Money Pool is made by the participant's chief financial officer or treasurer, or their designee, on the basis of cash flow projections and other relevant factors, and in the participant's sole discretion.

The cost of compensating balances, if any, and fees paid to banks to maintain credit lines and accounts by Utility Money Pool participants lending External Funds to the Utility Money Pool are initially paid by the participant maintaining the line. A portion of such costs—or all of such costs if a Utility Money Pool participant establishes a line of credit solely for purposes of lending any External Funds obtained into the Utility Money Pool—are retroactively allocated every month to companies borrowing the External Funds in proportion to each participant's estimated peak short-term borrowing requirement.

Borrowings by Utility Money Pool participants are made *pro rata* from each participant that lends funds to the Utility Money Pool, in the proportion that the total amount loaned by each such lending company bears to the total amount then loaned through the Utility Money Pool. On any day when more than one fund source (*e.g.,* if there are External Funds as well as Internal Funds), with different rates of interest, is used to fund loans through the Utility Money Pool, each borrower would borrow *pro rata* from each such fund source in the Utility Money Pool in the same proportion that the amount of funds provided by that fund source bears to the total amount of short-term funds available to the Utility Money Pool. CP&L and NCNG (for so long as it remains a subsidiary of Progress Energy) each request authorization to borrow up to $400 million at any time outstanding under the Utility Money Pool. No loans through the Utility Money Pool may be made to, and no borrowings through the Utility Money Pool may be made by, Progress Energy.

If only Internal Funds make up the funds available in the Utility Money Pool, the interest rate applicable and payable to or by Utility Subsidiaries for all loans of Internal Funds would be equal to the rate for high-grade unsecured 30-day commercial paper sold through dealers by major corporations as quoted in *The Wall Street Journal.*

If only External Funds comprise the funds available in the Utility Money Pool, the interest rate applicable to loans of External Funds would be equal to the lending company's cost for the External Funds (or, if more than one Utility Money Pool participant had made available External Funds on such day, the applicable interest rate would be a composite rate equal to the weighted average of the cost incurred by the respective Utility Money Pool participants for the External Funds).

In cases where both Internal Funds and External Funds are concurrently borrowed through the Utility Money Pool, the rate applicable to all loans comprised of such ''blended'' funds would be a composite rate equal to the weighted average of (1) the cost of all Internal Funds contributed by Utility Money Pool participants (determined as set forth in the second-preceding paragraph above) and (2) the cost of all such External Funds (determined as set forth in the immediately preceding paragraph above). In circumstances where Internal Funds and External Funds are available for loans through the Utility Money Pool, loans may be made exclusively from Internal Funds or External Funds, rather than from a ''blend'' of such funds, to the extent it is expected that such loans would result in a lower cost of borrowing.

Funds not required by the Utility Money Pool to make loans (with the exception of funds required to satisfy the Utility Money Pool's liquidity requirements) would ordinarily be invested in one or more short-term investments, including: (1) Interest-bearing accounts with banks; (2) obligations issued or guaranteed by the U.S. government and/or its agencies and instrumentalities, including obligations under repurchase agreements; (3) obligations issued or guaranteed by any state or political subdivision thereof, provided that such obligations are rated not less than ''A'' by a nationally recognized rating agency; (4) commercial paper rated not less than ''A–1'' or ''P–1'' or their equivalent by a nationally recognized rating agency; (5) money market funds; (6) bank certificates of deposit; (7) Eurodollar funds; and (8) such other investments as are permitted by section 9(c) of the Act and rule 40.

The interest and investment income earned on loans and investments of surplus funds is allocated among the participants in the Utility Money Pool in accordance with the proportion each participant's contribution bears to the total amount of funds in the Utility Money Pool and the cost of funds contributed to the Utility Money Pool by the participant. Each Applicant receiving a loan through the Utility Money Pool is required to repay the principal amount, together with interest accrued thereon, on demand and in any event no later than one year after the date of the loan. All loans made through the Utility Money Pool may be prepaid by the borrower without premium or penalty.

B. Nonutility Money Pool

The Nonutility Money Pool is operated and funded in substantially the same manner as the Utility Money Pool, except that funds contributed by Progress Energy to the Money Pools are made available to the Utility Money Pool first and then to the Nonutility Money Pool. The manner of calculating interest on funds contributed to, and borrowings from, the Nonutility Money Pool is as described above under Utility Money Pools. No loans through the Nonutility Money Pool may be made to, and no borrowings through the Nonutility Money Pool may be made by, Progress Energy.

The current participants in the Nonutility Money Pool are Progress Energy, Progress Service, SRS, PV Holdings, Progress Ventures, and Progress Capital. It is proposed that the following additional Nonutility Subsidiaries be permitted to participate in the Nonutility Money Pool: Progress Real Estate, Progress Fuels, Progress Solutions, Progress Telecommunications, and Caronet. The Applicants request that the Commission reserve jurisdiction over the addition of any other existing or future Nonutility Subsidiaries as participants in the Nonutility Money Pool.

X. Other Transactions

A. Financing Subsidiaries

The Applicants request authority to acquire, directly or indirectly, the equity securities of one or more Financing Subsidiaries created specifically for the purpose of facilitating the financing of the authorized and exempt activities (including exempt and authorized acquisitions) of Progress Energy and the Subsidiaries through the issuance of Long-term Debt or Preferred Securities to third parties. Any Financing Subsidiary organized in accordance with the authority granted by the Commission in this proceeding shall be organized only if, in management's opinion, the creation and utilization of such Financing Subsidiary will likely result in tax savings, increased access to capital markets and/or lower cost of capital to the parent company of the Financing Subsidiary.

Authorization also is requested for any Financing Subsidiary to dividend, loan or otherwise transfer the proceeds of a financing to, or as directed by, the Financing Subsidiary's parent company; *provided however,* that a Financing Subsidiary of a Utility Subsidiary will dividend, loan or otherwise transfer proceeds of a financing only to a Utility Subsidiary.

Progress Energy and its Subsidiaries request authorization to guarantee or enter into expense agreements in respect of the obligations of any Financing Subsidiaries that they organize, to the extent not otherwise exempt under rules 45(b)(7) and 52. The amount of any equity or long-term debt securities issued by any Financing Subsidiary shall be counted against any limitation on the amounts of similar types of securities that may be issued directly by the parent company of a Financing Subsidiary, as set forth in this Application or in any other application/declaration that may be filed in the future, to the extent that such securities are guaranteed by such parent company. In that case, however, the guaranty by the parent company would not also be counted against the limitations on Progress Guarantees or Nonutility Guarantees, as the case may be.

Progress Energy and, to the extent not exempt under rule 52, Subsidiaries also request authorization to issue their subordinated unsecured notes (''Subordinated Notes'') to any Financing Subsidiary to evidence the loan of financing proceeds by a Financing Subsidiary to its parent company. The principal amount, maturity and interest rate on any such Subordinated Notes will be designed to parallel the amount, maturity and interest or distribution rate on the securities issued by a Financing Subsidiary in respect of which the Subordinated Note is issued.

B. Investments in Energy-Related Assets

Progress Energy currently has authority to acquire or construct in one or more transactions from time to time nonutility energy assets in the United States, including, without limitation, natural gas production, gathering, processing, storage and transportation facilities and equipment, liquid oil reserves and storage facilities, and associated facilities (collectively, ''Energy-Related Assets''), that are incidental to the energy marketing, brokering and trading operations of Progress Energy's subsidiaries, subject to an investment limitation of $1 billion (''Investment Limitation'').

Progress Energy seeks to extend its authorization to invest in Energy-Related Assets (or in the equity securities of companies substantially all of whose assets consist of Energy-Related Assets), subject to the Investment Limitation. Such Energy-Related Assets (or equity securities of companies substantially all of whose assets consist of Energy-Related Assets) may be acquired for cash or in exchange for Common Stock or other securities of

Progress Energy or a Nonutility Subsidiary of Progress Energy, or any combination of the foregoing.[2] If Common Stock of Progress Energy is used as consideration in connection with any such acquisition, its market value on the date of issuance will be counted against the proposed Investment Limitation. The stated amount or principal amount of any other securities issued as consideration in any such transaction will also be counted against the Investment Limitation. Under no circumstances will any Nonutility Subsidiary acquire, directly or indirectly, any assets or properties the ownership or operation of which would cause such company to be considered an ''electric utility company'' or ''gas utility company'' as defined under the Act.

C. Payment of Dividends

1. *By Progress Energy and NCNG.* Progress Energy seeks authorization to declare and pay dividends on Common Stock and/or redeem or repurchase outstanding shares of Common Stock from time to time out of capital and unearned surplus, to the extent permitted under applicable corporate law and the terms of any applicable covenants in their respective financing documents, in an amount equal to (A) the sum of (1) CP&L's consolidated retained earnings prior to formation of Progress Energy as a holding company over CP&L in 2000, (2) Florida Progress's retained earnings prior to its acquisition in 2000 by Progress Energy, and (3) NCNG's retained earnings prior to the acquisition of NCNG by CP&L in 1999, plus (B) the amount, if any, recorded as an impairment to goodwill in accordance with SFAS No. 142. Progress Energy and NCNG request that the Commission reserve jurisdiction over the preceeding proposals pending completion of the record.

NCNG seeks authorization to pay dividends out of capital and unearned surplus in an amount equal to NCNG's retained earnings prior to the acquisition of NCNG by CP&L in 1999.

2. *By Nonutility Subsidiaries.* Progress Energy also proposes, on behalf of itself and each of its current and future non-exempt Nonutility Subsidiaries that they be permitted to pay dividends with respect to their securities and/or acquire, retire or redeem any of their securities that are held by any associate company or affiliate from time to time, out of capital and unearned surplus (including revaluation reserve), to the extent permitted under applicable corporate law.

D. Expenditures in Connection With Development Activities

Progress Energy, through its Nonutility Subsidiaries (including Intermediate Subsidiaries) requests a continuation of its current authority to make expenditures in connection with certain preliminary development activities relating to exempt or authorized nonutility businesses in an amount at any time outstanding not to exceed $250 million. Progress Energy proposes a ''revolving fund'' concept for permitted expenditures on the development activities. Thus, to the extent a Nonutility Subsidiary in respect of which expenditures for development activities were made subsequently becomes an EWG or FUCO or qualifies as an ''energy-related company'' under rule 58, the amount so expended will cease to be considered an expenditure for development activities, but will instead be considered as part of the ''aggregate investment'' in such entity under rule 53 or 58, as applicable.

E. Tax Allocation Agreement

The Applicants are authorized to file consolidated income tax returns and allocate the consolidated income tax liability of the group in accordance with a Tax Allocation agreement that does not satisfy all of the requirements of rule 45(c). Under the Tax Allocation agreement, Progress Energy is permitted to retain the benefit (*i.e.*, the tax savings) in consolidated tax liability that is attributable to the interest expense on the debt incurred to acquire Florida Progress, subject to certain limitations and restrictions.

The Applicants request authorization to continue to file consolidated income tax returns for tax years ending during the Authorization Period under the previously approved Tax Allocation agreement. The Applicants will supplement the quarterly report under rule 24 filed in this proceeding for the quarterly period in which they file their consolidated federal income tax return with information showing the calculation of the portion of Progress Energy's loss that is attributable to interest expense on the debt incurred to acquire Florida Progress and a spreadsheet showing the actual allocation of income taxes to each of the members of the consolidated group and the allocation of income taxes to each of the members of the consolidated group that would be required by rule 45(c).

Interstate Power and Light Company (70–10150)

Interstate Power and Light Company (''IP&L''), a wholly-owned public-utility subsidiary of Alliant Energy Corporation (''Alliant''), a registered holding company under the Act, 200 First Street SE., Cedar Rapids, Iowa, has filed an application-declaration (''Application'') under sections 6(a), 7, 9(a) and 10 of the Act and rule 54 under the Act.

IP&L requests authority to enter into an amendment to a fuel lease it has with Arnold Fuel Inc. (''Arnold''). IP&L is engaged principally in the generation, purchase, transmission, distribution and sale of electric power and the purchase, distribution, transportation and sale of natural gas in portions of Iowa, Minnesota and Illinois. IP&L also provides steam service in selected markets in Iowa. IP&L owns a 70% undivided interest in the Duane Arnold Energy Center (''DAEC''), a 580 megawatt (net capacity) boiling water nuclear reactor located near Palo, Iowa, which was placed in commercial operation in 1974.[3] IP&L[4] leases its 70% undivided interest in the nuclear fuel required for the DAEC according to a fuel lease, dated August 21, 1973, as amended (''Fuel Lease'') with Arnold. Unless terminated by either party, the term of the Fuel Lease is automatically extended on an annual basis, provided that the term of the Lease Agreement may not be extended beyond December 31, 2023.

Under the terms of the Fuel Lease, Arnold is obligated to acquire and pay the acquisition costs relating to IP&L's 70% undivided interest in the separate nuclear fuel assemblies and components (including replacement nuclear material) which, when acquired, becomes a part of the nuclear fuel leased to IP&L (''Nuclear Fuel''). Arnold currently finances the costs relating to the Nuclear Fuel by issuing commercial paper promissory notes and/or receiving revolving credit loans under a credit agreement (''Credit Agreement'') between Arnold and Bank One, NA, individually and as agent bank, and other banks that may become parties to the financing. Commercial paper notes may have maturities of up to 270 days. Revolving credit loans under the Credit Agreement mature on April 28, 2004 and bear interest at the ''Alternate Base Rate,'' which is a fluctuating rate of

[2] In some instances, companies substantially all of whose assets consist of Energy-Related Assets may also be engaged in nonutility activities that would be permitted by rule 58 (*e.g.,* energy marketing, ownership, operation and servicing of fuel procurement, transportation, handling and storage facilities).

[3] The remaining 30% undivided interest in the DAEC is owned by Central Iowa Power Cooperative and Corn Belt Power Cooperative. The DAEC is operated by Nuclear Management Company, LLC, an indirect, 20% owned, non-utility subsidiary of Alliant.

[4] IP&L is successor to Iowa Electric Light and Power Company.

interest equal to the higher of (1) the Federal Funds Effective Rate plus 0.5% or (2) the corporate base rate of Bank One from time to time. The aggregate amount of commercial paper notes and revolving credit loans under the Credit Agreement may not exceed $60 million. Arnold is currently obligated under the Credit Agreement to pay a facility fee of 10 basis points per annum on each lending bank's commitment.

IP&L is obligated under the Fuel Lease to make quarterly lease payments (''Basic Rent''), consisting of a ''Quarterly Lease Charge,'' which, for any calendar quarter, is the sum of the aggregate of the ''Daily Lease Charges,'' plus a ''Burn-Up Charge,'' which is the portion of the Nuclear Fuel that is consumed in producing heat during the quarterly rent period. The Daily Lease Charge for any calendar day is equal to the sum of (1) an accrual for all interest expense and amortization of debt discount with respect to all commercial paper issued by and all revolving credit loans obtained by Arnold under the Credit Agreement which are outstanding at the close of business of such day, (2) an accrual for such day with respect to all commitment fees and other fees, costs and expenses (including issuing agent's fees) of Arnold under the Credit Agreement, and (3) a charge determined by dividing (x) ⅛th of 1% of the ''Stipulated Loss Value'' of the Nuclear Fuel (essentially Arnold's unrecovered cost of the Nuclear Fuel purchased and leased to IP&L) at the close of business on such day by (y) 365. The Fuel Lease and Arnold's current financing arrangements were all in place at the time Alliant became a registered holding company in 1998.

IP&L requests authorization to enter into an amendment to the Fuel Lease to reflect certain proposed changes to the financing arrangements by which Arnold will finance the cost of Nuclear Fuel. Specifically, authorization is requested for Arnold to issue from time to time during the term of the Lease Agreement up to $30 million of senior secured notes (''Notes'') under one or more note purchase agreements with banks, insurance companies or other institutional lenders. Each Note will have a maturity date of between one year and seven years from the date of issuance and bear interest on the unpaid principal prior to maturity or default at a rate not to exceed 400 basis points over the yield to maturity of a U.S. Treasury security having a comparable term. Each Note may be subject to redemption at IP&L's option upon payment of a premium equal to the excess, if any, of (a) the net present value of the future stream of payments under the Note as if held to maturity, discounted at a rate determined pursuant to the applicable note purchase agreement, over (b) the principal amount of the Note. Under the Fuel Lease, as amended, the calculation of the ''Daily Lease Charge'' will be modified to reflect accruals for interest on and placement fees and other expenses relating to the Notes.

In connection with the foregoing, IP&L and Bank One, NA will enter into an amended Credit Agreement under which the aggregate commitments of the lending banks will be reduced from $60 million to $30 million. Under the amended Credit Agreement, the facility fee will be increased from 10 basis points per year to 15 basis points per year on each lending bank's commitment. The interest rate options applicable to borrowings under the Credit Agreement will remain unchanged.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–22030 Filed 8–27–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48382; File No. SR–Amex–2003–71]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to the Elimination of the Minor Floor Violation Disciplinary Committee

August 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 July 25, 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 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 Amex proposes to amend Amex Rule 590 to eliminate its Minor Floor Violation Disciplinary Committee (''MFVDC'' or ''Committee'') and to transfer the MFVDC's responsibilities to the Exchange's Enforcement Department. The text of the proposed rule change is available at the Office of the Secretary, the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has had a Minor Rule Violation Fine Plan since 1976 that provides a simplified procedure for the resolution of specified rule violations. Codified in Amex Rule 590, the Minor Rule Violation Fine Plan has three distinct sections: Part 1 (''General Rule Violations''), which covers more substantive matters; Part 2 (''Floor Decorum''), which covers Floor Decorum and operational matters; and Part 3 (''Reporting Violations''), which covers the late submission of routine reports.

The Exchange's Enforcement Department and MFVDC[3] currently divide responsibility for administering Part 1 of Amex Rule 590. The Enforcement Department enforces those rules enumerated in paragraph (g) of Part 1 of Amex Rule 590, and the MFVDC enforces the rules enumerated in paragraph (h) of Part 1 of Amex Rule 590. The rules that currently may be enforced by the MFVDC follow:

Failure to comply with the Exchange's Auto-Ex Policy relating to signing on and off the Auto-Ex system

Failure to comply with the Exchange's rules regarding openings. (Amex Rules 108(a) and (b) and 950(b))

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange established the MFVDC in 1993. *See* Securities Exchange Act Release No. 32989 (September 29, 1993), 58 FR 52122 (October 6, 1993) (SR–Amex–92–11). The structure of the Committee recently changed to include two floor members, two members of the Amex staff and one representative of an upstairs member firm.

Failure to comply with the Exchange's delayed opening policy. (Amex Floor Transaction Handbook, Part IV, B.3.(g))

Failure to comply with the Exchange's procedures for stopping orders. (Amex Rule 109 and 950(o))

Failure to properly mark or identify and represent Floor orders as required under Exchange rules:

1. Amex Rule 111, Commentary .04; Amex Rule 114, Commentary .09; and Amex Rule 153(g) (which are made applicable to options by Amex Rule 950(a)).
2. Amex Rule 950(c) & (d); 957(d); Amex Rule 958, Commentary .09; and Amex Rule 958A(b)).

Failure to comply with requirements relating to block sized cross transactions. (Amex Rule 126(g), Commentaries .01 and .02)

Failure to comply with the Exchange's procedures for executing ''cross'' transactions. (Amex Rule 151 which is made applicable to options by Amex Rule 950(a))

Failure to comply with Exchange procedures regarding stop orders. (Amex Rules 154, Commentary .04 and 950(f))

Violation of the Exchange's rules regarding orders left with specialists. (Amex Rules 154 and 950(f))

Failure to comply with the ''2, 1, 1/2 Point Rule''. (Amex Rules 154, Commentary .08 and 950(f), Commentary .04)

Failure to comply with the Exchange's rules regarding the execution of orders. (Amex Rules 156 and 950(g))

Failure by specialists to obtain Floor Official approval when establishing, increasing or liquidating a position. (Amex Rule 170, Commentaries .01 and .02)

Failure to obtain Exchange approval, or failure to comply with the terms of approval, for member or member firm proprietary electronic devices or systems used on the Exchange Floor. (Amex Rule 220)

Violation of Intermarket Trading System (ITS) rules relating to Pre-Opening Applications (Amex Rule 232) and Trade Throughs, Locked Markets, and the Block Trade Policy (Amex Rule 236).

Failure to comply with the Exchange's ''facilitation'' policy. (Amex Rule 950(d), Commentary .02)

Failure to comply with the Exchange's ''solicitation'' policy. (Amex Rule 950(d), Commentary .03)

Failure to quote options markets within the maximum quote spread differentials. (Amex Rules 950(n), Commentary .10; 958(c)(i); and 958(c)(ii))

Failure to comply with the Exchange's rules regarding the announcement of trader orders. (Amex Rule 958, Commentary .09)

Failure to comply with the Exchange's modified firm quote rule. (Amex Rule 958A)

Part 1 of Amex Rule 590 allows the Enforcement Department and the Committee to issue abbreviated ''written statements'' to persons who may have violated the specified rules identifying the rules violated, the act or omission constituting the violation, and the amount of the fine. The issuance of a ''written statement'' by the Enforcement Department or MFVDC does not constitute a finding of guilt. Persons receiving a written statement may plead ''no contest'' and return the statement to the Exchange with the specified fine. In the alternative, persons who are charged under the Plan may contest the fine and receive a hearing before an Exchange Disciplinary Panel. The Exchange is not required to use Amex Rule 590 to impose a fine for a violation of the rules enumerated in the rule and is free to pursue disciplinary action under Article V of the Amex Constitution or Amex Rule 345.

In this filing, the Exchange is proposing to eliminate the MFVDC and to transfer its responsibilities to the Exchange's Enforcement Department so that responsibility for initiating disciplinary action under Part 1 of the Minor Rule Violation Fine Plan will rest exclusively with the Amex enforcement staff. The Exchange currently has one rule filing pending with the Commission that would add a violation to paragraph (h) of Part 1 of Amex Rule 590.[4] This filing is being amended to transfer this violation to the list of rules that may be the subject of Enforcement Department action under paragraph (g) of Part 1 of Amex Rule 590. In connection with the elimination of the MFVDC, the Amex also is proposing to eliminate reference to the Committee wherever it appears in the Exchange's rules.[5]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[6] in general and furthers the objectives of Section 6(b)(1),[7] 6(b)(6),[8] and 6(b)(7)[9] in particular in that it will enhance the ability of the Exchange to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange; it will help ensure that members and persons associated with members are appropriately disciplined for violations of the Act, the rules and regulations thereunder, and the rules of the Exchange; and it will provide a fair procedure for the disciplining of members and persons associated with members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which The Amex consents, the Commission will:

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange

[4] SR–Amex–2002–09 would add to the list of violations that may be sanctioned by the MFVDC, ''Failure to use best efforts to attempt to ensure that the next Auto-Ex execution is appropriately allocated to the price improving registered options trader. (Amex Rule 933, Commentary .04(d).'' *See* Amendment No. 9 to Amex–2002–09. Amex proposes to transfer this rule to the list of rules enforced by the Enforcement Department under paragraph (g) of Part 1 of Amex Rule 590.

[5] The MFVDC is mentioned in Commentaries .04 and .06 to Amex Rule 26. These Commentaries concern the calculation of performance ratings for option and ETF specialists.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(1).

[8] 15 U.S.C. 78f(b)(6).

[9] 15 U.S.C. 78f(b)(7).

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–2003–71 and should be submitted by September 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–22032 Filed 8–27–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48388; File No. SR–CSE–2003–09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Cincinnati Stock Exchange, Inc. Relating to Market Order Exposure Requirements

August 21, 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 August 7, 2003, The Cincinnati Stock Exchange, Inc. (''CSE'' 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 CSE. The Exchange filed the proposal pursuant to Section 19(b)(3)(A)(i) of the Act,[3] and Rule 19b–4(f)(1)[4] thereunder, as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE is proposing to amend CSE Rule 11.9(u), Interpretation .01, concerning market order exposure requirements (''Market Order Exposure Requirement''). The proposed rule change would modify the rule language in light of the current $0.01 minimum price variation and codify certain of the Exchange's stated policies and interpretations contained in CSE Regulatory Circulars.[5]

The text of the proposed rule change is set forth below. Proposed new language is in *italics;* proposed deletions are in [brackets].[6]

* * * * *

Rule 11.9(u), Interpretations and Policies

* * * * *

.01 Market Order Exposure Requirement

(*a*) Consistent with his or her agency responsibility to exercise due diligence, a member must comply with the following procedures which provide the opportunity for public agency buy/sell market orders in securities other than Nasdaq/NM securities to receive a price lower/higher than the disseminated national best offer/bid.

Except under unusual market conditions or if it is not in the best interests of the customer, [when the spread between the national best bid and offer is greater than the minimum price variation a member must either immediately execute the market order at an improved price or expose the market order on the Exchange for a minimum of fifteen seconds in an attempt to improve the price.] *Preferencing Dealers must immediately price improve or expose for a minimum of five seconds in an attempt to improve the price*:

1. market orders with sizes less than or equal to 1000 shares when the NBBO at time of order receipt is more than 5 cents ($0.05) wide;

2. market orders with sizes between 1001 shares and 5000 shares when the NBBO at time of order receipt is more than 10 cents ($0.10) wide; and

3. market orders with sizes above 5000 shares when the NBBO at time of order receipt is more than 15 cents ($0.15) wide.

(*b*) *to assist Preferencing Dealers in satisfying their obligations under the rule, the following exceptions apply:*

1. Unusual Market Conditions

Unusual market conditions include the following conditions:

i. The NBBO is more than 1 dollar ($1.00) wide at receipt;

ii. the market is locked or crossed at receipt or becomes that way during exposure;

iii. when circuit breakers have been activated;

iv. during and immediately after the opening (a period not to exceed 5 minutes);

v. immediately prior to the close (a period not to exceed 5 minutes);

vi. when the Exchange has declared a fast market; and

vii. when non-firm markets exist.

2. Best Interests of the Customer

In order to protect the best interests of the customer, the following orders may require unique handling subject to the application of a member's brokerage judgment and experience as required by CSE Rule 12.10, Best Execution:

i. block size market orders as defined in the Intermarket Trading System Plan;

ii. odd-lot orders;

iii. contingent orders;

iv. a market order for a quantity that exceeds the existing NBBO size;

v. NBBO moves in direction of market order stop price; and

vi. Primary market trades at market order stop price.

* * * * *

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 CSE 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 CSE 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

The purpose of the proposed rule change is to amend CSE Rule 11.9(u),

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] *See* Regulatory Circulars 01–07, 99–03, 98–06, 97–07 and 96–04.

[6] At the request of the Exchange, the Commission has revised the proposed rule change to insert the word ''wide'' at the end of clauses (a)1, (a)2 and (a)3. Telephone conversation between John Polise, Senior Special Counsel, Joseph P. Morra, Special Counsel and Ann E. Leddy, Attorney, Division of Market Regulation, Commission, and Jeffrey T. Brown, Senior Vice President, Regulation and General Counsel, Exchange (August 20, 2003).

Interpretation .01, to modify the rule language in light of the current $0.01 minimum price variation in quoted spreads.[7] In addition, the proposed rule change would codify certain of the Exchange's stated policies and interpretations contained in CSE Regulatory Circulars.[8] Rule 11.9(u), Interpretation .01, which applies only to ITS eligible securities, requires Preferencing Designated Dealers (''PDDs'') in greater than minimum price variation spreads between the national best bid and offer (''NBBO'') to, except under unusual market conditions or if it is not in the best interest of the customer, either immediately execute a market order at an improved price or expose it on the Exchange for a minimum of fifteen seconds.[9]

The Market Order Exposure Requirement was adopted when the industry minimum price variation was one-eighth of a dollar ($0.125) resulting in the CSE's market order exposure rule applying when bid/ask spreads were one-fourth of a dollar ($0.25).[10] Given the advent of decimal pricing and today's narrow spreads, the CSE proposes to update its rule. The CSE seeks to reduce the exposure period from 15 seconds to 5 seconds and to impose the Market Order Exposure Requirement based on the size of the market order received by the CSE PDDs. Specifically, the CSE proposes a three-tiered application of the rule to require PDDs to: (1) Expose for 5 seconds or execute immediately at an improved price market orders of 1000 shares or less received when the NBBO is more than 5 cents ($0.05) wide; (2) expose for 5 seconds or execute immediately at an improved price market orders with share size between 1001 and 5000 shares received when the NBBO is more than 10 cents ($0.10) wide; and (3) expose for 5 seconds or execute immediately at an improved price market orders with size greater than 5001 shares when the NBBO is more than 15 cents ($0.15) wide.[11]

As noted above, the CSE's Market Order Exposure Requirement anticipates that certain market conditions preclude application of the rule. The rule carves out these market conditions by providing that: ''[e]xcept under unusual market conditions or if it is not in the best interests of the customer * * * ''[12] Over the years, the CSE has disseminated Regulatory Circulars describing the Exchange's interpretations of ''unusual market conditions'' or when ''it is not in the best interests of the customer'' to expose a market order.[13] The CSE proposes now to incorporate these interpretations into the language of the rule. Therefore, to assist PDDs in satisfying their obligations under the rule, the following exceptions apply:

Unusual Market Conditions

Unusual market conditions include the following conditions:

1. The NBBO is more than 1 dollar ($1.00) wide at receipt;
2. the market is locked or crossed at receipt or becomes that way during exposure;
3. when circuit breakers have been activated;
4. during and immediately after the opening (a period not to exceed 5 minutes);
5. immediately prior to the close (a period not to exceed 5 minutes);
6. when the exchange has declared a fast market; and
7. when non-firm markets exist.

Best Interests of the Customer

In order to protect the best interests of the customer, the following orders may require unique handling subject to the application of a member's brokerage judgment and experience as set forth by CSE Rule 12.10, Best Execution:[14]

1. block size market orders as defined in the Intermarket Trading System Plan;
2. odd-lot orders;
3. contingent orders;
4. a market order for a quantity that exceeds the existing NBBO size;
5. NBBO moves in direction of market order stop price; and
6. primary market trades at market order stop price.

1. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[15] in general, and with Section 6(b)(5) of the Act,[16] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system and, generally, in that it protects investors and the public interest.

B. Self-Regulatory Organization's Statement of Burden on Competition

The CSE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposal has become effective pursuant to Section 19(b)(3)(A)(i) of the Act,[17] and Rule 19b–4(f)(1)[18] thereunder, in that it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the 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

[7] While over time the minimum trading increment has decreased from one-eighth to subpenny increments, under the current interpretation the requirements of Rule 11.9(u) Interpretation .01 remain applicable only when the price variation in the spread between the best national bid and offer is greater than or equal to one-fourth of a $1 ($0.25). *See* CSE Regulatory Circular 97–07; *see also* Securities Exchange Act Release Nos. 39720 (March 4, 1998), 63 FR 11942 (March 11, 1998)(SR–CSE–97–13); 43471 (October 20, 2000), 65 FR 64463 (October 27, 2000) (SR–CSE–00–08); and 43653 (December 1, 2000), 65 FR 77055 (December 8, 2000) (SR–CSE–00–08) (each of which references CSE Regulatory Circular 97–07 for further discussion of CSE's Market Order Exposure Requirement).

[8] *See supra,* note 5.

[9] This provision applies only to public agency buy/sell market orders in securities other than Nasdaq national market securities.

[10] *See supra,* note 7.

[11] In a separate rule filing, SR–CSE–2003–10, CSE is proposing to eliminate the Market Order Exposure Requirement completely.

[12] CSE Rule 11.9(u), Interpretations and Policies .01.

[13] *See supra,* note 5.

[14] CSE Rule 12.10, Best Execution.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(3)(A)(i).

[18] 17 CFR 240.19b–4(f)(1).

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 Exchange. All submissions should refer to file number SR–CSE–2003–09 and should be submitted by September 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–22031 Filed 8–27–03; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3537]

State of Mississippi

Lee County and the contiguous counties Chickasaw, Itawamba, Monroe, Pontotoc, Prentiss and Union in the State of Mississippi constitute a disaster area due to damages caused by severe storms and flooding that occurred on August 6, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 20, 2003 and for economic injury until the close of business on May 20, 2004 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.125
Homeowners without Credit Available Elsewhere	2.562
Businesses with Credit Available Elsewhere	6.199
Businesses and Non-Profit Organizations without Credit Available Elsewhere	3.100
Others (Including Non-Profit Organizations) with Credit Available Elsewhere	5.500
For Economic Injury:	
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	3.100

[19] 17 CFR 200.30–3(a)(12).

The number assigned to this disaster for physical damage is 353711 and the number for economic injury is 9W7200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 20, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–22013 Filed 8–27–03; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends Part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). This notice transfers the agency Press Office from the Office of the Commissioner to the Office of the Deputy Commissioner, Communications. The new material and changes are as follows:

Section SA.10 *The Office of the Commissioner*—(Organization):

Delete

F. The Press Office (SAT)

Section SA.20 *The Office of the Commissioner*—(Functions):

Delete in entirety

F. The Press Office (SAT)

Section TE.00 *The Office of Communications*—(Mission):

Add second line

Performs SSA Press Office function to ensure a unified and consistent message to the public.

Section TE.10 *The Office of the Communications*—(Organization):

C. The Immediate Office of the Deputy Commissioner, Communications (TEA)

Add

which includes: 1. The Press Office (TEA–1)

Section TE.20 *The Office of the Communications*—(Functions):

C. The Immediate Office of the Deputy Commissioner, Communications (TEA), provides the Deputy Commissioner and Assistant Deputy Commissioner with staff assistance on the full range of their responsibilities.

Add

It includes 1. The Press Office (TEA–1)

(a) Guides and coordinates all SSA press activities. It prepares and distributes news releases, fact sheets, and other materials for national distribution and for local release through SSA field offices.

(b) Initiates and maintains contacts with members of the news media and responds to press inquiries and requests from newspapers, radio and television news departments; news and general print magazines, internet news providers, and other specialized press. Advises Agency executives, Regional Communications Directors, Public Affairs Specialists, and other employees on matters related to news media.

(c) Monitors press coverage of Social Security programs and employees, and distributes summaries of media coverage to Agency executives. When appropriate, the Press Office works to correct inaccuracies in coverage.

Dated: August 14, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

[FR Doc. 03–22015 Filed 8–27–03; 8:45 am]

BILLING CODE 4191–02–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Notice of Availability and Request for Public Comment on Interim Environmental Review of United States-Central America Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of availability and request for public comment.

SUMMARY: The Office of the U.S. Trade Representative (USTR), on behalf of the Trade Policy Staff Committee (TPSC), seeks comment on the interim environmental review of the proposed U.S.-Central America Free Trade Agreement (CAFTA). The interim environmental review is available at *http://www.ustr.gov/environment/environmental.shtml.* Copies of the review will also be sent to interested members of the public by mail upon request.

DATES: Comments on the draft environmental review are requested no later than October 15, 2003, and earlier if possible. Comments received before September 15, 2003, will be used to inform the seventh round of negotiations, currently scheduled for September 15–19. Comments received after September 15, 2003, will be used to inform subsequent rounds of negotiations. After the seventh round, two more rounds of negotiations are scheduled, with the concluding round in December 2003.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395–3475. Questions concerning the environmental review, or requests for copies, should be addressed to Alice Mattice or David Brooks, Environment and Natural Resources Section, Office of the USTR, telephone 202–395–7320.

SUPPLEMENTARY INFORMATION: The Trade Act of 2002, signed by the President on August 6, 2002, provides that the President shall conduct environmental reviews of [certain] trade agreements consistent with Executive Order 13121—*Environmental Review of Trade Agreements* (64 FR 63,169, Nov. 18, 1999) and its implementing guidelines (65 FR 79,442, Dec. 19, 2000) and report on such reviews to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate. The Order and guidelines are available at *http://www.ustr.gov/environment/environmental.shtml.*

The purpose of environmental reviews is to ensure that policymakers and the public are informed about reasonably foreseeable environmental impacts of trade agreements (both positive and negative), to identify complementarities between trade and environmental objectives, and to help shape appropriate responses if environmental impacts are identified. Reviews are intended to be one tool, among others, for integrating environmental information and analysis into the fluid, dynamic process of trade negotiations. USTR and the Council on Environmental Quality jointly oversee implementation of the Order and Guidelines. USTR, through the Trade Policy Staff Committee (TPSC), is responsible for conducting the individual reviews.

Written Comments

In order to facilitate prompt processing of submissions of comments, the Office of the United States Trade Representative strongly urges and prefers e-mail submissions in response to this notice. Persons submitting comments by e-mail should use the following e-mail address: *FR0097@ustr.gov* with the subject line: ''CAFTA Interim Environmental Review.'' Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files. If submission by e-mail is impossible, comments should be made by facsimile to (202) 395–6143, attention: Gloria Blue.

Written comments will be placed in a file open to public inspection in the USTR Reading Room at 1724 F Street, NW., Washington DC. An appointment to review the file may be made by calling (202) 395–6186. The Reading Room is open to the public from 10–12 a.m. and from 1–4 p.m., Monday through Friday.

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 03–22035 Filed 8–27–03; 8:45 am]

BILLING CODE 3190–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments and Notice of Public Hearing Concerning Proposed United States-Dominican Republic Free Trade Negotiations

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of intent to initiate free trade negotiations between the United States and the Dominican Republic, request for comments, and notice of public hearing.

SUMMARY: The United States intends to initiate free trade negotiations with the Dominican Republic. The interagency Trade Policy Staff Committee (TPSC) will convene a public hearing and seek public comment to provide the United States Trade Representative (USTR) advice on how specific goods and services and other matters should be treated under an agreement resulting from the proposed negotiations.

DATES: Persons wishing to testify orally at the hearing must provide written notification of their intention, as well as their testimony, by October 1, 2003. A hearing will be held in Washington, DC beginning on October 8, 2003, and will continue as necessary on subsequent days. Written comments are due by noon, November 2, 2003.

ADDRESSES: Submissions by electronic mail: *FR0089@ustr.gov* (notice of intent to testify and written testimony); *FR0090@ustr.gov* (written comments). Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143. The public is strongly encouraged to submit documents electronically rather than by facsimile. (*See* requirements for submissions below.)

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments or participation in the public hearing, contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395-3475. All other questions should be directed to Andrea Gash Durkin, Director for Central America and the Caribbean, (202) 395–6135.

SUPPLEMENTARY INFORMATION:

1. Background

Under section 2104 of the Trade Act of 2002 (Trade Act) (19 U.S.C. 3804), for agreements that will be approved and implemented through trade promotion authority (TPA) procedures, the President must provide the Congress with at least 90 days written notice of his intent to enter into negotiations and must identify the specific objectives for the negotiations. Before and after the submission of this notice, the President must consult with appropriate Congressional committees and the Congressional Oversight Group regarding the negotiations.

Under section 131 of the Trade Act of 1974, as amended (19 U.S.C. 2151), the President must seek the advice of the U.S. International Trade Commission (ITC) regarding the probable economic effects on U.S. industries and consumers of the removal of tariffs and non-tariff barriers on imports pursuant to any proposed agreement. In addition, pursuant to section 133, the President must afford interested persons an opportunity to present their views regarding any matter relevant to any proposed agreement.

On August 4, 2003, after consulting with relevant Congressional committees and the Congressional Oversight Group, the USTR notified the Congress that the President intends to initiate free trade agreement negotiations with the Dominican Republic and identified specific objectives for the negotiations. Through these negotiations, we expect to provide for essentially the same disciplines as those in the Free Trade Agreement we are currently negotiating with the five member countries of the Central American Economic Integration System (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) (CAFTA), and to negotiate specific market access commitments with the Dominican Republic. On August 6, 2003, the USTR requested the ITC to provide advice on probable economic effects. The ITC intends to provide this advice within four months of its receipt of the request. This notice solicits views

from the public on these negotiations and provides information on a hearing that will be conducted pursuant to the requirements of the Trade Act of 1974.

2. Public Comments and Testimony

To assist the Administration in pursuing these negotiations, the Chairman of the TPSC invites written comments and/or oral testimony of interested persons at a public hearing. Comments and testimony may address the reduction or elimination of tariffs or non-tariff barriers on any articles provided for in the Harmonized Tariff Schedule of the United States (HTSUS) that are products of the Dominican Republic, any concession which should be sought by the United States, or any other matter relevant to the proposed agreement.

The TPSC invites comments and testimony on all of these matters and, in particular, seeks comments and testimony addressed to:

(a) General and commodity-specific negotiating objectives for the proposed agreement.

(b) Economic costs and benefits to U.S. producers and consumers of removal of tariffs and non-tariff barriers to U.S.-Dominican Republic trade.

(c) Treatment of specific goods (described by Harmonized System tariff numbers) under the proposed agreement, including comments on

(1) Product-specific import or export interests or barriers,

(2) Experience with particular measures that should be addressed in the negotiations, and

(3) In the case of articles for which immediate elimination of tariffs is not appropriate, a recommended staging schedule for such elimination.

(d) Adequacy of existing customs measures to ensure Dominican Republic origin of imported goods, and appropriate rules of origin for goods entering the United States under the proposed agreement.

(e) Existing Dominican Republic sanitary and phytosanitary measures and technical barriers to trade.

(f) Existing barriers to trade in services between the United States and the Dominican Republic that should be addressed in the negotiations.

(g) Investment issues that should be addressed in the negotiations.

(h) Government procurement issues that should be addressed in the negotiations and other relevant issues.

Comments may address issues such as trade-related intellectual property rights, labor, and environment, noting that we expect to provide for essentially the same disciplines for the Dominican Republic that are negotiated with CAFTA. Comments identifying present or potential trade barriers, laws or regulations that are not primarily trade-related should address the economic, political and social objectives of such regulations and the degree to which they discriminate against U.S. producers. At a later date, the USTR, through the TPSC, will publish notice of the U.S. environmental and employment impact reviews.

A hearing will be held on October 8, 2003, in Rooms 1 and 2, 1724 F Street, NW., Washington, DC. If necessary, the hearing will continue on subsequent days. Persons wishing to testify at the hearing must provide written notification of their intention by October 1, 2003. The notification should include: (1) The name, address, and telephone number of the person presenting the testimony; and (2) a short (one or two paragraph) summary of the presentation, including the subject matter and, as applicable, the product(s) (with HTSUS numbers), service sector(s), or other subjects to be discussed. A copy of the testimony must accompany the notification. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the TPSC. Persons with mobility impairments who will need special assistance in gaining access to the hearing should contact the TPSC Executive Secretary.

Interested persons, including persons who participate in the hearing, may submit written comments by noon, November 2, 2003. Written comments may include rebuttal points demonstrating errors of fact or analysis not pointed out in the hearing. All written comments must state clearly the position taken, describe with particularity the supporting rationale, and be in English. The first page of written comments must specify the subject matter, including, as applicable, the product(s) (with HTSUS numbers), service sector(s), or other subjects.

3. Requirements for Submissions

In order to facilitate prompt processing of submissions, the Office of the United States Trade Representative strongly urges and prefers electronic (e-mail) submissions in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile. Persons making submissions by e-mail should use the following subject line: ''United States—Dominican Republic Free Trade Negotiations'' followed by (as appropriate) ''Notice of Intent to Testify,'' ''Testimony,'' or ''Written Comments.'' Documents should be submitted as WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters ''BC–'', and the file name of the public version should begin with the characters ''P–''. The ''P–'' or ''BC–'' should be followed by the name of the submitter.

Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments, notice of testimony, and testimony will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Business confidential information submitted in accordance with 15 CFR 2003.6 must be clearly marked ''Business Confidential'' at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 p.m. and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling (202) 395–6186.

General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet Web site (*http://www.ustr.gov*).

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 03–22018 Filed 8–27–03; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Research, Engineering and Development (R,E&D) Advisory Committee

AGENCY: Federal Aviation Administration.

ACTION: Notice of meeting.

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the FAA Research, Engineering and Development (R,E&D) Advisory Committee.

Name: Research, Engineering & Development Advisory Committee.

Time and Date: September 17–9 a.m.–5 p.m. September 18–9 a.m.–5 p.m.

Place: Sheraton Pentagon South, 4641 Kenmore Avenue, Alexandria, Virginia.

Purpose: On September 17 from 9 a.m. to 5 p.m. will be a joint meeting with NASA's Revolutionize Aviation Subcommittee. The meeting agenda will include briefings on the National Plan, SATS/Capstone 21, Unmanned Aerial Vehicles in the National Airspace System, Environmental R&D and NASA/FAA Safety R&D Roadmaps. On September 18 from 9 a.m. to 5 p.m. the meeting agenda will include receiving from the Committee guidance for FAA's research and development investments in the areas of air traffic services, airports, aircraft safety, human factors and environment and energy.

Attendance is open to the interested public but seating is limited. Persons wishing to attend the meeting or obtain information should contact Gloria Dunderman at the Federal Aviation Administration, AAR–200, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–8937 or *gloria.dunderman@faa.gov.*

Members of the public may present a written statement to the Committee at any time.

Issued in Washington, DC on August 25, 2003.

Herman A. Rediess,

Director, Office of Aviation Research.

[FR Doc. 03–22061 Filed 8–27–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–06–C–00–BGM To Impose/Use the Revenue From a Passenger Facility Charge (PFC) at Greater Binghamton Airport, Binghamton, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose/use the revenue from a PFC at Greater Binghamton Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 29, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, NY 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Carl R. Beardsley, Jr., Deputy Commissioner of Aviation, of the Broome County Department of Aviation at the following address: Broome County Department of Aviation, Greater Binghamton Airport, 2534 Airport Road, Box 16, Johnson City, NY 13790.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Broome County Department of Aviation under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Levine, Airport Engineer, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, NY 11530, (516) 227–3807. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose/use the revenue from a PFC at Greater Binghamton Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 15, 2003, the FAA determined that the application to impose/use the revenue from a PFC submitted by the Broome County Department of Aviation was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 27, 2003.

The following is a brief overview of the application.

PFC Application No.: 03–06–C–00–BGM.

Level of the proposed PFC: $4.50.

Proposed charge effective date: February 1, 2005.

Proposed charge expiration date: March 1, 2005.

Total estimated PFC revenue: $7,996.

Brief description of proposed project(s):

—ARFF Facility Refurbishment.

—Passenger Boarding Bridge Purchase.

—Airport Security Access Control System Enhancement.

—Airport Security Fence Improvements.

Class or classes or air carriers which the public agency has requested not be required to collect PFCs: Non-Scheduled/On Demand Air Carriers filling FAA form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional airports office located at: Federal Aviation Administration, Airports Division, AEA–610, Eastern Region, 1 Aviation Plaza, Jamaica, New York, 11434–4809.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Broome County Department of Aviation.

Issued in Garden City, New York, on August 21, 2003.

Philip Brito,

Manager, New York Airports District Office, Eastern Region.

[FR Doc. 03–22046 Filed 8–27–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (03–07–C–00–SLC) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Salt Lake City International Airport, Submitted by the Salt Lake City Department of Airports, Salt Lake City, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Salt Lake City International Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before September 29, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Craig A. Sparks, Manager; Denver Airports District Office, DEN–ADO, Federal Aviation Administration; 26805 East 68th Avenue, Suite 224, Denver, Colorado 80249.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Timothy

L. Campbell, Executive Director, at the following address: Salt Lake City Department of Airports, 776 N. Terminal Dr., TUI, Suite 250, Salt Lake City, Utah 84122.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Salt Lake City International Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher J. Schaffer, (303) 342–1258, 26805 East 68th Avenue, Suite 224, Denver, Colorado 80249. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 03–07–C–00–SLC to impose and use PFC revenue at Salt Lake City International Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 20, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Salt Lake City Department of Airports, Salt Lake City, Utah, was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 20, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: February 1, 2004.

Proposed charge expiration date: May 31, 2006.

Total requested for use approval: $68,667,132.

Brief description of proposed project: Construct West Runway 34L/16R.

Class or classes of air carriers, which the public agency has requested, not be required to collect PFC's: All air taxi/commercial operators filing or required to file FAA Form 188–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Salt Lake City International Airport.

Issued in Renton, Washington on August 20, 2003.

Carolyn T. Read,

Acting Manager, Planning, Programming, and Capacity Branch Northwest Mountain Region.

[FR Doc. 03–22044 Filed 8–27–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (03–08–C–00–SLC) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Salt Lake City International Airport, Submitted by the Salt Lake City Department of Airports, Salt Lake City, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Salt Lake City International Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before September 29, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Craig A. Sparks, Manager; Denver Airports District Office, DEN–ADO, Federal Aviation Administration; 26805 East 68th Avenue, Suite 224, Denver, Colorado 80249.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Timothy L. Campbell, Executive Director, at the following address: Salt Lake City Department of Airports, 776 N. Terminal Dr., TUI, Suite 250, Salt Lake City, Utah 84122.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Salt Lake City International Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher J. Schaffer, (303) 342–1258, 26805 East 68th Avenue, Suite 224, Denver, Colorado 80249. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 03–08–C–00–SLC to impose and use PFC revenue at Salt Lake City International Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 20, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Salt Lake City Department of Airports, Salt Lake City, Utah, was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 20, 2003. The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: June 1, 2006.

Proposed charge expiration date: July 31, 2006.

Total requested for use approval: $7,649,000.

Brief description of proposed projects: Apron D Rehabilitation East, Taxiway M Reconstruction, Tooele Valley AWOS, West Apron Paving (Phase III) and Supporting Infrastructure, Electronic Visual Information Display Systems (EVIDS) Upgrade, East Side Oil/Water Separator, Airport Layout Plan (ALP)/Environmental Update (Phase II), Airfield Equipment, Park and Wait Sign, Tooele Valley Airport Land Acquisition.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: All air taxi/commercial operators filing or required to file FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Salt Lake City International Airport.

Issued in Renton, Washington on August 20, 2003.

Carolyn T. Read,

Acting Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 03–22045 Filed 8–27–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Montgomery and Prince George's Counties, MD

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a Draft Environmental Impact Statement (EIS)/Draft Section 4(f) Evaluation will be prepared for a proposed roadway improvement project in Montgomery and Prince George's Counties, Maryland.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel W. Johnson, Environmental Program Specialist, Federal Highway Administration, Maryland Division, The Rotunda, Suite 220, 711 W. 40th Street, Baltimore, Maryland 21211, Telephone: (410) 962–4342, extension 145.

SUPPLEMENTARY INFORMATION: The FHWA along with the Maryland State Highway Administration will prepare a Draft EIS with a draft Section 4(f) Evaluation for transportation improvements along the MD 28/MD 198 Corridor in Montgomery and Prince George's Counties. The U.S. Army Corps of Engineers and U.S. Environmental Protection Agency will be invited to be cooperating agencies. The proposed project includes widening improvements along MD 28 (Norbeck Road), Norbeck Road Extended and MD 198 (Spencerville Road/Sandy Spring Road) from the vicinity of MD 97 (Georgia Avenue) to the vicinity of I–95 (approximately 10.6 miles).

Proposed improvements along this corridor are necessary because MD 28 and MD 198 are currently operating near capacity in some areas between MD 97 in Montgomery County and I–95 in Prince George's County. The 2002 completion of Montgomery County's Norbeck Road Extended project provides a direct connection of MD 28 and MD 198, reducing travel time between MD 182 (Layhill Road) and MD 650 (New Hampshire Avenue). Traffic operations in the study corridor are expected to worsen as planned and future development occurs and congestion increases. The local roadway network will reach capacity and will be unable to accommodate this increased travel demand leading to stop-and-go conditions at locations along the corridor. Improvements within the corridor will accommodate existing and projected travel demand, while addressing safety concerns.

The alternates under consideration include (1) No-Build Alternate—taking no action, (2) Transportation Systems Management Alternate—providing a wide range of spot improvements throughout the corridor that address the most serious concerns at specific location or segments of roadway (*e.g.,* intersection improvements, geometric improvements, access management strategies, and center turn lanes) and (3) Master Plan Features Alternate—incorporating roadway improvements, including roadway widening, to MD 28, Norbeck Road Extended and MD 198 within the study limits as called for in the local area master plans.

Other transportation projects within the vicinity of the MD 28/MD 198 Corridor Improvement Study are under way or under study; including the MD 28/MD 97 interchange, the MD 198/US 29 interchange and the Intercounty Connector (ICC). A Public Hearing was held for the MD 28/MD 97 interchange in December 2002. The MD 198/US 29 interchange is currently under construction, anticipated to be complete in the Fall 2004. The Public Hearing for the ICC is tentatively scheduled for the Fall 2004.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, local agencies, private organizations, and citizens who have previously expressed or are known to have an interest in this project. A Public Hearing is tentatively scheduled for the Winter 2003/2004. The Draft EIS/Draft Section 4(f) Evaluation will be available for public and agency review and comment prior to a Public Hearing. Public notice will be given of the availability of the Draft EIS/4(f) for review and of the time and place of this hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties.

Comments or questions concerning these proposed actions and EIS should be directed to the FHWA at the address provided above (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program).

Issued on: August 14, 2003.

Daniel W. Johnson,

Environmental Program Manager, Baltimore, Maryland.

[FR Doc. 03–22037 Filed 8–27–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–14229; Notice 2]

Kawasaki Motors Corporation, U.S.A.; Grant of Application for Decision of Inconsequential Noncompliance

Kawasaki Motors Corporation U.S.A. of Irvine, California (KMC) has determined that some 2002 and 2003 model year Kawasaki motorcycles produced for sale in the U.S. fail to comply with a requirement in Federal Motor Vehicle Safety Standard (FMVSS) No. 123, ''Motorcycle Controls and Displays''. The motorcycles in question have ignition switches that are not labeled with the word ''ignition''. Pursuant to 49 U.S.C. 30118(d) and 30120(h), KMC has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports''.

Notice of receipt of the application was published, with a 30-day comment period, on February 3, 2003, in the **Federal Register** (67 FR 72026). NHTSA received no comment on this application.

Federal Motor Vehicle Safety Standard No. 123 standardizes motorcycle controls to minimize the risk of crashes resulting from operator errors in the use of controls. In FMVSS No. 123, paragraph S5.2.3 specifies that the ignition shall be labeled with the word ''ignition'' as well as the word ''off'' at the appropriate ignition switch position. Proper labeling of the ignition helps to ensure that a rider who needs to quickly turn off a motorcycle for safety reasons will be able to locate, identify, and operate the ignition control.

Kawasaki Motors Corporation described the operation of the motorcycles with the noncompliance as follows:

> The ignition switch is located in a pod positioned immediately in front of the operator, just ahead of the fuel filler opening on the top of the fuel tank. The switch is operated by an ignition key and has three positions, sequentially in a clockwise direction: ''off'' where the ignition is disabled; ''on'' where the ignition is enabled; and ''park'' where the ignition is disabled but minimal lighting functions are enabled. These ignition switch positions are labeled on a metal plate that surrounds the ignition switch and which also contains the turn signal indicator lamps, neutral and high beam indicators. Unlike standard automotive practice, the ignition switch does not operate the starter motor—the starter button is located on the handlebar. Starting the

motorcycle involves insertion of the key into the switch and turning the ignition to the ''on'' position, then operating the separate starter button. An operator would not be able to start the engine inadvertently by using only the ignition switch.

Kawasaki Motors Corporation stated the following in support of its application for inconsequential noncompliance:

No safety consequences attach to the omission of the ''ignition'' identification for the switch. Operators are familiar with the function and location of the ignition switch as well as the use of the ignition key to operate the switch. The location of the switch, in combination with frequently referenced displays such as turn signal, neutral, and high beam indicators means that the operator is quite familiar with the switch and its location, and experiences no adverse consequences from the lack of ''ignition'' identification for the switch. In fact, an operator unable to identify the ignition switch, due to the lack of labeling, would be unable to start or operate the motorcycle in the first place.

The other ignition switch labeling, *i.e.,* the word ''off'' at the appropriate switch position, is present as required, and the remainder of the vehicle controls and displays comply with the requirements of FMVSS No. 123.

In their application, KMC stated that it is unaware of any accidents, injuries, owner complaints or field reports for the subject vehicles vis-à-vis this noncompliance, and has received no communications of any kind from owners, dealers, or anyone else indicating any awareness of the missing label.

After reviewing KMC's application, NHTSA concludes that the noncompliance of KMC with respect to FMVSS No. 123 does not constitute a consequential vehicle safety concern. Motorcycles, including the non-complying Kawasaki motorcycles, are equipped with an engine kill switch located on the right handlebar where it is within reach of the rider's right hand. A motorcycle operator confronted with the need to quickly shut off the engine can do so without moving his hand from the handgrip. By using the kill switch, there is no need for the operator to locate the ignition switch. As a result, the missing label on the ignition switch should not prevent immediate engine shut-down.

Accordingly, KMC's application is granted and the applicant is exempted from providing the notification of the noncompliance as required by 49 U.S.C. 30118, and from remedying the noncompliance as required by 49 U.S.C. 30120.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: August 15, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–22041 Filed 8–27–03; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub–No. 223X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Mingo County, WV

Norfolk Southern Railway Company (NSR) has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 1.59-mile line of railroad between milepost TE–1.50 at Licks Fork Spur and milepost TE–3.09 at Elda, in Mingo County, WV. The line traverses United States Postal Service Zip Code 24293.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 27, 2003,[1] unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by September 8, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 17, 2003, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's representative: James R. Paschall, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

NSR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by September 2, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by August 28, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

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[1] While NSR initially indicated a proposed consummation date of September 26, 2003, because the verified notice was filed on August 8, 2003, consummation may not take place prior to September 27, 2003. NSR's representative has subsequently confirmed that consummation cannot occur before September 27, 2003.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

Decided: August 22, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–22019 Filed 8–27–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on an information collection that is due for extension approval by the Office of Management and Budget. The Office of International Monetary and Financial Policy within the Department of the Treasury is soliciting comments concerning Extension of Foreign Currency Form FC–1 (OMB No. 1505–0012) Weekly Consolidated Foreign Currency Report of Major Market Participants, Form FC–2 (OMB No. 1505–0010) Monthly Consolidated Foreign Currency Report of Major Market Participants, and Form FC–3 (OMB No. 1505–0014) Quarterly Consolidated Foreign Currency Report. The reports are mandatory.

DATES: Written comments should be received on or before October 27, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Timothy D. DuLaney, Office of International Monetary and Financial Policy, Department of the Treasury, Room 4423–1440NYA, 1500 Pennsylvania Avenue NW., Washington DC 20220. In view of possible delays in mail delivery, please also notify Mr. DuLaney by e-mail (*Tim.Dulaney@do.treas.gov*), FAX (202–622–2021) or telephone (202–622–2052).

FOR FURTHER INFORMATION CONTACT: Copies of the proposed forms and instructions are available on the Federal Reserve Bank of New York's website, in the U.S. Department of the Treasury section of the webpage for Regulatory Reports Forms and Instructions at: *http://www.ny.frb.org/bankinfo/regrept/regrept.html.* Requests for additional information should be directed to Mr. DuLaney.

SUPPLEMENTARY INFORMATION:

Title: Weekly Consolidated Foreign Currency Report of Major Market Participants, Foreign Currency Form FC–1.

OMB Control Number: 1505–0012.

Title: Monthly Consolidated Foreign Currency Report of Major Market Participants, Foreign Currency Form FC–2.

OMB Control Number: 1505–0010.

Title: Quarterly Consolidated Foreign Currency Report, Foreign Currency Form FC–3.

OMB Control Number: 1505–0014.

Abstract: Foreign Currency Forms FC–1, FC–2, and FC–3 are required by Pub. L. 93–110 (31 U.S.C. 5315), which directs the Secretary of the Treasury to prescribe regulations and reports on foreign currency transactions conducted by a United States person or a foreign person controlled by a United States person. The regulations governing forms FC–1, FC–2, and FC–3 are contained in Title 31 part 128 of the Code of Federal Regulations (31 CFR part 128) which were published in the **Federal Register** on November 2, 1993.

Current Actions: No changes to the current forms and instructions are being proposed.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents:

Foreign Currency Form FC–1: 21 respondents.

Foreign Currency Form FC–2: 21 respondents.

Foreign Currency Form FC–3: 51 respondents.

Estimated Average Time Per Respondent:

Foreign Currency Form FC–1: One (1) hour per respondent per response.

Foreign Currency Form FC–2: Four (4) hours per respondent per response.

Foreign Currency Form FC–3: Eight (8) hours per respondent per response.

Estimated Total Annual Burden Hours:

Foreign Currency Form FC–1: 1,092 hours, based on 52 reporting periods per years.

Foreign Currency Form FC–2: 1,008 hours, based on 12 reporting periods per year.

Foreign Currency Form FC–3: 1,632 hours, based on 4 reporting periods per year.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: (a) Whether Foreign Currency Forms FC–1, FC–2, and FC–3 are necessary for the proper performance of the functions of the Office, including whether the information will have practical uses; (b) the accuracy of the above estimates of the burdens; (c) ways to enhance the quality, usefulness and clarity of the information to be collected; (d) ways to minimize the reporting and/or record keeping burdens on respondents, including the use of information technologies to automate the collection of the data; and (e) estimates of capital or start-up costs of operation, maintenance and purchase of services to provide information.

Timothy D. DuLaney,

Office of International Monetary and Financial Policy, U.S. Department of the Treasury.

[FR Doc. 03–21989 Filed 8–27–03; 8:45 am]

BILLING CODE 4810–25–P

Corrections

Federal Register

Vol. 68, No. 167

Thursday, August 28, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

OAR–2002–0040, FRL–7461–4]

RIN 2060–A174

National Emission Standards for Hazardous Air Pollutants: Engine Test Cells/Stands

Correction

In rule document 03–5521 beginning on page 28774 in the issue of Tuesday, May 27, 2003 make the following correction:

PART 63—[Corrected]

On page 28785, in the second column, ''**Subpart PPPPP—National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Standards** '' should read ''**Subpart PPPPP—National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/ Stands**''.

[FR Doc. 03–5521 Filed 8–27–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
August 28, 2003

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Early Seasons and Bag and Possession Limits for Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AI93

Migratory Bird Hunting; Early Seasons and Bag and Possession Limits for Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes the hunting seasons, hours, areas, and daily bag and possession limits of mourning, white-winged, and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; common snipe; sandhill cranes; sea ducks; early (September) waterfowl seasons; migratory game birds in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; and some extended falconry seasons. Taking of migratory birds is prohibited unless specifically provided for by annual regulations. This rule permits taking of designated species during the 2003–04 season.

DATES: This rule is effective on September 1, 2003.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2003

On May 6, 2003, we published in the **Federal Register** (68 FR 24324) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, the proposed regulatory alternatives for the 2002–03 duck hunting season, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 23, 2003, we published in the **Federal Register** (68 FR 37362) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks and the regulatory alternatives for the 2003–04 duck hunting season. The June 23 supplement also provided detailed information on the 2003–04 regulatory schedule and announced the Service Migratory Bird Regulations Committee (SRC) meetings.

On June 18 and 19, 2003, we held open meetings with the Flyway Council Consultants at which the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2003–04 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands, special September waterfowl seasons in designated States, special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2003–04 regular waterfowl seasons. On July 17, 2003, we published in the **Federal Register** (68 FR 42546) a third document specifically dealing with the proposed frameworks for early-season regulations.

On July 30–31, 2003, we held open meetings with the Flyway Council Consultants at which the participants reviewed the status of waterfowl and developed recommendations for the 2003–04 regulations for these species. Proposed hunting regulations were discussed for late seasons. We published proposed frameworks for the 2003–04 late-season migratory bird hunting regulations on August 19, 2003, in the **Federal Register** (68 FR 50016). On August 27, 2003, we published a fifth document in the **Federal Register** which contained final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits.

The final rule described here is the sixth in the series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations and deals specifically with amending subpart K of 50 CFR part 20. It sets hunting seasons, hours, areas, and limits for mourning, white-winged, and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; common snipe; sandhill cranes; sea ducks; early (September) waterfowl seasons; mourning doves in Hawaii; migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; youth waterfowl hunting day; and some extended falconry seasons.

NEPA Consideration

NEPA considerations are covered by the programmatic document ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published a Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582) and our Record of Decision on August 18, 1988 (53 FR 31341). Copies are available from the address indicated under **ADDRESSES.** Additionally, in a proposed rule published in the April 30, 2001, **Federal Register** (66 FR 21298), we expressed our intent to begin the process of developing a new EIS for the migratory bird hunting program. We plan to begin the public scoping process in 2005.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (and) shall ''insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *.'' Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to adversely affect any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final frameworks reflect any such modifications. Our biological opinions resulting from this Section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES.**

Executive Order 12866

The migratory bird hunting regulations are economically significant and were reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. As such, a cost/benefit analysis was initially prepared in 1981. This analysis was subsequently revised annually from 1990–96, and then updated in 1998. We will update again in 2004. It is further discussed below under the heading Regulatory

Flexibility Act. Results from the 1998 analysis indicate that the expected welfare benefit of the annual migratory bird hunting frameworks is on the order of $50 to $192 million. Copies of the cost/benefit analysis are available upon request from the address indicated under **ADDRESSES.**

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis discussed under Executive Order 12866. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996 and 1998 and will be updated again in 2004. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 1998 Analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $429 million and $1.084 billion at small businesses in 2003. Copies of the Analysis are available upon request from the address indicated under **ADDRESSES.**

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date required by 5 U.S.C. 801 under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. We utilize the various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, subpart K, in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 10/31/2004). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned clearance number 1018–0023 (expires 10/31/2004). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of harvest, and the portion it constitutes of the total population.

A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not ''significantly or uniquely'' affect small governments, and will not produce a Federal mandate of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that it will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Thus, this action is not a significant energy action and no Statement of Energy Effects is required.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act (MBTA), does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule will allow hunters to exercise otherwise unavailable privileges, and, therefore, it will reduce restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the MBTA. Annually, we prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. We develop the frameworks in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will ultimately make season selections, thereby having an influence on their own regulations. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Further, any State or Tribe may be more restrictive than the Federal frameworks at any time. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there was a delay in the effective date

of these regulations after this final rulemaking, the States would have insufficient time to implement their selected season dates and limits and start their seasons in a timely manner. We therefore find that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these regulations will, therefore, take effect immediately upon publication. Accordingly, with each conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State or Territory on those species of migratory birds for which open seasons are now prescribed, and consideration having been given to all other relevant matters presented, certain sections of title 50, chapter I, subchapter B, part 20, subpart K, are hereby amended as set forth below.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Dated: August 8, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

PART 20—[AMENDED]

■ For the reasons set out in the preamble, title 50, chapter I, subchapter B, Part 20, subpart K of the Code of Federal Regulations is amended as follows:

■ 1. The authority citation for Part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712 and 16 U.S.C. 742 a-j, Pub. L. 106–108.

BILLING CODE 4310–55–P

-Note - The following annual hunting regulations provided for by §§20.101 through 20.106 and 20.109 of 50 CFR 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

2. Section 20.101 is revised to read as follows:

§20.101 Seasons, limits, and shooting hours for Puerto Rico and the Virgin Islands.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset.

CHECK COMMONWEALTH REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

(a) Puerto Rico

	Season Dates	Limits Bag	Limits Possession
Doves and Pigeons			
Zenaida, white-winged, and mourning doves	Sept. 6-Nov. 3	15	15
Scaly-naped pigeons	Sept. 6-Nov. 3	5	5
Ducks	Nov. 16-Dec. 22 &	6	12
	Jan. 10-Jan. 26	6	12
Common Moorhens	Nov. 16-Dec. 22 &	6	12
	Jan. 10-Jan. 26	6	12
Common Snipe	Nov. 16-Dec. 22 &	8	16
	Jan. 10-Jan. 26	8	16

Restrictions: In Puerto Rico, the season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, masked duck, purple gallinule, American coot, and Caribbean coot, white-crowned pigeon and plain pigeon. Hunting is closed in the area known as Caño Tiburones.

Closed Areas: Closed areas are described in the July 17, 2003, Federal Register (68 FR 42546).

(b) Virgin Islands

	Season Dates	Limits Bag	Limits Possession
Zenaida doves	Sept. 1-Sept. 30	10	10
Ducks	CLOSED		

Restrictions: In the Virgin Islands, the seasons are closed for ground or quail doves, pigeons, ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, masked duck, and purple gallinule.

Closed Areas: Ruth Cay, just south of St. Croix, is closed to the hunting of migratory game birds.

3. Section 20.102 is revised to read as follows:

§20.102 Seasons, limits, and shooting hours for Alaska.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset. Area descriptions were published in the July 17, 2003, Federal Register (68 FR 42546).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Area Seasons	Dates
North Zone	Sept. 1-Dec. 16
Gulf Coast Zone	Sept. 1-Dec. 16
Southeast Zone	Sept. 1-Dec. 16
Pribilof & Aleutian Islands Zone	Oct. 8-Jan. 22
Kodiak Zone	Oct. 8-Jan. 22

Daily Bag and Possession Limits

Area	Ducks(1)	Dark Geese(2)(3)	Light Geese (2)	Brant	Common Snipe	Sandhill Cranes(4)
North Zone	10-30	4-8	3-6	2-4	8-16	3-6
Gulf Coast Zone	8-24	4-8	3-6	2-4	8-16	2-4
Southeast Zone	7-21	4-8	3-6	2-4	8-16	2-4
Pribilof and Aleutian Islands Zone	7-21	4-8	3-6	2-4	8-16	2-4
Kodiak Zone	7-21	4-8	3-6	2-4	8-16	2-4

(1) The basic duck bag limits may include no more than 1 canvasback daily, 3 in possession, and may not include sea ducks. In addition to the basic duck limits, sea duck limits of 10 daily, 20 in possession, singly or in the aggregate, including no more than 6 each of either harlequin or long-tailed ducks, are allowed. Special sea duck limits will be available to non-residents, but at lower daily limits than residents, and they may take no more than a possession limit of 20 per season , including no more than 4 each of harlequin and long-tailed ducks, black, surf, and white-winged scoters, and king and common eiders. Sea ducks include scoters, common and king eiders, harlequin ducks, long-tailed ducks, and common and red-breasted mergansers. The season for Steller's and spectacled eiders is closed statewide.

(2) Dark geese include Canada and white-fronted geese. Light geese include snow geese and Ross' geese. Separate limits apply to brant. The season for emperor geese is closed Statewide.

(3) In Units 5 and 6, the taking of Canada geese is only permitted from September 28 through December 16. In the Middleton Island portion of Unit 6, the taking of Canada geese is by special permit and archery only, with a daily bag and possession limit of 1. In Unit 9(D) and the Unimak Island portion of Unit 10, the limits for dark geese are 6 daily and 12 in possession. In Unit 10 (except Unimak Island) the season for Canada geese is closed. Canada goose season will be closed in Unit 8 (Kodiak).

(4) In Unit 17, the daily bag limit for sandhill cranes is 2 and the possession limit is 4.

Falconry: The total combined bag and possession limit for migratory game birds taken with the use of a falcon under a falconry permit is 3 per day, 6 in possession, and may not exceed a more restrictive limit for any species listed in this subsection.

Special Tundra Swan Season: In Units 18, 22, and 23, there will be a tundra swan season from September 1 through October 31 with a season limit of 3 tundra swans per hunter. This season is by registration permit only; hunters will be issued 1 permit allowing the take of up to 3 tundra swans. Hunters will be required to file a harvest report after the season is completed. Up to 500 permits may be issued in Unit 18 and 300 permits each in Units 22 and 23. In Unit 17, there will be an experimental tundra swan season from September 1 through October 31, with a season limit of 3 tundra swans per hunter. This season is by registration permit only; hunters will be issued 1 permit allowing the take of up to 3 tundra swans. Hunters will be required to file a harvest report after the season is completed. Up to 200 permits may be issued. Evaluation of experimental seasons must adhere to guidelines described in the Pacific Flyway Management Plan for the Western Population of Tundra Swans.

4. Section 20.103 is revised to read as follows:

§20.103 Seasons, limits, and shooting hours for doves and pigeons.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the July 17, 2003, Federal Register (68 FR 42546).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

(a) Doves

Note: Unless otherwise specified, the seasons listed below are for mourning doves only.

	Season Dates	Limits Bag	Limits Possession
EASTERN MANAGEMENT UNIT			
Alabama			
North Zone			
12 noon to sunset	Sept. 6 only	15	15
1/2 hour before sunrise to sunset	Sept. 7-Oct. 19 & Dec. 20-Jan. 4	15	15
South Zone			
12 noon to sunset	Oct. 18 only	12	12
1/2 hour before sunrise to sunset	Oct. 19-Nov. 9 & Nov. 26-Nov. 30 & Dec. 5-Jan. 15	12	12
Delaware			
12 noon to sunset	Sept. 1-Sept. 20	12	24
1/2 hour before sunrise to sunset	Oct. 20-Nov. 1 &	12	24
	Dec. 8-Jan. 13	12	24
Florida (1)			
12 noon to sunset	Oct. 4-Oct. 27	12	24
1/2 hour before sunrise to sunset	Nov. 15-Nov. 30 &	12	24
	Dec. 13-Jan. 11	12	24
Georgia			
Zone 1			
12 noon to sunset	Sept. 6 only	12	24
1/2 hour before sunrise to sunset	Sept. 7-Oct. 5 &	12	24
	Nov. 27-Nov. 29 &	12	24
	Dec. 10-Jan. 15	12	24
Zone 2			
12 noon to sunset	Sept. 27 only	12	24
1/2 hour before sunrise to sunset	Sept. 28-Oct. 26 &	12	24
	Nov. 27-Nov. 29 &	12	24
	Dec. 10-Jan. 15	12	24
Illinois			
sunrise to sunset	Sept. 1-Oct. 14 &	15	30
	Nov. 1-Nov. 16	15	30
Indiana	Sept. 1-Oct. 16 &	15	30
	Nov. 7-Nov. 16 &	15	30
	Nov. 27-Nov. 30	15	30

	Season Dates	Limits Bag	Limits Possession
Kentucky			
11 a.m. to sunset	Sept. 1-Oct. 24	15	30
1/2 hour before sunrise to sunset	Nov. 27-Dec. 2	15	30
Louisiana			
12 noon to sunset	Sept. 6-Sept. 7 &	12	24
	Oct. 11-Oct. 12 &	12	24
	Dec. 20-Dec. 21	12	24
1/2 hour before sunrise to sunset	Sept. 8-Sept. 14 &	12	24
	Oct. 13-Nov. 23 &	12	24
	Dec. 22-Jan. 5	12	24
Maryland			
12 noon to sunset	Sept. 1-Oct. 18	12	24
1/2 hour before sunrise to sunset	Nov. 10-Nov. 15 &	12	24
	Dec. 20-Jan. 3	12	24
Mississippi	Sept. 1-Sept. 21 &	15	30
	Oct. 11-Nov. 2 &	15	30
	Dec. 27-Jan. 11	15	30
North Carolina			
12 noon to sunset	Sept. 1-Sept. 7	12	24
1/2 hour before sunrise to sunset	Sept. 8-Oct. 4 &	12	24
	Nov. 24-Nov. 29 & Dec. 17-Jan. 15	12	24
Ohio	Sept. 1-Oct. 19 &	15	30
	Dec. 13-Dec. 23	15	30
Pennsylvania			
12 noon to sunset	Sept. 1-Oct. 4 &	12	24
	Nov. 1-Nov. 29 &	12	24
	Dec. 26-Jan. 1	12	24
Rhode Island			
12 noon to sunset	Sept. 27-Oct. 13	12	24
1/2 hour before sunrise to sunset	Oct. 18-Nov. 23 &	12	24
	Dec. 31-Jan. 15	12	24

	Season Dates	Limits Bag	Possession
South Carolina			
12 noon to sunset	Sept. 1-Sept. 6	12	24
1/2 hour before sunrise to sunset	Sept. 7-Oct. 4 &	12	24
	Nov. 22-Nov. 29 &	12	24
	Dec. 19-Jan. 15	12	24
Tennessee			
12 noon to sunset	Sept. 1 only	15	30
1/2 hour before sunrise to sunset	Sept. 2-Sept. 26 &	15	30
	Oct. 11-Oct. 26 &	15	30
	Dec. 20-Jan. 6	15	30
Virginia			
12 noon to sunset	Sept. 1-Sept. 27	12	24
1/2 hour before sunrise to sunset	Oct. 8-Nov. 8 &	12	24
	Dec. 31-Jan. 10	12	24
West Virginia			
12 noon to sunset	Sept. 1 only	12	24
1/2 hour before sunrise to sunset	Sept. 2-Oct. 4 &	12	24
	Oct. 27-Nov. 8 &	12	24
	Dec. 12-Jan. 3	12	24
Wisconsin	Sept. 1-Oct. 30	15	30
CENTRAL MANAGEMENT UNIT			
Arkansas	Sept. 6-Sept. 28 &	15	30
	Nov. 22-Nov. 30 &	15	30
	Dec. 20-Jan. 15	15	30
Colorado	Sept. 1-Oct. 30	15	30
Kansas (2)	Sept. 1-Oct. 28	15	30
	Nov. 8-Nov. 9	15	30
Missouri (3)	Sept. 1-Nov. 9	12	24
Montana	Sept. 1-Oct. 30	15	30
Nebraska	Sept. 1-Oct. 30	15	30
New Mexico (4)			
North Zone	Sept. 1-Oct. 30	15	30
South Zone	Sept. 1-Sept. 30 &	15	30
	Nov. 15-Dec. 14	15	30

	Season Dates	Limits Bag	Possession
North Dakota	Sept. 1-Oct. 26	15	30
Oklahoma (5)	Sept. 1-Oct. 30	15	30
South Dakota (6)	Sept. 1-Oct. 17	15	30
Texas (7)			
North Zone	Sept. 1-Oct. 30	15	30
Central Zone	Sept. 1-Oct. 30 &	12	24
	Dec. 26-Jan. 4	12	24
South Zone			
Special Area	Sept. 20-Nov. 5 &	12	24
	Dec. 20-Jan. 7	12	24
(Special Season)			
12 noon to sunset	Sept. 6-Sept. 7 &	10	20
	Sept. 13-Sept. 14	10	20
Remainder of the			
South Zone	Sept. 20-Nov. 5 &	12	24
	Dec. 20-Jan. 11	12	24
Wyoming	Sept. 1-Oct. 30	15	30
WESTERN MANAGEMENT UNIT			
Arizona (8)	Sept. 1-Sept. 15 &	10	20
	Nov. 21-Jan. 4	10	20
California (9)	Sept. 1-Sept. 15 &	10	20
	Nov. 8-Dec. 22	10	20
Idaho	Sept. 1-Sept. 30	10	20
Nevada (9)	Sept. 1-Sept. 30	10	20
Oregon	Sept. 1-Sept. 30	10	20
Utah	Sept. 1-Sept. 30	10	20
Washington	Sept. 1-Sept. 15	10	20
OTHER POPULATIONS			
Hawaii (10)	Nov. 1-Nov. 30 &	10	10
	Dec. 3-Dec. 28 &	10	10
	Dec. 31-Jan. 19	10	10

(1) In Florida, the daily bag limit is 12 mourning and white-winged doves in the aggregate, of which not more than 4 may be white-winged doves. The possession limit is twice the daily bag limit.

(2) In Kansas, the daily bag limit is 15 and the possession limit is 30 mourning white-winged doves in the aggregate. See State regulations for additional information on daily bag and possession limits.

(3) In Missouri, the daily bag limit is 12 and the possession limit is 24 mourning and white-winged doves in the aggregate.

(4) In New Mexico, the daily bag limit is 15 and the possession limit is 30 mourning white-winged doves in the aggregate. See State regulations for additional information on daily bag and possession limits.

(5) In Oklahoma, the daily bag limit is 15 and the possession limit is 30 mourning white-winged doves in the aggregate. See State regulations for additional information on daily bag and possession limits.

(6) In South Dakota, shooting hours are from sunrise to sunset.

(7) In Texas, the daily bag limit is either15 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 2 may be white-tipped doves with a maximum 60-day season or 12 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 2 may be whie-tipped doves with a maximum 70-day season. Possession limits are twice the daily bag limit. During the special season in the Special White-winged Dove Area of the South Zone, the daily bag limit is 10 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves. Possession limits are twice the daily bag limit.

(8) In Arizona, during September 1 through 15, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. During November 22 through January 5, the daily bag limit is 10 mourning doves. The possession limit is twice the daily bag limit. See State regulations for restrictive shooting hours in certain areas.

(9) In the areas of California and Nevada open to white-winged dove hunting, the daily bag limit is 10 and the possession limit is 20 mourning and white-winged doves in the aggregate.

(10) In Hawaii, the season is only open on the island of Hawaii. The daily bag and possession limits are 10 mourning doves, spotted doves and chestnut-bellied sandgrouse in the aggregate. Shooting hours are from one-half hour before sunrise through one-half hour after sunset. Hunting is permitted only on weekends and State holidays.

(b) Band-tailed Pigeons

	Season Dates	Limits	
		Bag	Possession
Arizona	Sept. 26-Oct. 6	5	10
California			
North Zone	Sept. 20-Sept. 28	2	4
South Zone	Dec. 20-Dec. 28	2	4
Colorado	Sept. 1-Sept. 30	5	10
New Mexico (1)			
North Zone	Sept. 1-Sept. 20	5	10
South Zone	Oct. 1-Oct. 20	5	10
Oregon	Sept. 15-Sept. 23	2	4
Utah (2)	Sept. 1-Sept. 30	5	10
Washington	Sept. 15-Sept. 23	2	4

(1) In New Mexico, each band-tailed pigeon hunter must have a band-tailed pigeon hunting permit issued by the State. The North Zone is defined as that area lying either norht or east of a line following U. S. Highway 60 from the Arizona State line east to Interstate Highway 25 at Socorro and then south along Interstate Highway 25 to the Texas State line. The South Zone is that area lying south and west of the North Zone.
(2) In Utah, each band-tailed pigeon hunter must have either a band-tailed pigeon hunting permit or a special bird permit stamp issued by the respective State.

5. Section 20.104 is revised to read as follows:

§20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the July 17, 2003, Federal Register (68 FR 42546).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-season regulations for further information.

	Sora and Virginia Rails	Clapper and King Rails	Woodcock	Common Snipe
Daily bag limit	25 (1)	15 (2)	3	8
Possession limit	25 (1)	30 (2)	6	16
ATLANTIC FLYWAY				
Connecticut (3)	Sept. 2-Nov. 1	Sept. 2-Nov. 1	Oct. 25-Nov. 22	Oct. 25-Nov. 22
Delaware	Sept. 1-Nov. 8	Sept. 1-Nov. 8	Nov. 24-Dec. 13 & Dec. 18-Dec. 27	Nov. 24-Jan.31
Florida	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Dec. 20-Jan. 18	Nov. 1-Feb. 15
Georgia	Sept. 20-Nov. 28	Sept. 20-Nov. 28	Dec. 20-Jan. 18	Nov. 15-Feb. 28
Maine	Sept. 1-Nov. 8	Closed	Deferred	Sept. 1-Dec. 16
Maryland	Sept. 1-Nov. 8	Sept. 1-Nov. 8	Oct. 25-Nov. 15 & Jan. 10-Jan. 17	Sept. 24-Nov. 28 & Dec. 15-Jan. 24
Massachusetts (4)	Sept. 1-Nov. 9	Closed	Deferred	Sept. 1-Dec. 14
New Hampshire	Closed	Closed	Oct. 1-Oct. 30	Sept. 15-Oct. 30
New Jersey (5)				
North Zone	Sept. 1-Nov. 8	Sept. 1-Nov. 8	Oct. 16-Nov. 8	Sept. 19-Jan. 3
South Zone	Sept. 1-Nov. 8	Sept. 1-Nov. 8	Nov. 8-Nov. 29 & Dec. 26-Dec. 27	Sept. 19-Jan. 3
New York (6)	Sept. 1-Nov. 9	Closed	Oct. 6-Nov. 4	Sept. 1-Nov. 9
North Carolina	Sept. 1-Nov. 8	Sept. 1-Nov. 8	Dec. 17-Jan. 15	Nov. 14-Feb. 28

	Sora and Virginia Rails	Clapper and King Rails	Woodcock	Common Snipe
Pennsylvania	Sept. 1-Nov. 8	Closed	Oct. 18-Nov. 15	Oct. 18-Nov. 22
Rhode Island (7)	Sept. 6-Nov. 14	Sept. 6-Nov. 14	Oct. 30-Nov. 28	Sept. 6-Nov. 14
South Carolina	Sept. 26-Sept. 30 & Oct. 24-Dec. 27	Sept. 26-Sept. 30 & Oct. 24-Dec. 27	Jan. 2-Jan. 31	Nov. 14-Feb. 28
Vermont	Closed	Closed	Deferred	Deferred
Virginia	Sept. 10-Nov. 18	Sept. 10-Nov. 18	Nov. 1-Nov. 15 & Dec. 20-Jan. 3	Oct. 8-Oct. 11 & Oct. 21-Jan. 31
West Virginia	Sept. 1-Nov. 8	Closed	Oct. 24-Nov. 22	Sept. 1-Dec. 13
MISSISSIPPI FLYWAY				
Alabama (8)	Sept. 6-Sept. 21 & Nov. 28-Jan. 20	Sept. 6-Sept. 21 & Nov. 28-Jan. 20	Dec. 18-Jan. 31	Nov. 14-Feb. 28
Arkansas	Sept. 1-Nov. 9	Closed	Nov. 8-Dec. 6 & Dec. 27-Jan. 11	Nov. 1-Feb. 15
Illinois (9)	Sept. 6-Nov. 14	Closed	Oct. 18-Dec. 1	Sept. 6-Dec. 21
Indiana (10)	Sept. 1-Nov. 9	Closed	Oct. 3-Nov. 16	Sept. 1-Dec. 16
Iowa (11)	Sept. 6-Nov. 14	Closed	Oct. 4-Nov. 17	Sept. 6-Nov. 30
Kentucky	Sept. 1-Nov. 9	Closed	Oct. 18-Dec. 1	Sept. 17-Nov. 2 & Nov. 27-Jan. 25
Louisiana (12)	Sept. 13-Sept. 28	Sept. 13-Sept. 28	Dec. 18-Jan. 31	Nov. 14-Feb. 28
Michigan (13)	Sept. 15-Nov. 14	Closed	Sept. 20-Nov. 3	Sept. 15-Nov. 14
Minnesota	Sept. 1-Nov. 4	Closed	Sept. 20-Nov. 3	Sept. 1-Nov. 4
Mississippi	Oct. 11-Dec. 19	Oct. 11-Dec. 19	Dec. 18-Jan. 31	Nov. 14-Feb. 28
Missouri	Sept. 1-Nov. 9	Closed	Oct. 15-Nov. 28	Sept. 1-Dec. 16
Ohio	Sept. 1-Nov. 9	Closed	Oct. 17-Nov. 30	Sept. 1-Nov. 30 & Dec. 8-Dec. 23
Tennessee	Deferred	Closed	Oct. 25-Dec. 8	Nov. 15-Feb. 28
Wisconsin	Deferred	Closed	Sept. 20-Nov. 3	Deferred

	Sora and Virginia Rails	Clapper and King Rails	Woodcock	Common Snipe
CENTRAL FLYWAY				
Colorado	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16
Kansas	Sept. 1-Nov. 9	Closed	Oct. 11-Nov. 24	Sept. 1-Dec. 16
Montana	Closed	Closed	Closed	Sept. 1-Dec. 16
Nebraska (14)	Sept. 1-Nov. 9	Closed	Sept. 20-Nov. 3	Sept. 1-Dec. 16
New Mexico	Sept. 20-Nov. 28	Closed	Closed	Oct. 11-Jan. 25
North Dakota	Closed	Closed	Sept. 20-Nov. 2	Sept. 20-Nov. 30
Oklahoma	Sept. 1-Nov. 9	Closed	Nov. 1-Dec. 15	Oct. 1-Jan. 15
South Dakota (15)	Closed	Closed	Closed	Sept. 1-Oct. 31
Texas	Sept. 20-Sept. 28 & Oct. 25-Dec. 24	Sept. 20-Sept. 28 & Oct. 25-Dec. 24	Dec. 18-Jan. 31	Oct. 18-Feb. 1
Wyoming	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16
PACIFIC FLYWAY				
Arizona	Closed	Closed	Closed	Deferred
Colorado	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16
Idaho:				
Area 1	Closed	Closed	Closed	Deferred
Area 2	Closed	Closed	Closed	Deferred
Montana	Closed	Closed	Closed	Sept. 1-Dec. 16
Nevada	Closed	Closed	Closed	Oct. 4-Jan. 16
New Mexico	Sept. 20-Nov. 28	Closed	Closed	Oct. 11-Jan. 25
Wyoming	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16

NOTE: For all other States in the Pacific Flyway, snipe seasons have been deferred and no seasons are prescribed for woodcock and rails.

(1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these species.

(2) All bag and possession limits for clapper and king rails apply singly or in the aggregate of the two species and, unless otherwise specified, the limits are in addition to the limits on sora and Virginia rails in all States. In Connecticut, Delaware, Maryland, and New Jersey, the limits for clapper and king rails are 10 daily and 20 in possession.

(3) In Connecticut, the daily bag and possession limits may not contain more than 1 king rail. The common snipe daily bag and possession limits are 3 and 6, respectively.

(4) In Massachusetts, the sora rail limits are 5 daily and 5 in possession; the Virginia rail limits are 10 daily and 10 in possession.

(5) In New Jersey, the season for king rails is closed by State regulation.

(6) In New York, the rail daily bag and possession limits are 8 and 16, respectively. Seasons for sora and Virginia rails and common snipe are closed on Long Island.

(7) In Rhode Island, the sora and Virginia rails limits are 5 daily and 10 in possession, singly or in the aggregate; the clapper and king rail limits are 5 daily and 10 in possession, singly or in the aggregate; the common snipe limits are 5 daily and 10 in possession.

(8) In Alabama, the rail limits are 15 daily and 15 in possession, singly or in the aggregate.

(9) In Illinois, shooting hours are from sunrise to sunset.

(10) In Indiana, the sora rail limit is 25 daily and 25 in possession. The season on Virginia rails is closed.

(11) In Iowa, the limits for sora and Virginia rails are 12 daily and 24 in possession.

(12) In Louisiana, additional days occurring after September 30 will be published with the late season selections.

(13) In Michigan, the aggregate limits for sora and Virginia rails are 8 daily and 16 in possession.

(14) In Nebraska, the rail limits are 10 daily and 20 in possession.

(15) In South Dakota, the snipe limits are 5 daily and 15 in possession.

6. Section 20.105 is amended by revising paragraphs (a) through (f) to read as follows:

§20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise noted. Area descriptions were published in the July 17, 2003, Federal Register (68 FR 42546).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-seasons regulations for further information.

(a) Common Moorhens and Purple Gallinules

	Season Dates	Limits Bag	Possession
ATLANTIC FLYWAY			
Delaware	Sept. 1-Nov. 8	15	30
Florida (1)	Sept. 1-Nov.9	15	30
Georgia	Deferred	--	--
Maine	Closed	--	--
New Jersey	Sept. 1-Nov. 8	10	20
New York			
Long Island	Closed	--	--
Remainder of State	Sept. 1-Nov. 9	8	16
North Carolina	Sept. 1-Nov. 8	15	30
Pennsylvania	Sept. 1-Nov. 8	15	30
South Carolina	Sept. 26-Sept. 30 &	15	30
	Oct. 24-Dec. 27	15	30
Virginia	Deferred	--	--
West Virginia	Deferred	--	--
MISSISSIPPI FLYWAY			
Alabama	Sept. 6-Sept. 21 &	15	15
	Nov. 28-Jan. 20	15	15
Arkansas	Sept. 1-Nov. 9	15	30
Indiana	Sept. 1-Nov. 9	15	30
Kentucky	Sept. 1-Nov. 9	15	30
Louisiana (2)	Sept. 13-Sept. 28	15	30
Michigan	Deferred	--	--
Minnesota	Deferred	--	--
Mississippi	Oct. 11-Dec. 19	15	30

	Season Dates	Limits Bag	Possession
Ohio	Sept. 1-Nov. 9	15	30
Tennessee	Deferred	--	--
Wisconsin	Deferred	--	--
CENTRAL FLYWAY			
New Mexico			
Zone 1	Oct. 11-Dec. 19	1	2
Zone 2	Oct. 11-Dec. 19	1	2
Oklahoma	Sept. 1-Nov. 9	15	30
Texas	Sept. 20-Sept. 28 &	15	30
	Oct. 25-Dec. 24	15	30
Wyoming	Deferred	--	--
PACIFIC FLYWAY			
All States	Deferred	--	--

(1) The season applies to common moorhens only.

(2) Additional days occurring after September 30 will be published with the late season selections.

(b) Sea Ducks (scoter, eider, and oldsquaw ducks in Atlantic Flyway).

Within the special sea duck areas, the daily bag limit is 7 scoter, eider, and oldsquaw ducks, singly or in the aggregate, of which no more than 4 may be scoters. Possession limits are twice the daily bag limit. These limits may be in addition to regular duck bag limits only during the regular duck season in the special sea duck hunting areas.

	Season Dates	Limits Bag	Possession
Connecticut	Sept. 24-Jan. 24	7	14
Delaware	Sept. 19-Jan. 20	7	14
Georgia	Deferred	--	--
Maine	Deferred	--	--

	Season Dates	Limits Bag	Possession
Maryland	Deferred	--	--
Massachusetts	Deferred	--	--
New Hampshire (1)	Sept. 15-Dec. 30	7	14
New Jersey	Sept. 18-Jan. 20	7	14
New York	Oct. 11-Jan. 25	7	14
North Carolina	Deferred	--	--
Rhode Island	Oct. 11-Jan. 25	7	14
South Carolina	Deferred	--	--
Virginia	Deferred	--	--

NOTE: Notwithstanding the provisions of this Part 20, the shooting of crippled waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Virginia and Maryland in those areas described, delineated, and designated in their respective hunting regulations as special sea duck hunting areas.

(1) In New Hampshire, the daily bag limit may include no more than 4 scoters, 4 eiders, or 4 oldsquaws.

(c) Early (September) Duck Seasons.

Note: Unless otherwise specified, the seasons listed below are for teal only.

	Season Dates	Limits Bag	Possession
ATLANTIC FLYWAY			
Delaware (1)(2)	Sept. 4-Sept. 13	4	8
Florida (3)	Sept. 20-Sept. 24	4	8
Georgia	Sept. 20-Sept. 28	4	8
Maryland (1)	Sept. 11-Sept. 20	4	8
North Carolina (1)	Sept. 11-Sept. 20	4	8
South Carolina (4)	Sept. 19-Sept. 27	4	8

	Season Dates	Limits Bag	Possession
Virginia (1)	Sept. 13-Sept. 23	4	8
MISSISSIPPI FLYWAY			
Alabama	Sept. 6-Sept. 21	4	8
Arkansas (4)	Sept. 13-Sept. 28	4	8
Illinois (4)	Sept. 6-Sept. 21	4	8
Indiana (4)	Sept. 1-Sept. 16	4	8
Iowa (5)			
North Zone	Sept. 20-Sept. 24	--	--
South Zone	Sept. 20-Sept. 22	--	--
Kentucky (6)	Sept. 17-Sept. 21	4	8
Louisiana	Sept. 13-Sept. 28	4	8
Mississippi	Sept. 13-Sept. 28	4	8
Missouri (4)	Sept. 6-Sept. 21	4	8
Ohio (4)	Sept. 1-Sept. 16	4	8
Tennessee (6)	Sept. 13-Sept. 17	4	8
CENTRAL FLYWAY			
Colorado (1)	Sept. 6-Sept. 14	4	8
Kansas			
Low Plains	Sept. 20-Sept. 27	4	8
High Plains	Sept. 13-Sept. 28	4	8
Nebraska (1)	Sept. 13-Sept. 21	4	8
New Mexico	Sept. 20-Sept. 28	4	8
Oklahoma			
Low Plains	Sept. 13-Sept. 28	4	8
High Plains	Sept. 13-Sept. 28	4	8
Texas	Sept. 13-Sept. 28	4	8

(1) Area restrictions. See State regulations.

(2) In Delaware, the shooting hours are from ½ hour before sunrise to 10:00 a.m.

(3) In Florida, the daily bag limit is 4 wood ducks and teal in the aggregate, no more than 2 of which may be wood ducks. The possession limit is twice the daily bag limit.

(4) Shooting hours are from sunrise to sunset.

(5) In Iowa, the September season is part of the regular season, and limits will conform to those set for the regular season.

(6) In Kentucky and Tennessee, the daily bag limit is 4 wood ducks and teal in the aggregate, of which no more than 2 may be wood ducks. The possession limit is twice the daily bag limit.

(d) Special Early Canada Goose Seasons.

	Season Dates	Limits	
		Bag	Possession
ATLANTIC FLYWAY			
Connecticut			
North Zone	Sept. 2-Sept. 30	8	16
South Zone	Sept. 17-Sept. 30	8	16
Delaware	Sept. 1-Sept. 15	8	16
Florida (1)	Sept. 20-Sept. 24	5	10
Georgia	Sept. 20-Sept. 28	5	10
Maine	Sept. 2-Sept. 25	3	6
Maryland			
Eastern Unit	Sept. 1-Sept. 15	5	10
Western Unit	Sept. 1-Sept. 25	5	10
Massachusetts (2)			
Central Zone	Sept. 2-Sept. 25	5	10
Coastal Zone	Sept. 2-Sept. 25	5	10
Western Zone	Sept. 2-Sept. 25	5	10
New Hampshire	Sept. 2-Sept. 25	3	6
New Jersey	Sept. 1-Sept. 30	8	16
New York			
Lake Champlain Zone	Sept. 2-Sept. 25	3	6
Northeastern Zone	Sept. 1-Sept. 25	8	16
Western Zone	Sept. 1-Sept. 25	8	16
Southeastern Zone	Sept. 1-Sept. 25	8	16
Long Island Zone (3)	Sept. 2-Sept. 30	8	16

	Season Dates	Limits Bag	Limits Possession
North Carolina (4)	Sept. 1-Sept. 30	5	10
Pennsylvania			
Southeast Zone	Sept. 1-Sept. 25	8	16
Rest of State	Sept. 1-Sept. 25	5	10
Rhode Island	Sept. 1-Sept. 30	8	16
South Carolina			
Early-Season Hunt Unit	Sept. 12-Sept. 27	8	16
Vermont			
Lake Champlain Zone	Sept. 2-Sept. 25	3	6
Interior Vermont Zone	Sept. 2-Sept. 25	3	6
Connecticut River Zone (6)	Sept. 2-Sept. 25	3	6
Virginia	Sept. 1-Sept. 25	5	10
West Virginia	Sept. 1-Sept. 13	5	10
MISSISSIPPI FLYWAY			
Alabama	Sept. 1-Sept. 15	5	10
Illinois			
Northeast Zone	Sept. 1-Sept. 15	5	10
North Zone	Sept. 1-Sept. 15	2	4
Central Zone	Sept. 1-Sept. 15	2	4
South Zone	Sept. 1-Sept. 15	2	4
Indiana	Sept. 1-Sept. 15	5	10
Iowa (3)			
Des Moines Goose Zone	Sept. 1-Sept. 15	3	3
Cedar Rapids/Iowa City Goose Zone	Sept. 1-Sept. 15	3	3
Kentucky	Sept. 6-Sept. 10	2	4
Michigan			
Upper Peninsula	Sept. 1-Sept. 10	5	10
Lower Peninsula:			
Huron, Saginaw, and Tuscola Counties	Sept. 1-Sept. 10	2	4
Remainder	Sept. 1-Sept. 15	5	10
Minnesota			
Twin Cities Metro Zone	Sept. 6-Sept. 22	5	10
Southeast Goose Zone	Sept. 6-Sept. 22	2	4
Five Goose Zone	Sept. 6-Sept. 22	5	10
Northwest Goose Zone	Sept. 6-Sept. 15	2	4

	Season Dates	Limits Bag	Limits Possession
Mississippi (5)	Sept. 1-Sept. 15	5	10
Ohio (3)	Sept. 1-Sept. 15	5	10
Tennessee	Sept. 1-Sept. 15	5	10
Wisconsin			
Early-Season Subzone A	Sept. 2-Sept. 15	5	10
Early-Season Subzone B	Sept. 2-Sept. 15	3	6
CENTRAL FLYWAY			
Kansas:			
Sept. Canada Goose Units	Sept. 6-Sept. 15	3	6
North Dakota	Sept. 1-Sept. 15	5	10
Oklahoma	Sept. 13-Sept. 22	3	6
South Dakota (3):			
West Unit (7)	Sept. 1-Sept. 15	5	10
North Unit	Sept. 1-Sept. 26	5	10
South Unit	Sept. 13-Sept. 26	5	10
PACIFIC FLYWAY			
California:			
Humboldt County	Closed		
Colorado:	Sept. 6-Sept. 14	3	6
Idaho			
East Canada Goose Zone	Closed		
Nez Perce County	Closed		
Oregon:			
Northwest Zone	Sept. 6-Sept. 19	5	10
Southwest Zone	Sept. 6-Sept. 12	5	10
East Zone	Sept. 6-Sept. 12	5	10
Washington:			
Mgmt. Area 2B	Sept. 1-Sept. 15	5	10
Mgmt. Areas 1 & 3	Sept. 6-Sept. 11	5	10
Mgmt. Area 4 & 5	Sept. 6-Sept. 7	3	6
Mgmt. Area 2A	Sept. 6-Sept. 11	3	6
Wyoming (2)	Sept. 1-Sept. 8	3	6 per season

(1) In Florida, the September Canada goose season is only open in the Florida waters of Lake Seminole in Jackson County that are south of State Route 2, north of the Jim Woodruff Dam, and east of State Route 2.

(2) State permit required.

(3) See State regulations for additional information.

(4) In North Carolina, in Currituck and Dare Counties, the daily bag and possession limits are 2 and 4, respectively.

(5) In Mississippi, the season is closed on Roebuck Lake in Leflore County.

(6) In Vermont, the Connecticut River Zone set by New Hampshire, is the same as the New Hampshire Inland Zone.

(7) In South Dakota, the West Unit includes Brown, Campbell, Edmunds, Faulk, McPherson, Spink, and Walworth Counties.

(e) Regular Goose Seasons.

Note: Bag and possession limits will conform to those set for the regular season.

	Season Dates
MISSISSIPPI FLYWAY	
Michigan (1)	
Canada:	
MVP Zone	Sept. 20-Nov. 6 & Dec. 13-Dec. 19
SJBP Zone	Sept. 20-Oct. 12 & Dec. 13-Dec. 19
White-fronted and Brant	Sept. 20-Dec. 7
Light geese	Sept. 20-Dec. 7
Wisconsin	
Horicon Zone	Sept. 16-Sept. 30
Collins Zone	Sept. 16-Sept. 30
Exterior Zone	Sept. 20-Sept. 30

(1) In Michigan, season dates for the Muskegon Wastewater, Saginaw County, Allegan County, Tuscola/Huron Goose Management Units in the South Zone will be established in the late-season regulatory process.

(f) Youth Waterfowl Hunting Days

The following seasons are open only to youth hunters. Youth hunters must be accompanied into the field by an adult at least 18 years of age. This adult cannot duck hunt but may participate in other open seasons.

Definitions

Youth Hunters: Includes youths 15 years of age or younger.

The Atlantic Flyway: Includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

The Mississippi Flyway: Includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

The Central Flyway: Includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

The Pacific Flyway: Includes Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nevada, New Mexico (the

Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

Note: Bag and possession limits will conform to those set for the regular season.

	Season Dates
ATLANTIC FLYWAY	
Connecticut	Deferred
Delaware	
Ducks, geese, and coots	Oct. 25
Florida	
Deferred	
Georgia	
Ducks, geese, mergansers, coots, moorhens and gallinules	Nov. 15 & 16
Maine	
Ducks, mergansers, and coots	Sept. 20
Maryland (1)	
Ducks, mergansers, coots, and Canada geese	Deferred
Massachusetts	Deferred
New Hampshire	
Ducks, geese, mergansers, and coots	Sept. 27 & 28
New Jersey	
Ducks, geese, mergansers, coots, moorhens and gallinules	Sept. 27
New York	
Ducks, mergansers, coots, and Canada geese (2)	
Long Island Zone	Nov. 8 & 9
Lake Champlain Zone	Sept. 27 & 28
Northeastern Zone	Sept. 20 & 21
Southeastern Zone	Sept. 27 & 28
Western Zone	Oct. 4 & 5
North Carolina	Deferred
Pennsylvania	
Ducks, mergansers, Canada geese, coots and moorhens	Sept. 27
Rhode Island	
Ducks, mergansers and coots	Nov. 1 & 2
South Carolina	Deferred

	Season Dates
Vermont	
Ducks, mergansers and coots	Sept. 27 & 28
Virginia	Deferred
West Virginia (3)	
Ducks, geese, mergansers, coots, moorhens, and gallinules	Sept. 20
MISSISSIPPI FLYWAY	
Alabama	
Ducks, mergansers, coots, geese, moorhens and gallinules	Feb. 7 & 8
Arkansas	Deferred
Illinois	Deferred
Indiana	Deferred
Iowa	
Ducks, geese, mergansers and coots	Oct. 4 & 5
Kentucky	
Ducks, geese, mergansers, coots, moorhens, and gallinules	
East Zone	Oct. 11 & 12
West Zone	Feb. 7 & 8
Louisiana	Deferred
Michigan	
Ducks, geese, mergansers, coots, moorhens and gallinules	Sept. 20 & 21
Minnesota (4)	
Ducks, geese, mergansers, coots, moorhens and gallinules	Sept. 20
Mississippi	Deferred
Missouri	Deferred
Ohio	Deferred
Tennessee	Deferred

	Season Dates
Wisconsin	
Ducks, geese, mergansers, coots, moorhens and gallinules	Sept. 20 & 21
CENTRAL FLYWAY	
Colorado	
Ducks, dark geese, mergansers and coots	Sept. 27 & 28
Kansas (5)	
Ducks, dark geese, mergansers and coots	
High Plains	Deferred
Low Plains	
Early Zone	Deferred
Late Zone	Deferred
Montana	
Ducks, geese, mergansers and coots	Sept. 27 & 28
Nebraska (6)	
Ducks, mergansers, coots, and geese	Sept. 27 & 28
New Mexico	
Ducks, mergansers, and coots	
North Zone	Oct. 4 & 5
South Zone	Oct. 18 & 19
North Dakota	
Ducks, geese, mergansers and coots	Sept. 20 & 21
Oklahoma	
Ducks, geese, mergansers, coots	
High Plains	Deferred
Low Plains	Deferred
South Dakota (7)	
Ducks, Canada geese, mergansers, and coots	Sept. 20 & 21
Texas	Deferred
Wyoming	
Ducks, geese, mergansers and coots	
Zone 1	Sept. 27
Zone 2	Sept. 20

	Season Dates
PACIFIC FLYWAY	
Arizona	
Ducks, geese, mergansers, coots, moorhens and gallinules	
North Zone	Deferred
South Zone	Deferred
California	
Ducks, geese, mergansers, coots, moorhens and gallinules	
Northeastern Zone	Sept. 27 & 28
Colorado River Zone	Deferred
Southern Zone	Deferred
Southern San Joaquin Valley Zone	Deferred
Balance-of-State Zone	Deferred
Colorado	
Ducks, geese, mergansers, and coots	Sept. 27 & 28
Idaho	
Ducks, Canada geese, mergansers, coots, moorhens and gallinules	Sept. 27 & 28
Montana	
Ducks, geese, mergansers, coots, moorhens and gallinules	Sept. 27 & 28
Nevada	
Ducks, geese, mergansers, coots, moorhens and gallinules	
Clark and Lincoln Counties	Jan. 31-Feb. 1
Rest of State	Sept. 27 & 28
New Mexico	
Ducks, geese, mergansers and coots	Oct. 11-Oct. 12
Oregon (8)	
Ducks, Canada geese, mergansers, coots, moorhens and gallinules	Sept. 27 & 28
Utah	
Ducks, geese, mergansers, coots, moorhens and gallinules	Sept. 27
Washington	
Ducks, Canada geese, mergansers, coots, moorhens and gallinules	Sept. 20 & 21
Wyoming	
Ducks, dark geese, mergansers, coots, moorhens and gallinules	Sept. 20

(1) In Maryland, the accompanying adult must be at least 21 years of age and possess a valid Maryland hunting license (or be exempt from the license requirement). This accompanying adult may not shoot or possess a firearm.

(2) In New York, the daily bag limit for Canada geese is 2.

(3) In West Virginia, the accompanying adult must be at least 21 years of age.

(4) In Minnesota, the Canada goose limit is 5, except that in the Twin Cities, Southeast, and Northwest Goose Zones, Swan Lake Area, and Carlos Avery Wildlife Management Area the limit is 1.

(5) In Kansas, the adult accompanying the youth must possess any licenses and/or stamps required by law for that individual to hunt waterfowl.

(6) In Nebraska, see State regulations for additional information on the daily bag limit.

(7) In South Dakota, the limit for Canada geese is 3, except in areas where the Special Early Canada goose season is open. In those areas, the limit is the same as for that special season.

(8) In Oregon, the Canada goose season is closed for the youth hunt in Western Washington Goose Management Area 2.

7. Section 20.106 is revised to read as follows:

§20.106 Seasons, limits, and shooting hours for sandhill cranes.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting and Hawking hours are one-half hour before sunrise until sunset, except as otherwise noted. Area descriptions were published in the July 17, 2003, Federal Register (68 FR 42546).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-season regulations for further information.

	Season Dates	Limits	
		Bag	Possession
CENTRAL FLYWAY			
Colorado (1)	Oct. 4-Nov. 30	3	6
Kansas (2)	Nov. 1-Dec. 28	3	6
Montana			
Regular Season Area (1)	Sept. 27-Nov. 23	3	6
Special Season Area (3)	Sept. 6-Sept. 14	1 per season	

	Season Dates	Limits Bag	Possession
New Mexico			
Regular Season Area (1)	Oct. 31-Jan. 31	3	6
Middle Rio Grande Valley Area (3)(4)(5)	Oct. 25-Oct. 26 &	1	2
	Nov. 15-Nov. 16 &	1	2
	Dec. 6-Dec. 7 &	1	2
	Jan. 10-Jan. 11	1	2
Southwest Area (3)(4)(5)	Nov. 1-Nov. 2 &	2	4
	Jan. 3-Jan. 4	2	4
Estancia Valley (4)(5)	Oct. 25-Oct. 26	2	4
North Dakota (2)			
Area 1	Sept. 20-Nov. 16	3	6
Area 2	Sept. 20-Oct. 26	2	4
Oklahoma (1)	Deferred	--	--
South Dakota (1)	Sept. 27-Nov. 23	3	6
Texas (1)			
Zone A	Deferred	--	--
Zone B	Deferred	--	--
Zone C	Deferred	--	--
Wyoming			
Regular Season Area (1)	Sept. 13-Nov. 9	3	6
Riverton-Boysen Unit (Area 4) (3)	Sept. 20-Oct. 10	1 per season	
Big Horn and Park Counties (Area 6) (3)	Sept. 20-Oct. 5	1 per season	
PACIFIC FLYWAY			
Arizona (3)	Oct. 31-Nov. 2 &	2 per season	
	Nov. 4-Nov. 6 &	2 per season	
	Nov. 8-Nov. 10 &	2 per season	
	Nov. 12-Nov. 14 &	2 per season	
	Nov. 16-Nov. 18	2 per season	
Idaho (3)	Sept. 1-Sept. 15	2	9 per season
Montana			
Special Season Area (3)	Sept. 6-Sept. 14	1 per season	
Utah (3)			
Rich County	Sept. 6-Sept. 14	1 per season	
Cache County	Sept. 6-Sept. 14	1 per season	
Eastern Box Elder County	Sept. 6-Sept. 14	1 per season	
Uintah County	Sept. 27-Oct. 5	1 per season	

	Season Dates	Limits Bag	Possession
Wyoming (3)			
Bear River Area (Area 1)	Sept. 1-Sept. 14	1 per season	
Salt River Area (Area 2)	Sept. 1-Sept. 8	1 per season	
Eden-Farson Area (Area 3)	Sept. 1-Sept. 8	1 per season	

(1) Each hunter participating in a regular sandhill crane hunting season must obtain and carry in his or her possession while hunting sandhill cranes a valid Federal sandhill crane hunting permit available without cost from conservation agencies in the States where crane hunting seasons are allowed. The permit must be displayed to any authorized law enforcement official upon request.

(2) In Kansas and North Dakota, each hunter participating in a regular sandhill crane hunting season must obtain and carry in his or her possession while hunting sandhill cranes a valid Federal sandhill crane hunting permit issued and validated by the State. The permit must be displayed to any authorized law enforcement official upon request.

(3) Hunting is by State permit only.

(4) In New Mexico, the seasonal bag limit is 2 in the Middle Rio Grande Valley Area, 4 in the Estancia Valley, and 8 in the Southwest Area.

(5) Shooting hours are one-half hour before sunrise to sunset.

8. Section 20.109 is revised to read as follows:

§20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the July 17, 2003, Federal Register (68 FR 42546). For those extended seasons for ducks, mergansers, and coots, area descriptions were published in the August 19, 2003, Federal Register (68 FR 50016) and will be published again in a September 2003 Federal Register.

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Daily bag limit . . . . . 3 migratory birds, singly or in the aggregate.

Possession limit . . . . . 6 migratory birds, singly or in the aggregate.

These limits apply to falconry during both regular hunting seasons and extended falconry seasons -- unless

further restricted by State regulations. The falconry bag and possession limits are not in addition to regular season limits. Unless otherwise specified, extended falconry for ducks does not include sea ducks within the special sea duck areas. Only extended falconry seasons are shown below. Many States permit falconry during the gun seasons. Please consult State regulations for details.

For ducks, mergansers, coots, geese, and some moorhen seasons; additional season days occurring after September 30 will be published with the late-season selections. Some States have deferred selections. Consult late-season regulations for further information.

	Extended Falconry Dates
ATLANTIC FLYWAY	
Delaware	
Mourning dove	Sept. 22-Oct. 18 & Jan. 14-Jan. 23
Rail	Nov. 10-Dec. 17
Woodcock	Oct. 1-Nov. 14 & Feb. 1-Mar. 3
Snipe	Feb. 1-Mar. 9
Florida	
Mourning and white-winged doves	Oct. 28-Nov. 14 & Dec. 1-Dec. 12 & Jan. 12-Jan. 18
Rails	Nov. 10-Dec. 16
Woodcock	Nov. 24-Dec. 19 & Jan. 19-Mar. 9
Common moorhens	Nov. 10-Dec. 14
Georgia	
Moorhens, gallinules, and sea ducks	Nov. 15-Nov. 21 & Dec. 1-Dec. 5 & Jan. 26-Feb. 15
Maryland	
Mourning doves	Oct. 19-Nov. 9 & Dec. 14-Dec. 19 & Jan. 4- Jan. 13
Rails	Nov. 9-Dec. 16
Woodcock	Oct. 1-Oct. 24 & Jan. 20-Mar. 10

	Extended Falconry Dates
Pennsylvania	
Mourning doves	Oct. 6-Oct. 31 & Dec. 1-Dec. 11
Virginia	
Doves	Sept. 28-Oct. 7 & Dec. 11-Dec. 30 & Jan. 11-Jan. 17
Woodcock	Oct. 29-Oct. 31 & Nov. 16-Dec. 19 & Jan. 4-Feb. 1
MISSISSIPPI FLYWAY	
Illinois	
Mourning doves	Oct. 15-Oct. 31 & Nov. 17-Dec. 16
Rails	Sept. 1-Sept. 5 & Nov. 15-Dec. 16
Woodcock	Sept. 1-Oct. 17 & Dec. 2-Dec. 16
Indiana	
Mourning doves	Oct. 17-Nov. 6 & Jan. 1-Jan. 26
Woodcock	Sept. 20-Oct. 2 & Nov. 17-Jan. 4
Ducks, mergansers, and coots (1) North Zone	Sept. 27-Sept. 30
Michigan	
Ducks, mergansers, coots, and moorhens	Deferred

	Extended Falconry Dates
Minnesota	
Woodcock	Sept. 1-Sept. 19 & Nov. 4-Dec. 16
Rails and snipe	Nov. 5-Dec. 16
Mississippi	Deferred
Missouri	
Mourning and white-winged doves	Nov. 10-Dec. 16
Ducks, mergansers, and coots	Sept. 6-Sept. 21
Ohio	Deferred
Tennessee	
Mourning doves	Sept. 27-Oct. 10 & Oct. 27-Nov. 28
Ducks (1)	Sept. 18-Sept. 30
Wisconsin	
Rails, snipe, moorhens, and gallinules (1)	Sept. 1-Sept. 26
Woodcock	Sept. 1-Sept. 19
Ducks, mergansers, and coots	Sept. 20-Sept. 21
CENTRAL FLYWAY	
Montana (2)	
Ducks, mergansers, and coots (1)	Sept. 24-Sept. 30
Nebraska	
Ducks, mergansers, and coots	
High Plains	Sept. 13-Sept. 21 & Sept. 27-Sept. 28
Low Plains	Sept. 6-Sept. 28
New Mexico	
Doves	
North Zone	Oct. 31-Dec. 16
South Zone	Oct. 1-Nov. 14 & Dec. 15-Dec. 16

	Extended Falconry Dates
New Mexico (cont.)	
Band-tailed pigeons	
North Zone	Sept. 21-Dec. 16
South Zone	Oct. 21-Jan. 15
Sandhill cranes	
Regular Season Area	Oct. 17-Oct. 30
Ducks and coots	Sept. 20-Sept. 28
Common moorhens	Dec. 20-Jan. 25
Sora and Virginia rails	Nov. 29-Jan. 4
North Dakota	
Ducks, mergansers, and coots	Sept. 8-Sept. 12 & Sept. 15-Sept. 19
Snipe	Sept. 1-Sept. 19
South Dakota	
Ducks, mergansers, and coots (1)	
High Plains	Sept. 4-Sept. 11
Low Plains	
North Zone	Sept. 4-Sept. 19 & Sept. 22-Sept. 26
Middle Zone	Sept. 4-Sept. 19 & Sept. 22-Sept. 26
South Zone	Sept. 4-Sept. 19 & Sept. 22-Sept. 30
Texas	
Mourning and white-winged doves	Nov. 19-Dec. 25
Rails and gallinules	Dec. 26-Jan. 31
Woodcock	Nov. 24-Dec. 17 & Feb. 1-Mar. 10
Wyoming	
Rails	Nov. 10-Dec. 16
Ducks, mergansers, and coots (1)	
Zone 1	Sept. 24-Oct. 3
Zone 2	Sept. 17-Sept. 26

	Extended Falconry Dates
PACIFIC FLYWAY	
Arizona	
Doves	Sept. 12-Oct. 28
Idaho	
Mourning doves	Nov. 1-Jan. 16
New Mexico	
Doves	
North Zone	Oct. 31-Dec. 16
South Zone	Oct. 1-Nov. 14 & Dec. 14-Dec. 16
Band-tailed pigeons	
North Zone	Sept. 21-Dec. 16
South Zone	Oct. 21-Jan. 15
Oregon (3)	
Mourning doves	Oct. 1-Dec. 16
Band-tailed pigeons	Sept. 1-Sept. 14 & Sept. 24-Dec. 16
Utah	
Mourning doves and band-tailed pigeons	Oct. 1-Dec. 16
Washington	
Mourning doves	Oct. 1-Dec. 31
Wyoming	
Rails	Nov. 10-Dec. 16
Ducks, mergansers, and coots (1)	Sept. 20

(1) Additional days occurring after September 30 will be published with the late-season selections.

(2) In Montana, the bag limit is 2 and the possession limit is 6.

(3) In Oregon, no more than 1 pigeon daily in bag or possession.

[FR Doc. 03–21759 Filed 8–27–03; 8:45 am]
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Federal Register

Thursday,
August 28, 2003

Part III

Department of Homeland Security

Bureau of Customs and Border Protection

Department of the Treasury

19 CFR Chapters I and IV

Delegations of Authority: Signature of Customs and Border Protection Regulations Published in the Federal Register; Final Rule

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Chapters I and IV

[CBP Dec. 03–24]

RIN 1515 AD 39

Delegations of Authority: Signature of Customs and Border Protection Regulations Published in the Federal Register

AGENCY: Bureau of Customs and Border Protection; Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document revises the title and structure of title 19 of the Code of Federal Regulations (CFR) to reflect changes caused by the creation of the Department of Homeland Security and the consequent governmental reorganization. The document also specifies the signatures that indicate the exercise of authority for documents that appear in 19 CFR chapter I. In addition, this document adds and reserves for future use a chapter under which the bureau of Immigration and Customs Enforcement (ICE) may issue regulations.

EFFECTIVE DATE: August 28, 2003.

FOR FURTHER INFORMATION CONTACT: Harold Singer, Chief, Regulations Branch, Customs and Border Protection (202) 572–8767.

SUPPLEMENTARY INFORMATION:

Background

Prior to March 1, 2003, the United States Customs Service was a component of the Department of the Treasury (Treasury). In accordance with Treasury Department Order No. 165, Revised (Treasury Decision 53654), issued on November 2, 1954, the Commissioner of Customs prescribed the regulations contained in Title 19 of the Code of Federal Regulations, Chapter I (19 CFR Chapter I) (the Customs Regulations), and with certain limited exceptions, the Customs Regulations required the approval of the Secretary of the Treasury (or his or her delegate). On November 25, 2002, the President signed the Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.*, Pub. L. 107–296, (the Act), establishing the Department of Homeland Security (DHS). Under section 403(1) of the Act (6 U.S.C. 203(1)), the United States Customs Service, including functions of the Secretary of the Treasury relating thereto, transferred to the Secretary of Homeland Security.

Notwithstanding the transfer of the Customs Service to DHS, section 412 of the Act (6 U.S.C. 212) provides that the legal authority vested in the Secretary of the Treasury over customs revenue functions is to be retained by the Secretary of the Treasury. Section 412 of the Act also authorizes the Secretary of the Treasury to delegate any of the retained legal authority over the customs revenue functions to the Secretary of Homeland Security.

By Treasury Department Order No. 100–16, dated May 15, 2003 and published in the **Federal Register** on May 23, 2003 (68 FR 28322), the Secretary of the Treasury delegated to the Secretary of Homeland Security authority to prescribe regulations pertaining to the customs revenue functions. This Order further provided that the Secretary of the Treasury retained the sole authority to approve any Customs Regulations concerning import quotas or trade bans, user fees, marking, labeling, copyright and trademark enforcement, and the completion of entry or substance of entry summary including duty assessment and collection, classification, valuation, application of the U.S. Harmonized Schedules, eligibility or requirements for preferential trade programs, and the establishment of recordkeeping requirements relating thereto.

The Code of Federal Regulations (CFR) is divided into 50 titles based on subject matter. Within each CFR title, departments and agencies are assigned individual chapters.

Because title 19 chapter I of the Code of Federal Regulations is currently named for the ''United States Customs Service, Department of the Treasury,'' and that agency is now known as the bureau of ''Customs and Border Protection'' (CBP) and is a component of DHS, the title of 19 CFR chapter I is revised in this document to reflect the new name of the agency and to add DHS. The Department of the Treasury remains in the title of chapter I because of the retained authority of the Secretary of the Treasury with respect to regulations concerning the customs revenue functions.

This document also amends the Customs Regulations by adding a new part 0 that prescribes the signatures that indicate the exercise of authority to amend, revise, or revoke regulations in 19 CFR chapter 1. The document specifies that signatures of the Secretary of the Treasury and of the Secretary of Homeland Security include the signatures of his or her Treasury or DHS delegate (respectively). Thus, the signature of the Commissioner of Customs and Border Protection indicates exercise of the Secretary of Homeland Security's authority as his or her DHS delegate.

Lastly, section 442 of the Homeland Security Act of 2002 (6 U.S.C. 252) established the Bureau of Border Security. Pursuant to section 1502 of the Act, the President transmitted to the House of Representatives the ''Reorganization Plan Modification for the Department of Homeland Security'' which, effective March 1, 2003, renamed the Bureau of Border Security as the bureau of ''Immigration and Customs Enforcement'' (ICE). ICE brings together the investigation arms of the former Customs Service, the investigative functions of the former Immigration and Naturalization Service, and the former Federal Protective Service. Under the savings provisions of the Homeland Security Act and general principles of federal law, the ''Customs Regulations'' in Title 19 CFR chapter I apply as relevant to both components of the legacy ''United States Customs Service''—*i.e.* to ICE and CBP. Nonetheless, in the future it is anticipated that ICE may issue regulations unique to ICE. Thus, this document creates a new chapter IV in 19 CFR for any regulations that ICE may promulgate in the future. However, absent such express regulatory action, the creation of this new chapter does not in itself supersede any Customs Regulations that currently apply for ICE in Chapter I.

Inapplicability of Prior Public Notice and Delayed Effective Date Requirements

This regulation involves matters relating to agency management. It involves the relationship between cabinet Departments on issues of authority over Customs Regulations. For this reason, pursuant to 5 U.S.C. 553 (a)(2), prior notice and public procedure and a delayed effective date are not required.

The Regulatory Flexibility Act and Executive Order 12866

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Further, this amendment does not meet the criteria for a ''significant regulatory action'' for purposes of Executive Order 12866.

List of Subjects in 19 CFR Part 0

Customs duties and inspection, Delegations of authority.

Amendments to the Regulations

■ For the reasons set forth in the preamble and under the Homeland Security Act of 2002, Pub. L. 107–296, Title 19 chapter I is amended and chapter IV is added as set forth below:

CHAPTER I—BUREAU OF CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY; DEPARTMENT OF THE TREASURY

■ 1. Revise the chapter I heading to read as set forth above.

■ 2. Add part 0 to chapter I to read as follows:

PART 0—TRANSFERRED OR DELEGATED AUTHORITY

Sec.
0.1 Customs revenue function regulations issued under the authority of the Departments of the Treasury and Homeland Security.
0.2 All other Customs Regulations issued under the authority of the Department of Homeland Security.
Appendix to 19 CFR Part 0—Treasury Department Order No. 100–16

Authority: 5 U.S.C. 301, 6 U.S.C. 101 *et seq.*, 19 U.S.C. 66, 19 U.S.C. 1624, 31 U.S.C. 321.

§ 0.1 Customs revenue function regulations issued under the authority of the Departments of the Treasury and Homeland Security.

(a) *Regulations requiring signatures of Treasury and Homeland Security.* (1) By Treasury Department Order No. 100–16, set forth in the appendix to this part, the Secretary of the Treasury has delegated to the Secretary of Homeland Security the authority to prescribe all Customs regulations relating to customs revenue functions, except that the Secretary of the Treasury retains the sole authority to approve such Customs regulations concerning subject matters listed in paragraph 1(a)(i) of the order. Regulations for which the Secretary of the Treasury retains the sole authority to approve will be signed by the Secretary of Homeland Security (or his or her DHS delegate), and by the Secretary of the Treasury (or his or her Treasury delegate) to indicate approval.

(2) When a regulation described in paragraph (a)(1) of this section is published in the **Federal Register**, the preamble of the document accompanying the regulation will clearly indicate that it is being issued in accordance with paragraph (a)(1) of this section.

(b) *Regulations with respect to which the Department of Homeland Security is authorized to sign for the Department of the Treasury.* (1) By Treasury Department Order No. 100–16, set forth in the appendix to this part, the Secretary of the Treasury delegated to the Secretary of Homeland Security the authority to prescribe and approve regulations relating to customs revenue functions on behalf of the Secretary of the Treasury when the subject matter of the regulations is not listed in paragraph 1(a)(i) of the order. Such regulations are the official regulations of both Departments notwithstanding that they are not signed by an official of the Department of the Treasury. These regulations will be signed by the Secretary of Homeland Security (or his or her DHS delegate).

(2) When a regulation described in paragraph (b)(1) of this section is published in the **Federal Register**, the preamble of the document accompanying the regulation will clearly indicate that it is being issued in accordance with paragraph (b)(1) of this section.

(c) *Sole signature by Secretary of the Treasury.* (1) Pursuant to Treasury Department Order No. 100–16, set forth in the appendix to this part, the Secretary of the Treasury reserves the right to promulgate regulations related to the customs revenue functions. Such regulations are signed by the Secretary of the Treasury (or his or her delegate) after consultation with the Secretary of Homeland Security (or his or her delegate), and are the official regulations of both Departments.

(2) When a regulation described in paragraph (c)(1) of this section is published in the **Federal Register**, the preamble of the document accompanying the regulation will clearly indicate that the regulation is being issued in accordance with paragraph (c)(1) of this section.

§ 0.2 All other Customs regulations issued under the authority of the Department of Homeland Security.

(a) The authority of the Secretary of the Treasury with respect to Customs regulations that are not related to customs revenue functions was transferred to the Secretary of Homeland Security pursuant to section 403(1) of the Homeland Security Act of 2002. Such regulations are signed by the Secretary of Homeland Security (or his or her delegate) and are the official regulations of the Department of Homeland Security.

(b) When a regulation described in paragraph (a) of this section is published in the **Federal Register**, the preamble accompanying the regulation shall clearly indicate that it is being issued in accordance with paragraph (a) of this section.

Appendix to 19 CFR Part 0—Treasury Department Order No. 100–16

Delegation from the Secretary of the Treasury to the Secretary of Homeland Security of general authority over Customs revenue functions vested in the Secretary of the Treasury as set forth in the Homeland Security Act of 2002.

Treasury Department, Washington, DC, May 15, 2003.

By virtue of the authority vested in me as the Secretary of the Treasury, including the authority vested by 31 U.S.C. 321(b) and section 412 of the Homeland Security Act of 2002 (Pub. L. 107–296) (Act), it is hereby ordered:

1. Consistent with the transfer of the functions, personnel, assets, and liabilities of the United States Customs Service to the Department of Homeland Security as set forth in section 403(1) of the Act, there is hereby delegated to the Secretary of Homeland Security the authority related to the Customs revenue functions vested in the Secretary of the Treasury as set forth in sections 412 and 415 of the Act, subject to the following exceptions and to paragraph 6 of this Delegation of Authority:

(a)(i) The Secretary of the Treasury retains the sole authority to approve any regulations concerning import quotas or trade bans, user fees, marking, labeling, copyright and trademark enforcement, and the completion of entry or substance of entry summary including duty assessment and collection, classification, valuation, application of the U.S. Harmonized Tariff Schedules, eligibility or requirements for preferential trade programs, and the establishment of recordkeeping requirements relating thereto. The Secretary of Homeland Security shall provide a copy of all regulations so approved to the Chairman and Ranking Member of the Committee on Ways and Means and the Chairman and Ranking Member of the Committee on Finance every six months.

(ii) The Secretary of the Treasury shall retain the authority to review, modify, or revoke any determination or ruling that falls within the criteria set forth in paragraph 1(a)(i), and that is under consideration pursuant to the procedures set forth in sections 516 and 625(c) of the Tariff Act of 1930, as amended (19 U.S.C. 1516 and 1625(c)). The Secretary of Homeland Security periodically shall identify and describe for the Secretary of the Treasury such determinations and rulings that are under consideration under sections 516 and 625(c) of the Tariff Act of 1930, as amended, in an appropriate and timely manner, with consultation as necessary, prior to the Secretary of Homeland Security's exercise of such authority. The Secretary of Homeland Security shall provide a copy of these identifications and descriptions so made to the Chairman and Ranking Member of the Committee on Ways and Means and the Chairman and Ranking Member of the Committee on Finance every six months. The Secretary of the Treasury shall list any case where Treasury modified or revoked such a determination or ruling.

(b) Paragraph 1(a) notwithstanding, if the Secretary of Homeland Security finds an overriding, immediate, and extraordinary security threat to public health and safety, the Secretary of Homeland Security may take action described in paragraph 1(a) without the prior approval of the Secretary of the Treasury. However, immediately after taking any such action, the Secretary of Homeland Security shall certify in writing to the Secretary of the Treasury and to the Chairman and Ranking Member of the Committee on Ways and Means and the Chairman and Ranking Member of the Committee on Finance the specific reasons therefor. The action shall terminate within 14 days or as long as the overriding, immediate, and extraordinary security threat exists, whichever is shorter, unless the Secretary of the Treasury approves the continued action and provides notice of such approval to the Secretary of Homeland Security.

(c) The Advisory Committee on Commercial Operations of the Customs Service (COAC) shall be jointly appointed by the Secretary of the Treasury and the Secretary of Homeland Security. Meetings of COAC shall be presided over jointly by the Secretary of the Treasury and the Secretary of Homeland Security. The COAC shall advise the Secretary of the Treasury and the Secretary of Homeland Security jointly.

2. Any references in this Delegation of Authority to the Secretary of the Treasury or the Secretary of Homeland Security are deemed to include their respective delegees, if any.

3. This Delegation of Authority is not intended to create or confer any right, privilege, or benefit on any private person, including any person in litigation with the United States.

4. Treasury Order No. 165–09, ''Maintenance of delegation in respect to general authority over Customs Revenue functions vested in the Secretary of the Treasury, as set forth and defined in the Homeland Security Act of 2002,'' dated February 28, 2003, is rescinded. To the extent this Delegation of Authority requires any revocation of any other prior Order or Directive of the Secretary of the Treasury, such prior Order or Directive is hereby revoked.

5. This Delegation of Authority is effective May 15, 2003. This Delegation is subject to review on May 14, 2004. By March 15, 2004, the Secretary of the Treasury and the Secretary of Homeland Security shall consult with the Chairman and Ranking Member of the Committee on Ways and Means and the Chairman and Ranking Member of the Committee on Finance to discuss the upcoming review of this Delegation.

6. The Secretary of the Treasury reserves the right to rescind or modify this Delegation of Authority, promulgate regulations, or exercise authority at any time based upon the statutory authority reserved to the Secretary by the Act.

John W. Snow, *Secretary of the Treasury.*

* * * * *

■ 3. Add Chapter IV to Title 19 to read as follows:

CHAPTER IV—BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT; DEPARTMENT OF HOMELAND SECURITY

PARTS 400 to 599—[RESERVED]

Dated: August 5, 2003.

Asa Hutchinson,

Under Secretary for Border and Transportation Security, Department of Homeland Security.

Dated: August 6, 2003.

Timothy E. Skud,

Deputy Assistant Secretary, Department of the Treasury.

[FR Doc. 03–21995 Filed 8–27–03; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

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H.R. 2195/P.L. 108–72
Smithsonian Facilities Authorization Act (Aug. 15, 2003; 117 Stat. 888)

H.R. 2465/P.L. 108–73
Family Farmer Bankruptcy Relief Act of 2003 (Aug. 15, 2003; 117 Stat. 891)

H.R. 2854/P.L. 108–74
To amend title XXI of the Social Security Act to extend the availability of allotments for fiscal years 1998 through 2001 under the State Children's Health Insurance Program, and for other purposes. (Aug. 15, 2003; 117 Stat. 892)

S. 1015/P.L. 108–75

Mosquito Abatement for Safety and Health Act (Aug. 15, 2003; 117 Stat. 898)

H.R. 1412/P.L. 108–76

Higher Education Relief Opportunities for Students Act of 2003 (Aug. 18, 2003; 117 Stat. 904)

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